

SCHOOL FACILITIES AUTHORITY
ADDENDUM NO. 5
TO THE
REQUEST FOR PROPOSALS
TO PROVIDE
PREQUALIFIED CONTRACTORS TO PROVIDE GENERAL CONTRACTOR A and/or B
SERVICES STATEWIDE
REQUEST FOR PROPOSALS NO. RFP-SFA-PCC24-01
ISSUED: November 13, 2024

NOTICE TO ALL PROSPECTIVE OFFERORS:

This Addendum is hereby made a part of the Request for Proposals RFP-SFA-PCC24-01 (RFP) for the PREQUALIFIED CONTRACTORS TO PROVIDE GENERAL CONTRACTOR A and/or B SERVICES STATEWIDE, and it shall amend the said RFP in the following respects:

Instructions to Offerors

Item 1 – Replace November 15 with November 20 on RFP Cover Page, Registration Form on page ii, section 2.3, and section 4.1.1.

Item 2 – Delete timetable in section 1.7 and replace with the following:

Public Notice announcing Request for Proposals (RFP)	September 16, 2024
Pre-proposal Conference (virtually via google meet)	10:00 a.m., September 20, 2024
Deadline for submission of written questions	On or before 2:00 p.m. September 26, 2024
SFA's responses to written questions	On or about October 15, 2024
Via sealed envelope with electronic proposal on flash drive to: ATTN: Procurement Officer School Facilities Authority 2759 South King Street, Room H201 Honolulu, HI 96826 THERE ARE NO EXCEPTIONS TO THIS PROPOSAL DUE DATE UNLESS THE DATE IS AMENDED IN WRITING BY SFA.	 2:00 p.m., November 20, 2024
Evaluation of Proposals	November 25, 2024
Best and Final Offer (BAFO) (Optional solely at SFA's discretion) *	On or about November 26, 2024

Contractors Selected (if no BAFO)	On or about November 26, 2024
Contracts Awarded	On or about November 27, 2024
Earliest Contract Commencement Date	On or about November 27, 2024

Item 3 – Attaching conformed redlined RFP with administrative language changes that were added to improve clarity.

Item 4 – No material changes were made to proposal forms or the technical proposal evaluation scoring process.

a. Attachment 1 – Conformed Redlined RFP

END OF ADDENDUM NO. 5

SCHOOL FACILITIES AUTHORITY

September 16, 2024

REQUEST FOR PROPOSALS

RFP No.: SFA-PCC24-01

SEALED PROPOSALS
TO PROVIDE

PREQUALIFIED CONTRACTORS TO PROVIDE GENERAL CONTRACTOR A and/or B SERVICES STATEWIDE

FOR THE SCHOOL FACILITIES AUTHORITY

will be received up to 2:00 p.m., HST

on

November 15~~20~~, 2024

Via sealed envelope with electronic proposal on flash drive to:

ATTN: Procurement Officer
School Facilities Authority
2759 South King Street, Room H201
Honolulu, HI 96826

Questions relating to this solicitation may be directed to the Procurement Officer
via email at procurement@hisfa.org

STATE OF HAWAII
 School Facilities Authority
 2759 South King Street, Room H201
 Honolulu, HI 96826

**REGISTRATION FORM
 For Online Solicitations**

Offerors interested in this solicitation are highly encouraged to register participation by completing and submitting this Registration Form. This form must be e-mailed to procurement@hisfa.org.

Only Offerors who are registered by the deadline provided below for offers will be forwarded addenda and/or other procurement notices related to this solicitation when issued, if any. Failure to register may result in the Offeror not receiving any addenda and/or other solicitation related notices via email from the SFA; the Offeror's submittal may therefore be rejected and not considered for award if addenda and/or procurement notices are not complied with.

Failure of the Offeror to receive any such addenda shall not relieve the Offeror of any obligation under this solicitation. It remains the responsibility of the Offeror to complete and submit its offer in accordance with the instructions contained in this RFP, as well as subsequent interpretations and addenda, if any.

After registration, Offeror shall then carefully review the solicitation requirements, making special note of any deadlines stated.

Solicitation Number:	SFA-PCC24-01
Solicitation Title:	PREQUALIFIED CONTRACTORS TO PROVIDE GENERAL Contractor A and/or B SERVICES STATEWIDE
Solicitation Deadline:	2:00 p.m. (Hawaii Standard Time) on November 1520, 2024
Name of Company:	
Mailing Address:	
Name of Offeror's Contact Person:	
Offeror's Contact Email:	
Offeror's Contact Telephone No.:	

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Section 1 – Administrative Overview; Notice to Offerors; Key Dates

SECTION 1

ADMINISTRATIVE OVERVIEW; NOTICE TO OFFERORS; KEY DATES

1.1 SCHOOL FACILITIES AUTHORITY OVERVIEW

The School Facilities Authority (SFA) is responsible for providing, creating, and modernizing the learning and living environments within Hawaii's public education system. More information is available at <https://www.hisfa.org/>.

1.2 RFP PURPOSE

The SFA manages a variety of projects across all Hawaiian Islands. This solicitation seeks to establish ~~multiple indefinite delivery indefinite quantity (IDIQ) contracts~~ a prequalified vendor list for General Contractor A and/or B licensed work at various facilities. Projects will occur at various sites statewide. Contractors selected under this RFP will be included in a prequalified pool and invited to submit proposals for specific projects as they arise.

This RFP aims to create a pool of qualified Contractors, each scoring 60% or better during evaluation of submittals provided in response to this RFP. Each of these prequalified Contractors will execute a Contract with SFA regarding the Contractors' participation in this pool. Contractors in the pool will be eligible to compete for General Contractor A and/or B projects during the Contract period. The number of Contractors in the pool will depend on the response to this RFP and scoring, with no predetermined minimum or maximum number of prequalified Contractors.

For each project that arises during the Contract period, three (3) or more Contractors from the pool will be selected to submit proposals. Selection of competing Contractors for each project will generally be based on how the project compares to Offeror responses in RFP forms 5 & 7 and will rotate among the pool members, as practicable. Awards will be based on evaluation criteria specific to each project. Following the award, SFA will issue a Purchase Order to the Contractor for the work relating to that project.

Projects are expected to range from \$100,000.00 to \$6,000,000.00, though amounts may vary. Projects will be segregated by value into small-scale public works under \$1.5M and large-scale public works \$1.5M and greater. The SFA reserves the right to solicit General Contractor A and/or B projects outside of this pool of prequalified Contractors at its discretion.

1.3 NOTICE TO OFFERORS

In accordance with ~~the Hawaii Public Procurement Code~~, Section 103D-303, Hawaii Revised Statutes (HRS) of the Hawaii Public Procurement Code, the SFA is issuing this Request for Proposals. All work performed under Contracts awarded from this RFP and performed under the Purchase Orders issued for projects will be governed by the Attorney General (AG) General Conditions and Interim General Conditions (IGCs), 1999 Edition (Exhibits A and B).

By submitting a proposal, Offerors agree to the terms of the AG General Conditions, Interim General Conditions, and this RFP. Requests for changes or questions regarding these terms must be submitted before the deadline for written questions (see Section 1.7

Section 1 – Administrative Overview; Notice to Offerors; Key Dates

RFP Key Dates). Only changes authorized by the SFA and issued via addendum will be accepted.

Proposals must include the completed Proposal Form 1. Upon Contract award, Contractors must comply with the Responsibility of Offerors as outlined in Section 3-122-112, Hawaii Administrative Rules (HAR).

The SFA makes no guarantee regarding the minimum amount of work to be awarded to any of the prequalified Contractors resulting from this RFP.

1.4 PROCUREMENT AUTHORITY

This procurement is conducted as a competitive proposal under Section 103D-303 of the HRS and Title 3, Subtitle 11, Chapter 122, Subchapter 6 of the HAR. Relevant provisions of Chapter 103D, HRS, and associated Administrative Rules are incorporated by reference and are part of this RFP.

1.5 ISSUING OFFICE AND RFP CONTACT PERSON

The individual listed below is the sole point of contact for this RFP. Unauthorized communication with other SFA personnel from the date of RFP release until Offeror selection may result in disqualification.

Issuing Office:

State of Hawaii
School Facilities Authority
2759 South King Street, Room H201
Honolulu, HI 96826

RFP Point of Contact (POC):

Procurement Officer
Email: procurement@hisfa.org

1.6 ORGANIZATION OF THE REQUEST FOR PROPOSAL (RFP)

This RFP is organized into five sections with supporting appendices, as follows:

- | | |
|-----------|---|
| Section 1 | ADMINISTRATIVE OVERVIEW; NOTICE TO OFFERORS; KEY DATES
Provides Notice to Offerors, a general overview on the organization and purpose of this RFP, background information on the critical need for service, authorities relating to the issuance of the RFP, and the RFP procurement timetable. |
| Section 2 | PROCUREMENT PROCESS
Provides a general description of the State's procurement procedures, methodology, and the review of Proposals. |
| Section 3 | SCOPE OF SERVICES AND REQUIREMENTS
Provides Offerors with a general description of the tasks to be performed, delineates the SFA's and Selected Offerors' (Contractor) responsibilities, stipulates Offeror qualifications, and defines deliverables. |

Section 1 – Administrative Overview; Notice to Offerors; Key Dates

Section 4 PROPOSAL CONTENT, CRITERIA, AND EVALUATION
Describes the required format and content for the Offeror's submittal and establishes requirements for the RFP. Describes how Proposals will be evaluated by the SFA.

Section 5 EXHIBITS
Describes those provisions and conditions unique to this RFP and provides attachments, appendices, and exhibits in the provisions for Offeror's review and response.

Exhibit A: AG General Conditions

Exhibit B: Interim General Conditions, 1999 Edition (IGCs)

Exhibit C: Supplementary Conditions to The Interim General Conditions (1999 Edition)

Exhibit D: Checklist

Exhibit E: Reserved for Future Use

Exhibit F: Contractor's Agreement to Be Bound

Exhibit G: Sample Letter of Assent

Exhibit H: Sample Attestation of Exemption

Section 6 PROPOSAL FORMS

Offeror Form (OF-1), Proposal Form 1

Offeror Certification, Proposal Form 2

List of Any Lawsuits or Pending Legal Actions, Proposal Form 3

Financial Solvency Certification, Proposal Form 4

Offeror's Information, Proposal Form 5

Comparable Construction Experience, Proposal Form 6 (a-d)

Work Capabilities, Proposal Form 7

Section 1 – Administrative Overview; Notice to Offerors; Key Dates

1.7 RFP KEY DATES

Except as noted, the following schedule represents the SFA's best estimate. All times indicated reflect Hawaii Standard Time (HST). If any component of this schedule is delayed, the rest of the schedule will likely be amended by the same number of days. The SFA reserves the right to amend or revise the timetable without prior written notice when such revision or amendment is in the SFA's best interest.

Please reference *Section 4, PROPOSAL CONTENT, CRITERIA, AND EVALUATION*, of this RFP for Proposal submittal requirements.

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Deadline for submission of written questions	On or before 2:00 p.m. September 26, 2024
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Via sealed envelope with electronic proposal on flash drive to: ATTN: Procurement Officer School Facilities Authority 2759 South King Street, Room H201 Honolulu, HI 96826 THERE ARE NO EXCEPTIONS TO THIS PROPOSAL DUE DATE UNLESS THE DATE IS AMENDED IN WRITING BY SFA.	2:00 p.m., November 15 <u>20</u> , 2024
Evaluation of Proposals	November 20 <u>25</u> , 2024
Best and Final Offer (BAFO) (Optional solely at SFA's discretion) *	On or about November 21 <u>26</u> , 2024
Contractors Selected (if no BAFO)	On or about November 21 <u>26</u> , 2024
Contracts Awarded <u>ed</u>	On or about November 22 <u>27</u> , 2024
Earliest Contract Commencement Date/ Notice to Proceed	On or about November 22 <u>27</u> , 2024

*In the event of a BAFO, an addendum will be issued with a new timeline.

Section 2 – Procurement Process

SECTION 2

PROCUREMENT PROCESS

2.1 PROCUREMENT PROCESS OVERVIEW

This procurement is conducted under Subchapter 6, Chapter 3-122, HAR, and Section 103D-303, HRS. The process begins with the issuance of this RFP, followed by responses to written inquiries, and the preparation and submission of Proposals. After evaluation, the Evaluation Committee (EC) will recommend the most advantageous Proposals – i.e., those scoring 60% or better during evaluation – to the Procurement Officer, who may award Contracts to be included in the prequalified pool. The SFA reserves the right to cancel this solicitation or reject any or all offers in whole or in part. This RFP, all addenda, and the Proposal of each successful Offeror will form the Contract between SFA and each successful Offeror.

The terms “Offeror” and “Bidder” are synonymous when used in this and all other related solicitation documents.

2.2 PREPARATION FOR RFP SUBMISSION

2.2.1 Offeror Responsibilities

The submission of a Proposal shall constitute an incontrovertible representation by the Offeror of compliance with the requirements of this RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions for the performance of the anticipated project work. Failure to comply with the requirements of this subsection may be grounds for the rejection of the Proposal or termination of the Contract.

Before submitting a Proposal, each Offeror shall:

- a. Examine the solicitation documents thoroughly for defects and questionable or objectionable matter. Solicitation documents include this RFP, any attachments, and any other relevant documentation.
- b. Submit their written comments concerning any defects and questionable or objectionable matter to the SFA **prior** to the due date for written questions, or as amended. This will allow issuance of any necessary amendments to the RFP. It will also help prevent the opening of any defective proposal and exposure of the Offeror's Proposal upon which Award could not be made. If an Offeror, after submitting written comments or questions during the question period, believes they are aggrieved in connection with the solicitation, they are entitled to submit a protest pursuant to Section 103D-701, HRS.
- c. Know and comply with applicable Federal, State, and County laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the anticipated project work.
- d. Meet all of the qualifications required by this RFP. Failure to provide the Required Documents, as specified in *Section 4.2 Qualifying Requirements*, or failure to meet minimum mandatory requirements, will most likely have

Section 2 – Procurement Process

adverse effects on the evaluation of Offeror's Proposal and may result in a "No Pass" evaluation.

- e. Obtain and pay for all permits (if applicable), certificates, and licenses required and necessary for the performance of the work specified herein prior to commencing any work under this Contract; shall post all notices required by law, and shall comply with all laws, ordinances, and regulations bearing on the conduct of the work specified.
- f. Comply with all business registration requirements prior to commencing work under this Contract. Offerors shall be incorporated or organized under the laws of the State and be registered to do business in the State as a separate branch or division that is capable of fully performing under the Contract. See *Sections 2.2.4 Compliance Documents and 2.2.5 Insurance Requirements*.
- g. Submit the "Sealed Proposal Form," "Hawaii Business," or "Compliant Non-Hawaii Business" certificates, and any other documents required by the Proposal documents. See *Section 2.2.4 Compliance Documents*.

2.2.2 Instruction to Offerors

- a. The AG General Conditions, IGCs, and Supplementary Conditions set forth additional terms and conditions for the RFP and Award Process. The AG General Conditions, IGCs, and Supplementary Conditions will be part of the Contract documents by which the StateSFA and each prequalified Contractor will be bound. Offerors are directed to the AG General Conditions and IGCs for Contract and statutory requirements and for execution of Contract requirements. Offerors are also directed to *Section 5, Exhibits A, B, and C*.
- b. **Economy of Presentation:** Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent with and appropriate to the requirements of this RFP. Emphasis shall be on completeness and clarity and content. If any additional information is required by the StateSFA regarding any aspects of the Offeror's Proposal, it shall be provided within five (5) business days. All submitted Proposals shall become the property of the State of Hawaii.
- c. **Price:** Awards will be of an indefinite quantity, and prices for each project awarded shall be determined through the competitive award as set forth in Section 3.2 of this RFP.
- d. **Complete Offer Form (OF-1).** See Proposal Form 1. Proposals shall be submitted using the Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable. Offeror shall indicate its exact legal name in the appropriate spaces. Failure to do so may delay proper execution of the Contract to participate in the pool of prequalified Contractors resulting from this RFP.

Section 2 – Procurement Process

2.2.3 Confidentiality of Material

All material given to or made available to a Contractor, 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.

All information, data, or other material provided by the Offerors or the prequalified Contractors to the State shall be subject to the Uniform Information Practices Act, Chapter 92F, HRS. The Offeror shall designate in writing to the Procurement Officer those portions of its proposal or any subsequent submittal that are trade secrets or other proprietary data that the Offeror desires to remain confidential, subject to §3-122-58, HAR, in the case of an RFP. The Offeror shall state in its written communication to the SFA Procurement Officer, the reason(s) for designating the material as confidential, for example, trade secrets. The Offeror shall submit the material designated as confidential in such manner that the material is readily separable from the offer to facilitate inspection of the non-confidential portion of the offer.

If a request is made to inspect the confidential material, the inspection shall be subject to written determination by the Office of the Attorney General in accordance with Chapter 92F, HRS. If it is determined that the material designated as confidential is subject to disclosure, the material shall be open to public inspection, unless the Offeror protests under Chapter 3-126, HAR. If the request to inspect the confidential material is denied, the decision may be appealed to the Office of Information Practices in accordance with §92F-15.5, HRS.

2.2.4 Compliance Documents

The work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Vendors are advised that they are liable for the Hawaii GET at the current prevailing tax rate for sales made on Oahu, and for the islands of Hawaii, Maui, Kauai, Molokai, and Lanai. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax-exempt status and cite the HRS chapter or section allowing the exemption.

The Offeror must provide one of the following, as proof of compliance:

a. Certificate of Vendor Compliance (Hawaii Compliance Express)

Upon Proposal submission, Offeror may demonstrate proof of compliance with the above-referenced requirements by submitting a *Certificate of Vendor Compliance*, issued by the Hawaii Compliance Express (HCE) online system. The HCE service allows vendors to register online through a simple wizard interface at <http://vendors.ehawaii.gov>. The *Certificate of Vendor Compliance* provides current compliance status as of the issuance date, satisfies requirements of ~~Chapter~~Section 103D-310(c), HRS, and is therefore acceptable for contracting purposes. Contractors electing to use HCE services are required to pay an annual fee.

Due to the time required to obtain the required HCE *Certificate of Vendor Compliance*, it is highly recommended that the interested Offeror begin the registration process immediately.

Section 2 – Procurement Process

OR

b. Other Documentation of Compliance

As part of the Qualifying Proposal Requirements, the Offeror shall furnish proof of compliance according to HRS §103D-310 and HAR §3-122-112, including documentation from:

- 1) Department of Taxation
 - Chapter 237, tax clearance;
- 2) Department of Labor
 - Chapter 383, unemployment insurance;
 - Chapter 386, workers' compensation;
 - Chapter 392, temporary disability insurance;
 - Chapter 393, prepaid health care; and
- 3) Department of Commerce and Consumer Affairs

A *Certificate of Good Standing* verifies the Offeror's status as (a) a Hawaii business, registered and incorporated or organized under the laws of the State of Hawaii, or (b) a compliant non-Hawaii business registered to do business in Hawaii. As evidence of compliance, the Offeror may submit the *Certificate of Good Standing* issued by the Department of Commerce and Consumer Affairs, Business Registration Division (BREG) to fulfill this requirement. A Hawaii business that is a sole proprietorship is not required to register with BREG and therefore exempt from this requirement.

2.2.5 Insurance Requirements

Prior to award of the Contract and to award of a Purchase Order for a specific project, the State shall also require verification of the following coverages: (1) Worker's Compensation; (2) Comprehensive Automobile Liability; and (3) Commercial General Liability.

The Contractor shall maintain in full force and effect, during the life of an awarded Contract and an awarded Purchase Order, liability and property damage insurance to protect the Contractor and its subcontractors, if any, from claims for damages for personal injury, accidental death, and property damage which may arise from operations under an awarded Contract and an awarded Purchase Order, whether such operations be by Contractor or by any subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the Contract, the insurance policy(ies) shall name the subcontractor as additionally insured.

As an alternative to the Contractor providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, the Contractor may require the subcontractor to provide their own insurance which meets the requirements herein. It is understood that a subcontractor's insurance policy(ies) are in addition to the Contractor's own policy(ies).

Section 2 – Procurement Process

The following minimum insurance coverage(s) and limit(s) shall be provided by the Contractor, including its subcontractor(s) where appropriate.

Types of Insurance:

- a. **Workers' Compensation:** The Contractor shall obtain workers' compensation insurance for all persons whom they employ in carrying out the work under this Contract, and for work under a Purchase Order for a specific project. This insurance shall be in strict conformity with the requirements of the most current and applicable State of Hawaii Workers' Compensation Insurance laws in effect on the date of the execution of this Contract and as modified during the duration of the Contract. The minimum limit of liability for workers' compensation is the HRS Chapter 386 statutory limit.
- b. **Comprehensive Automobile Liability:** The Contractor shall obtain Auto Liability Insurance covering all owned, non-owned and hired autos with a combined single Limit of not less than \$1,000,000 per accident for bodily injury and property damage. The State shall be named as additional insured. The required limit of insurance may be provided by a single policy or with a combination of primary and excess policies.
- c. **Commercial General Liability:** The Contractor shall obtain General Liability insurance with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. The State shall be named as additional insured. The required limit of insurance may be provided by a single policy or with a combination of primary and excess policies.

It is the responsibility of the Contractor to notify the State of any changes to its insurance policies or if the Contractor receives notice of cancellation of any of its insurance policies. The Contractor will immediately provide written notice to the State should the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

In addition, Contractor's insurance policies shall contain the following clauses:

- a. The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii.
- b. It is agreed that any insurance maintained by the State of Hawaii will apply more than, and not contribute with, insurance provided by this policy.

INDEMNIFICATION AND DEFENSE (Amendment to General Conditions of Contract prepared by Attorney General's Contracts Committee) - Paragraph 7 of the General Conditions, entitled "Indemnification and Defense," is amended as shown below:

"The Contractor shall 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 reasonable attorney's fees, and all claims, suits, and demands therefore, arising out of or resulting from the negligent, reckless, intentional, or wrongful acts, errors, or omissions of the Contractor or the Contractor's employees, officers, agents, or subcontractors under this Contract. The provisions of this

Section 2 – Procurement Process

paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.”

Upon Contractor’s execution of the Contract, the Contractor agrees to deposit with the SFA certificate(s) of insurance necessary to satisfy the ~~State~~SFA of Contractor compliance with the insurance provisions of an awarded Contract or Purchase Order for a specific project. Such insurance shall remain in effect and the certificate(s) therefore on deposit with the State during the entire term of an awarded Contract or Purchase Order for a specific project, including those of its subcontractor(s) where appropriate. Upon request by the State, Contractor shall be responsible for furnishing a copy of the policy(ies).

Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default under an awarded Contract or Purchase Order for a specific project, entitling the State to exercise any or all of the remedies provided in an awarded Contract or Purchase Order for a specific project, for default of the Contractor.

The procuring of such required insurance shall not be construed to limit Contractor’s liability hereunder or to fulfill the indemnification provisions and requirements of an awarded Contract or Purchase Order for a specific project. Notwithstanding said policy(ies) of insurance, Contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with an awarded Contract or Purchase Order for a specific project.

2.2.6 Proposal Opening – NOT USED

2.2.7 ~~Required Review/Written Inquiries~~

- a. Written inquiries concerning this RFP shall be submitted in writing to the POC: procurement@hisfa.org up to **September 26, 2024**.
- b. It is the Offeror’s responsibility to carefully review this solicitation for defects and questionable or objectionable matter. Solicitation documents include this RFP, any attachments, and any other relevant documentation.
- c. Comments concerning defects, discrepancies, omissions, questionable or objectionable matter, or questions related to this RFP must be made in writing to allow issuance of any necessary amendments to the RFP. It will also help prevent exposure of Offeror’s Proposal prepared in response to a defective or inaccurate solicitation upon which an Award could not be made.
- d. Comments related to this solicitation shall be communicated in writing to the POC via e-mail by the date and time established for submission of written questions to ensure an official response. The SFA will not respond to verbal or informal questions.

Such comments shall contain pertinent information to identify the prospective Offeror, its telephone number, e-mail address, the RFP number, as well as reference to the specific page, section, and/or paragraph as applicable.

- e. The SFA’s responses to the prospective Offerors’ written questions received by the scheduled date shall be compiled, shall omit reference to the source(s)

Section 2 – Procurement Process

of the questions, shall be issued as an addendum to the RFP, and shall become a part of the RFP. The SFA will publish the questions as they are submitted including any background information provided with the question. The SFA at its sole discretion may omit questions which may be combined or paraphrase questions and background content for clarity.

- f. Offerors who have submitted an RFP Registration Form will receive notification of any addenda from the date the Registration Form is received. The SFA is not responsible for delays or non-receipt of such responses or any communications by the prospective Offerors.
- g. If an Offeror submits a question after the scheduled date, the SFA may answer the question but does not guarantee that the answer will be provided prior to the Proposal due date.
- h. If an Offeror, after submitting written comments or questions during the question period, believes they are aggrieved in connection with the solicitation, they are entitled to submit a protest pursuant to Section 103D-701, HRS.

2.2.8 RFP Addenda; Clarifications

The SFA may periodically issue an addendum that may increase or decrease the Contract scope of work, timelines, provisions, or conditions. The SFA will make the addenda available to the Offerors at the respective SFA's office or through the SFA's website. Failure of any Offeror to complete and submit an RFP Registration Form or receive any such addenda or clarifications shall not relieve the Offeror of any obligation under this solicitation.

The SFA reserves the right to amend this RFP at any time prior to the closing date for Best and Final Offers. All addenda issued shall be incorporated into the resulting Contracts with prequalified Contractors.

2.2.9 Cancellation of RFP; Rejection of Proposals

This RFP may be cancelled and any or all Proposals may be rejected, in whole or in part, when it is determined to be in the best interest of the purchasing agency (SFA), as provided in §3-122-95 through §3-122-97, HAR.

2.2.10 Notice of Intent to Offer (Letter of Intent) – NOT USED

2.3 PROPOSAL DEADLINES

Proposals must be received at the SFA no later than **2:00 p.m. on November 15~~20~~, 2024**, or as amended. Submit sealed envelope with electronic proposal on flash drive to (hand delivery recommended):

ATTN: Procurement Officer
 School Facilities Authority
 2759 South King Street, Room H201
 Honolulu, HI 96826.

Section 2 – Procurement Process

Proposals received after the deadline will be rejected. Timely receipt of offers shall be evidenced by the date and time the SFA received the sealed envelope with flash drive containing the entire electronic proposal (including all required signatures).

2.4 DISQUALIFICATION OF PROPOSALS

The SFA reserves the right to consider as acceptable only those Proposals submitted in compliance with all the requirements set forth in this RFP and which demonstrate an understanding of the issues involved and the scope of work.

An Offeror shall be disqualified, and the Offeror's Proposal shall be rejected, for any one or more of the following non-exclusive reasons as solely determined by the SFA:

- 2.4.1 Proposal received after specified deadline.
- 2.4.2 Proposal not properly completed as required herein or containing any unauthorized additions or deletions, defects including but not limited to irregularities of any kind which may make the Proposal incomplete, indefinite, or ambiguous as to its meaning (e.g., un-initialed erasures).
- 2.4.3 Incomplete Proposals or conditional Proposals, including but not limited to a Proposal which includes any other set of terms and conditions, or any terms or conditions contradictory to those included in this RFP.
- 2.4.4 A Proposal signed by other than an authorized individual.
- 2.4.5 More than one Proposal per license type from an individual, firm, corporation, or joint venture under the same or different names (Offeror), whereby all Proposals from the Offeror shall be rejected.
- 2.4.6 Evidence to the SFA's sole satisfaction of collusion among Offerors, lack of responsibility and cooperation to SFA requests during the RFP process or as shown by past work, being in arrears on existing contracts with the State of Hawaii, ~~(State)~~ or defaulting on previous contract(s).
- 2.4.7 Failure to possess proper licenses, facilities, equipment or sufficient experience to provide the proposed solution or to perform the work contemplated.
- 2.4.8 Evidence of any noncompliance with any applicable law or rule.

2.5 PROPOSAL EVALUATION

In accordance with HAR §3-122-45.01, an Evaluation Committee (EC) shall provide a comprehensive, fair, and impartial evaluation of the Proposals in accordance with the requirements of this RFP and the evaluation criteria. Refer to *Section 4* of this RFP for specific requirements and details of the process.

For evaluation purposes, pursuant to §103D-1008, HRS, a tax-exempt proposal submitted in response to a solicitation shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

2.6 OFFER ACCEPTANCE PERIOD

The SFA's acceptance of a Proposal, if any, will typically be made within ninety (90) calendar days after the opening of Proposals.

Section 2 – Procurement Process

2.7 NOTIFICATION OF AWARD; NON-SELECTED OFFEROR(s)

Notice of Intent to Award shall be made to the responsive, responsible Proposal(s) determined by the EC to be the most advantageous to the State based on the evaluation criteria – i.e., those scoring 60% or better during evaluation. Upon completion of the Selection process, the SFA shall post the Notice of Intent to Award on the State Procurement Office's Hawaii Awards and Notices Data System website (hereinafter "HANDS").

All Offerors will be notified of the results in writing. The SFA is not responsible for delays or non-receipt of such notification. Failure of any Offeror to receive any such notification shall not relieve the Offeror of any obligations or requirements herein.

2.8 DEBRIEFING

The purpose of a debriefing, if requested, is to inform unsuccessful Offerors of the basis for Selection. The Offeror(s) not selected may submit a written request for a debriefing within three (3) working days after the posting of the Selection. The debriefing shall be held, to the maximum extent possible, within seven (7) working days after the posting.

2.9 PROTEST

Pursuant to HRS §103D-701 and HAR §3-126, any Protest shall be submitted in writing to the SFA's Procurement Officer, c/o School Facilities Authority at 2759 South King Street, Room H201, Honolulu, HI 96826.

A Protest of the solicitation content shall be submitted in writing within five (5) working days after the aggrieved person(s) know(s) or should have known about the facts giving rise thereto; provided further that the Protest shall not be considered unless it is submitted in writing prior to the opening date of the Proposals.

A Protest of Selection shall be submitted in writing within five (5) working days after the posting of the Selection or within five (5) working days following a debriefing. The Notice(s) of Selection resulting from this solicitation shall be posted on HANDS.

2.10 CONTRACT

The selected Offeror(s) (Contractor(s)) shall be required to enter into a formal written Contract. Upon Contract execution, the SFA will issue a fully executed copy of the Contract to the Contractor. The Contractor shall then be eligible to receive project requests from the SFA Project Coordinator (PC) for individual projects subject to the request protocol as set forth in Section 3.2. The invitation to submit a proposal will depend on the needs of the SFA and availability of funds. No work shall be undertaken by the successful Offeror (Contractor) prior to the commencement date specified on the Purchase Order. The SFA is not liable for any work, contract costs, expenses, lost profits, or any damages whatsoever incurred by the Contractor prior to an official Purchase Order.

2.10.1 Contract Award

Award, if any, shall be made to the responsive and responsible Offeror(s) with the highest number of points and whose Proposal(s) the SFA deems most advantageous in accordance with the evaluation criteria – i.e., 60% or better during evaluation.

Section 2 – Procurement Process

Failure to execute a Contract as required within ten (10) working days after the Awardee has received the Contract, or such further time as the SFA may allow for execution, shall be just cause for the annulment of the Award.

2.10.2 Conditions for Award

The SFA may, in compliance with the Hawaii Public Procurement Code, reject any or all offers and waive any defects if the SFA believes the rejection or waiver is in the best interest of the State.

The Award of a Purchase Order for a project is conditioned upon funds made available for the project, if applicable. Any contract is subject to approval by the Attorney General and the approval of the Governor, as required by statute, regulation, rule, order, or other directive.

2.10.3 Proposal as Part of the Contract; Order of Precedence of Contract Documents

The Contract Documents, together constituting the entire agreement between the parties, are listed below in the order of precedence with item “a” representing the highest precedence for resolution of any conflicts:

- a. An individual Purchase Order and related documentation including, but not limited to the Detailed Scope of Work, Drawings, Specifications, Project Proposal, and Supplemental Work Orders.
- b. The Contract together with any amendments.
- c. Attorney General (AG) General Conditions.
- d. Contract Supplementary Conditions.
- e. Interim General Conditions, 1999 Edition.
- f. This Request for Proposals together with any addenda.
- g. The Proposal submitted by the Contractor.

Any agreement arising out of this Proposal may be subject to the approval of the Department of the Attorney General as to form, and is subject to all further approvals, including the approval of the Governor, required by statute, regulations, rule, order, or other directive.

2.10.4 Terms of Contract

Upon execution of the Contract resulting from this RFP, the Contractor shall be eligible to receive invitations from the SFA to attend project scope meetings and submit a competitive proposal for the scoped General Contractor A or B work.

Initial Contract Term:

The initial term of the Contract shall be upon execution of the Contract until June 30, 2026.

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Contract Renewal:

The Contract may be extended for not more than three (3) additional twelve-month periods, i) upon mutual written agreement of the parties, ii) prior to expiration, and iii) under the same terms and conditions of the original Contract or as negotiated between the SFA and the Contractor. Extension(s) shall be contingent upon i) the need for continued services and ii) funding availability beyond the current fiscal year. As each option(s) to extend is mutually agreed upon, the Contractor shall be required to execute a supplement to the Contract for each additional period.

2.10.5 Additional Terms and Conditions

The SFA reserves the right to add terms and conditions during Contract negotiations, if any. These terms and conditions will be within the scope of the RFP and will not affect the Proposal evaluations.

2.10.6 Contract Modifications

The Contract may be modified only by written document signed by the Contract Administrator and Contractor personnel authorized to sign contracts on behalf of the Contractor. Any modification to the Contract shall be pursuant to HAR Chapter 3-125.

2.10.7 Failure to Execute Contract; Timely Submission of Certificates

Documentation of Compliance (see *Section 2.2.4b*) or a *Certificate of Vendor Compliance* (see *Section 2.2.4a*) and any other required documentation and certification shall be submitted to the SFA as soon as possible or by the deadline established by the SFA.

2.10.8 Contract Invalidation

If any provision in the Contract is found to be invalid, such invalidation will not be construed to invalidate the entire Contract.

Section 3 – Scope of Services and Requirements

SECTION 3

SCOPE OF SERVICES AND REQUIREMENTS

3.1 INTRODUCTION

The SFA has numerous construction projects across the State of Hawaii. It is the intent of the SFA to establish a prequalified vendor list to perform General Contractor A and/or B work at various locations as the need arises. Firms who are awarded a Contract under this solicitation will be added to a qualified list and will be eligible to perform work on future projects.

All work performed will be on an as-needed basis with no guarantee of a specific volume of work to be performed. All labor, materials, tools, transportation, and equipment necessary to perform the work shall be the responsibility of the Contractor. The work shall consist of repair and maintenance, improvements, and/or construction. In addition, work performed shall be in compliance with all Federal, State, and local codes and ordinances.

3.2 SCOPE OF WORK

3.2.1 Planned Work

For each project, SFA will invite three (3) or more Contractors who have been awarded a Contract for this RFP and indicated on RFP forms 5 & 7 that they can provide services in the location where the work will occur. SFA will invite the Contractors via an electronic notice in PROCORE™ to attend a pre-bid meeting at the planned jobsite. PROCORE™ is a cloud-based software product purchased by the SFA that will be made available to contracted awardee(s) free of charge that will manage data and communications for projects awarded and managed under the resulting Contracts from this solicitation. Offerors are responsible for ensuring their organization possesses the necessary hardware, internet access, and basic computer competency to enable use of the PROCORE™ software. Unless otherwise stated in the meeting invitation, attendance at the pre-proposal meeting is **not** mandatory, although Contractors will be evaluated on their participation throughout the project proposal phase. If a pre-proposal meeting is not necessary or practicable (due to the facility location or other limiting factors), the Contract Administrator (CA) or designated representative will inform the Contractors in writing in the pre-bid meeting invitation or follow-up correspondence. In most instances the project will be assigned to a Project Coordinator (PC) designated by the CA. The project authorization, payments, and change orders shall require PC review and CA approval.

Following the pre-proposal meeting, the Contractors will be given time to ask for clarifications or request additional information pertaining to the scope of work. Responses to questions at the meeting will be sent to all attendees via PROCORE™. The scope of work will be broken down by Project Line Item Number (PLIN) and will contain a date for when the proposals for the project are due. The Contractors shall prepare and submit a proposal for the project that consists of a lump sum fixed price for each PLIN as well as a project schedule. The SFA will provide a standard form to be used for proposals. The SFA will evaluate the proposals and select a Contractor based on the following:

30% Lump Sum Price,
 30% Contractor Past Performance Evaluation Score (Excluding Schedule),
 30% Schedule Past Performance Evaluation Score, AND
 10% Rating of Contractor Participation During Job Proposal Phase

Section 3 – Scope of Services and Requirements

The Contractor Past Performance Evaluation Score will be based on ratings of work performed for SFA under RFP # D22-0004. Each new Contractor will begin with a past performance score of 10 out of 10 and will receive an updated score at the completion of their first project worked on pursuant to this RFP. After the first project, the past performance scores will be an average score for the Contractor's completed projects. Upon receipt of the first evaluation score, the prior "10" default evaluation score will be dropped and not counted towards the calculation of the Contractor's average.

For individual projects, the PC is responsible to fill out a Contractor Evaluation Score sheet and to attach supporting notes, photographs, emails, or other supporting documents to document performance deficiencies. PC is responsible to evaluate all projects fairly and objectively.

If a Contractor knows of issues related to an individual project that should be considered in the performance evaluation, it is the Contractor's responsibility to provide that information to the SFA in writing within 3 working days of an individual project closing.

The Contractor may request a debrief meeting with the SFA to review Contractor performance on an individual project or possible re-evaluation within 10 working days from project completion.

If a Contractor has a debrief meeting and feels that their work performance is not being objectively evaluated, they may appeal to the Contract Administrator. They must file a written appeal to the SFA within 5 working days to be considered for a re-evaluation of project performance. Prior to the meeting the Contractor must provide a written summary of issue(s) to be discussed supported with any documentation. This information shall be submitted in writing 3 working days prior to the meeting. All decisions by the Contract Administrator arising from this meeting shall be final.

Contractors are expected to attend pre-proposal meetings and submit proposals for each project opportunity they are invited to. If a Contractor for whatever reason is not interested in a project or is unable to participate or attend a pre-proposal meeting, they shall notify the PC within three business days so that another Contractor can be invited to participate.

Contractors will be notified in writing if selected for a particular project. The winning Contractor shall again provide the SFA with compliance and insurance documentation as described in Section 2.2.4 and 2.2.5 of this solicitation. **If the winning proposal is greater than \$25,000 the Contractor shall obtain performance and payment bonds in the amount of one hundred percent (100%) of the value the project.** Once documents have been verified by the SFA, a purchase order (PO) may be issued. Unless otherwise stated, the PO issued by the SFA shall represent the official Notice to Proceed (NTP) for the project.

During the pre-bid meeting Contractors and the PC are expected to be evaluating the project and making necessary changes in project scope to allow the project to be accurately bid for the actual work. If changes are needed to the scope of work the PC is responsible to distribute an updated project scope to the Contractors within 5 business days of bid closing to reflect the change in project scope. Change orders after award should be kept to a minimum and are discouraged. Project change orders will require written approval from the CA.

Section 3 – Scope of Services and Requirements

The CA will evaluate change orders on an individual basis and retains the authority to allow them or to require additional work to be bid out as a separate project. With the approval of the CA, the PC has the discretion to issue change orders on a time and material basis or as a lump sum. For work issued as time and materials, costs will be submitted using a daily force account form.

For daily force account work materials cost should be based on actual purchase price (receipts required) and labor based on prevailing wage rates with a set 20% overhead and profit and additional 6% overhead for insurance and taxes. The PC has discretion to include excessive or poorly justified change order charges as a factor in Contractor evaluation scoring for future projects.

~~Contractors have been issued an award and cContract pursuant to this RFP, and therefore the applicability of HRS §103D-701 is at the time of award for the cContract resulting from this RFP, and not to any future the project award. Any challenge of an award of a project/job shall be submitted in writing to the CA within 5 working days of the award. Upon receipt of a request for debriefing meeting or a written challenge of an award of a project, the CA will schedule a meeting with the requesting party within a reasonable amount of time. The meeting may be in person, or via video or telephonic conference as appropriate and as determined by the CA. Only the CA, its designees, Contractor, and its employees may attend the meeting. Any challenges to an project award shall be presented to the CA at the time of the meeting. Additional information may be presented or requested at the sole discretion of the CA.~~

~~The CA will issue a decision in a reasonable amount of time and inform the challenging party of their decision in writing. The decision of the CA may be appealed to the SFA Executive Director (ED). All appeals must be submitted in writing to the ED within 5 working days from the date of the decision by the CA. The review by the ED shall be limited to the documentation provided. The decision by the ED shall be final.~~

3.2.2 Work Schedule and Repair/Maintenance Response

All construction, repair and/or maintenance service described herein may be performed between the hours of 7:30 A.M. to 4:00 P.M. on normal working days, Monday through Friday, excluding state holidays unless requested otherwise by the SFA.

3.2.3 Parts and Materials

Should the Contractor elect to purchase parts from the mainland at reduced prices, even though the part is available locally, the SFA reserves the right to require the Contractor to air express (next day delivery) the parts at the Contractor's expense.

3.2.4 Cleanup and Work Practices

The Contractor shall keep the project site secured and free of debris, including but not limited to, litter, refuse, shop towels, worn/damaged or discarded parts, and shall clean and remove all fluids, oil, grease drippings or spills during the daily progress of work. The Contractor shall remove all tools, used parts, fluids and lubricants, and equipment from the service area upon completion of the work. Contractor shall also legally dispose of used parts, fluids, oils, and lubricants, whether hazardous or not, in accordance with the Environmental Protection Agency (EPA) and/or other government regulations including providing written records, as required. The Contractor shall support, hold harmless and protect the SFA legally and financially with regard to these regulations.

Section 3 – Scope of Services and Requirements

The Contractor shall exercise caution during the progress of construction, repair, and/or maintenance work to prevent damage to any building utilities, structure, and landscaping. The Contractor shall immediately restore and correct all damaged equipment and property caused by the Contractor's negligence, by Contractor's employees or equipment, at the Contractor's own expense when/as requested by the SFA and to the CA's satisfaction. If such repairs are not completed immediately, the SFA reserves the right to purchase and/or make repairs, in the open market, a corresponding quantity of the services specified herein, and to deduct from any moneys due or that may thereafter become due to the Contractor, the difference between the price named in the ~~Contract~~ Purchase Order and the actual cost to the State. In case any money due the Contractor is insufficient for said purpose, the Contractor shall pay the difference upon request from the SFA. The SFA may also utilize all other remedies provided by law.

Poor safety, cleanup and work practices may affect the Contractor's project performance rating score.

3.2.5 Safety Precautions

The Contractor will coordinate with SFA and all others to avoid conflicts with the scope or schedule of work. For projects with an electrical component if applicable, the Contractor shall follow Occupational Safety and Health Administration (OSHA) regulations and not perform maintenance or if necessary, do any electrical repair work until all power switches are de-energized, locked, and tagged. All services, equipment and/or parts to be provided by the Contractor shall comply with all applicable Federal, State, and local safety requirements, especially the provisions of OSHA, EPA, and other governmental agencies. The Contractor shall be responsible for providing appropriate safety equipment in order to comply with OSHA for worker safety and protection at all project locations at all times.

3.2.6 Security Requirements

The Contractor must be aware of and report to the SFA, with as much detailed information as possible, any suspicious activity or obvious breach of security in relation to or in the course of their work. The Contractor must keep their work areas secure, before, during, and after performing work. The Contractor must ensure all areas provided access to are closed and secured when exiting the premises.

The Contractor's vehicles and personnel shall be properly identified as belonging to the Contractor, through company signage/logos, uniforms, name tags, or identification cards as appropriate to comply with this requirement. The Contractor is responsible for locking vehicles and securing equipment while on State property.

3.3 PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference will be held on September 20, 2024, at 10:00 a.m. (HST). The Pre-Proposal Conference will be held virtually via google meet or other virtual platform service. Attendance is voluntary but interested Offerors are encouraged to attend to gain understanding of the breadth and scope of work involved under this RFP. It is the intent of the SFA to address questions concerning this RFP at the Pre-Proposal Conference. Final answers to any questions resulting in revisions to the original terms will be issued in writing as an addendum to this RFP.

Section 3 – Scope of Services and Requirements

Interested Offerors wanting to participate in the Pre-Proposal Conference virtually may participate via phone and/or internet.

A meeting link will be sent to all Offerors that have pre-registered.

3.4 CONTRACTOR REQUIREMENTS

3.4.1 Subcontractors

- a. Contractor shall complete a “Subcontractor’s List” for each project that involves a subcontractor and submit it to the SFA with the Work Authorization submitted as part of the project proposal. It is the sole responsibility of the Contractor to review the requirements of each project and determine the appropriate specialty contractor’s licenses that are required to complete the project. Please mention on the subcontractor list which specialty contractor components will be performed “in-house” and verify that your company possesses the appropriate specialty licenses.
- b. Contractor agrees a completed listing of subcontractors is required for the project as part of project proposals and that the Contractor, together with the listed subcontractors, shall have the specialty contractor’s licenses necessary to complete the work. The Contractor acknowledges that its subcontractors performing the work must be properly licensed contractors on the day of proposal opening. Substitutions are not allowed after proposal opening to prevent proposal shopping. Be aware licensing issues with a subcontractor shall be grounds for the SFA rejecting a proposal.
 - 1) Based on the Hawaii Supreme Court’s January 28, 2002 decision in *Okada Trucking Co., Ltd. v. Board of Water Supply, et al.*, 97 Hawaii 450 (2002), the Contractor as a general contractor (“A” or “B” license) is prohibited from undertaking any work solely or as part of a larger project, which would require the Contractor (“A” or “B” general ~~E~~contractor) to act as a specialty (“C” license) contractor in any area in which the Contractor (“A” or “B” general ~~E~~contractor) has no specialty contractor’s license. Although the “A” and “B” Contractor may still propose on and act as the “Prime Contractor” on an “A” or “B” project (see HRS §444-7 for the definitions of an “A” and “B” project), respectively, the “A” and “B” Contractor may only perform work in the areas in which they have the appropriate contractor’s license. The Contractor (“A” or “B” general ~~E~~contractor) must have the appropriate “C” specialty contractor’s license(s) either obtained on its own or obtained automatically under HAR §16-77-32.
 - 2) General Engineering “A” contractors automatically have these “C” specialty contractor’s licenses: C-3, C-9, C-10, C-17, C-24, C-31a, C-32, C-35, C-37a, C-37b, C-38, C-43, C-49, C-56, C-57a, C-57b, and C-61.
 - 3) General Building “B” contractors automatically have these “C” specialty contractor’s licenses: C-5, C-6, C-10, C-12, C-24, C-25, C-31a, C-32a, C-42a, and C-42b.
 - 4) Instructions to complete the Subcontractor’s List

Section 3 – Scope of Services and Requirements

- i) Determine the specialty contractor classification(s) required for the project and provide the complete firm's name and license number of the subcontractors in the respective columns. If the Contractor is a general Contractor and providing the work of the required specialty contractor classification, fill in the Contractor's (general Contractor's) license number and name. Proposal shopping of subcontractors after a project is awarded is strictly prohibited and non-compliance may be the basis for disqualification and termination of a Contractor from [a Purchase Order for a specific project and from](#) this Contract.
- ii) List only one subcontractor per required specialty contractor's classification.
- iii) For projects with alternate(s), fill out the respective Subcontractors List for the alternate(s). Contractor shall determine the additional specialty contractor's classification and description that are required for the respective alternate. Contractor shall fill in the complete class number, class description, firm name and license number of the respective subcontractor. Contractor need not include any subcontractor previously listed for the project proposal.

3.4.2 CLEANUP

The Contractor shall keep the project site free of debris, litter, discarded parts, etc., and shall clean all oil drippings or spills during the daily progress of work. The Contractor shall remove and legally dispose all material from the property upon completion of the work.

3.4.3 WARRANTY

In addition to any required manufacturer's warranties, all work and equipment shall be guaranteed in writing by the Contractor against defects in materials, equipment, or workmanship for one year from the Project Acceptance Date or as otherwise specified in the project-specific scope of work or other Purchase Order documents. The written warranty shall be submitted to the SFA prior to the processing of the final payment.

3.4.4 CONTRACT STAFFING REQUIREMENTS

Personnel whose names and resumes are submitted in the Proposal, shall not be removed from the project without prior approval of the SFA. Substitute or additional personnel shall not be used for the project until a resume is received and approved by the SFA. The SFA shall have the right, and the Contractor shall comply with any request, to remove and replace any personnel from all work on the project effective immediately upon notification by the SFA. Personnel changes that are not approved by the SFA may be grounds for [Purchase Order termination and for](#) Contract termination.

3.5 EPA LEAD RENOVATION, REPAIR AND PAINTING (RRP) RULE CERTIFICATION

Federal law requires all renovation, repair, and painting firms (including sole proprietorships) working in housing, or facilities where children are routinely present, built before 1978, to be certified.

Section 3 – Scope of Services and Requirements

The United States Environmental Protection Agency (EPA) has established the Lead Renovation, Repair and Painting (RRP) Rule. The Lead Renovation, Repair and Painting (RRP) Rule sets forth requirements for firms and individuals performing renovations, and affects Contractors, property managers, and others who disturb painted surfaces. It applies to work in houses, apartments, and child-occupied facilities (such as schools and day-care centers) built before 1978. Pre-renovation education requirements as well as training, firm certification, recordkeeping and work practice requirements can be obtained by contacting the EPA or by visiting the website: <https://www.epa.gov/lead/lead-renovation-repair-and-painting-program>.

The EPA's RRP Rule requires each firm to be certified, to have at least one certified renovator, and for the remainder of employees involved in renovation activities either also be certified renovators or be trained on the project by a certified renovator.

3.6 INVOICING

The SFA will provide specific information, forms, instructions, etc. to the awarded Contractors.

3.7 PAYMENT

Section 103-10, HRS, provides that the SFA shall have thirty (30) calendar days after receipt of an accepted invoice and satisfactory delivery of goods or performance of the services, to make payment. For this reason, the SFA shall reject any proposal submitted with a condition requiring payment within a shorter period. Further, the SFA shall reject any proposal submitted with a condition requiring interest payments greater than that allowed by §103-10, HRS. The SFA will not recognize any requirements established by the Offeror and communicated to the SFA after award of the Contract, which requires payment within a shorter period or interest payment not in conformance with §103-10, HRS.

3.7.1 Final Payment

In addition to the requirements in the AG General Conditions and IGCs, the following shall accompany the final payment invoice:

The Contractor must submit an original CERTIFICATE OF VENDOR COMPLIANCE as issued by the State Procurement Office via an online system, also referred to as "Hawaii Compliance Express", or equivalent. Details regarding this online application process can be viewed at: <http://vendors.ehawaii.gov/hce/>.

All required certificate(s) for the Contractor and all subcontractors, must accompany the invoice for final payment on the Contract.

All invoicing shall be subject to Chapter 103, Hawaii Revised Statutes.

3.8 AVAILABILITY OF FUNDS

~~This~~ Contracts resulting from this RFP and Purchase Orders relating to specific projects ~~are~~ is subject to the availability of funds. Pursuant to Section 103D-309, HRS, except in certain instances, no contract entered into between the SFA and the Contractor shall be binding or of any force unless the SFA certifies that there is an available unexpended

Section 3 – Scope of Services and Requirements

appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the ~~C~~contract.

3.9 WAGE CERTIFICATE

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

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

For more information on the Class Specifications and Minimum Qualifications, please visit the State of Hawaii Department of Human Resources Development at the following website: <http://dhrd.hawaii.gov/>.

The SFA reserves the right to inspect the Contractor's wage records to ensure compliance with Section 103-55, HRS.

3.9.1 Services Performed by Laborers and Mechanics

- a. The Contractor or the Contractor's subcontractor(s) shall give a copy of the rates of wages to each laborer and mechanic employed by the Contractor at the time each laborer and mechanic is employed; provided that the Contractor does not have to provide the Contractor's employees the wage rate schedules where there is a collective bargaining agreement.
- b. The SFA may withhold from the Contractor so much of the accrued payments as the SFA may consider necessary to pay the laborers and mechanics employed by the Contractor or any subcontractor on the project site the difference between the required wages and the wages received and not refunded by the laborers and mechanics.
- c. A certified copy of all payrolls shall be submitted weekly to the SFA for review. The Contractor shall be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, the wage rates contained therein are not less than the applicable rates, and the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed. Any certification discrepancy found by the SFA shall be reported to the Contractor to effect compliance.
- d. Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the Contractor and the Contractor's subcontractors, if any, during the course of the work and preserved for a period of three (3) years thereafter. The records shall contain the name of each employee, the

Section 3 – Scope of Services and Requirements

employee's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. The Contractor shall make payroll records available for examination within ten (10) working days from the date of a written request by the SFA or any authorized representatives thereof.

3.10 PROJECT LABOR AGREEMENT

ADMINISTRATIVE DIRECTIVE NO. 24-01, dated February 16, 2024, requires a Project Labor Agreement (PLA) (available at <https://budget.hawaii.gov/wp-content/uploads/2024/02/AD-24-01.pdf>) for all projects with award amounts in excess of one million five hundred thousand dollars (\$1,500,000).

COMPTROLLER'S MEMORANDUM NO. 2024-20, dated July 26, 2024, issued the Department of Accounting and General Services' "Guidelines for Implementing Administrative Directive No. 24-01 relating to Use of Project Labor Agreements for State Construction Projects," effective July 26, 2024 (<https://ags.hawaii.gov/wp-content/uploads/2024/07/CM2024-20.pdf>).

The definitions of the terms "Contractor" and "Subcontractor" for the purposes of this solicitation are those contained in the SFA's General Terms and Conditions for Construction, not as defined in the PLA.

The required form of the Contractor's Agreement-To-Be-Bound may be found in Exhibit F of this RFP. Any Letter of Assent shall take the substantial form of the Agreement-To-Be-Bound. A sample Letter of Assent is provided in Exhibit G of this RFP.

Any Subcontractor performing only trade work not represented by PLA signatories shall not be required to submit a Letter of Assent. However, any such Subcontractor shall be required to execute and provide to the awarded Contractor a written statement attesting that the Subcontractor will be performing only trade work not subject to the PLA, in the form of an Attestation of Exemption executed by a person authorized to bind the Subcontractor. The awarded Contractor shall provide any such Attestation of Exemption to SFA upon demand. A sample Attestation of Exemption is provided in Exhibit H of this RFP.

Any Contractor awarded a Covered Project, as defined by the PLA, must:

- a. Obtain either a Letter of Assent or Attestation of Exemption, as appropriate, from each Subcontractor of any tier who may be employed on the project and make copies of such documents available to the SFA upon demand.
- b. Execute an Agreement-To-Be-Bound.
- c. Submit to the SFA a complete, fully executed Agreement-To-Be-Bound within fourteen (14) calendar days of project award, or as soon thereafter as is practicable as determined by the SFA. Failure to timely submit any required Agreement-To-Be-Bound or to provide upon demand any required Letter of Assent or Attestation of Exemption shall be cause for the ~~State~~SFA in its sole discretion to rescind the subject award and to award the project to the next highest ranked offeror satisfying all requirements.

Section 3 – Scope of Services and Requirements

By submitting an executed Agreement-To-Be-Bound, the Contractor shall be deemed to have certified that all required Letters of Assent and Attestations of Exemption have been gathered and will be made available to SFA upon demand.

Contractors and their Subcontractors (of any tier) are not required to be party to any collective bargaining agreement to participate in a Covered Project.

The Contractor shall maintain in a current status throughout the life of the ~~contract~~ Purchase Order for a Covered Project, the Agreement-To-Be-Bound, and all Letters of Assent and Attestations of Exemption from Subcontractors of all tiers.

It is understood that by virtue of executing an Agreement-To-Be-Bound, a Contractor will not be obligated to sign a collective bargaining agreement as a condition of performing work.

The Contractor has the primary obligation to meet all conditions of the PLA. This obligation cannot be relieved, evaded, or diminished by subcontracting. Should the Contractor elect to subcontract, the Contractor shall continue to have such primary obligation.

The State shall remain impartial concerning any dispute between labor and its Contractor and not undertake the conciliation, mediation, or arbitration of a labor dispute. All labor disputes shall be resolved pursuant to the procedure set forth in the PLA.

3.11 EXCLUSION OF SPECIFIC WORKERS

The SFA reserves the right to require the Contractor to remove an employee, agent, subcontractor, or volunteer (Worker) from performing work under the Contract or under any Purchase Order for a project covered by this Contract. The SFA shall notify the Contractor in writing and this exclusion of a specific Worker(s) shall take effect as indicated on the notice. The Contractor may appeal this decision to the SFA in writing within ten (10) working days of receipt of the notice. Removal of the employee, agent, subcontractor, or volunteer shall remain in effect pending the outcome of the appeal. This provision shall not infringe upon the right of the Contractor to employ the removed individual but shall apply to any work requiring interaction with the SFA, its employees or staff. All ~~W~~worker(s) on Department of Education (DOE) facilities will be required to follow the same requirements that DOE requires for workers on DOE-contracted projects.

3.12 INSPECTION AND PROCEDURAL CHANGES; RELIEF AVAILABLE TO STATE

All work is subject to inspection, evaluation, and approval by the SFA. The SFA may employ all reasonable means to ensure that the work is being performed in compliance with the Contract and the project-specific Purchase Order. Should the SFA determine that corrections or changes are necessary in order to accomplish the intent or purpose of the Purchase Order, the SFA may direct the Contractor to make such changes.

Failure of the Contractor to perform any provisions of the Purchase Order (based on the identified portion of unacceptable work received) may result in SFA determining

Section 3 – Scope of Services and Requirements

Contractor is in non-compliance with Contract and/or Purchase Order requirements and may:

- Suspend Payments – Temporarily withhold or disallow all or part of the billing cost/payments pending correction of a deficiency or a non-submission of a required deliverable by the Contractor.
- Seek Reimbursement – Seek reimbursement from the Contractor or withhold future payments for any funds paid to the Contractor subsequent to a determination that such was unauthorized, fraudulently obtained, or inappropriately billed.
- Seek Market Value – In the event the Contractor fails, refuses or neglects to perform the services in accordance with the requirements of the Supplementary Conditions, the Scope of Services or the GC, ~~the State~~ SFA reserves the right to purchase, in the open market, a corresponding quantity of the services specified herein and to deduct from any monies due or that may thereafter become due to the Contractor, the difference between the price named in the Contract or resulting Purchase Order and the actual cost to the SFA. In case any money due the Contractor is insufficient for said purpose, the Contractor shall pay the difference upon demand from the ~~State~~ SFA. The SFA may also utilize all other remedies provided by law.

3.13 CONTRACT ADMINISTRATION

3.13.1 Contract Administrator

- a. For purposes of this Contract, the person named below or his/her duly authorized representative or successor in office is designated Contract Administrator (CA). The CA may be contacted as follows:

Contract Administrator:	Douglas Cullison
Telephone Number:	415-226-6703
E-mail Address:	doug.cullison@hisfa.org

- b. The CA is responsible for:

- 1) The terms, conditions, quantities, specifications, scope of services, other contract terms, and all decisions relating to the Contract and/or Purchase Order for a project;
- 2) Monitoring the Contractor's work, documenting that the Contractor maintains the required insurance coverage (if applicable), resolving disputes and discrepancies, evaluating the work of the Contractor, ensuring the services or goods are delivered as required in the Purchase Order for a project, and processing payment for services rendered; and
- 3) Change management in the event of change in scope of work, change in the performance period, increase or decrease in total compensation, and/or changes in any other Contract and/or Purchase Order terms.

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- c. Notwithstanding the responsibilities set forth hereinabove, any coordination of services falling outside those articulated above shall remain with the SFA Executive Director.

3.13.2 Guarantee

Each awardee is guaranteed a chance to submit project proposals. SFA makes no guarantee on minimum quantity or minimum lump sum amount of work to be issued under this solicitation.

In the event ~~the~~an awardee is unsuccessful in securing a competitive project award, the SFA reserves the right to award project(s) at its sole discretion, although SFA is not obligated to award project(s) to any or all awardee(s). This term supersedes the requirement to solicit three (3) awardees for projects awarded under Section 3.2.1.

Section 4 – Proposal Content, Criteria, and Evaluation

SECTION 4

PROPOSAL CONTENT, CRITERIA, AND EVALUATION

4.1 SECTION OVERVIEW

This section provides the criteria on which the RFP evaluation is determined. It is not an attempt to limit the content of the Proposals in any way.

The Offeror may include any additional data or information that is deemed pertinent to this RFP. The Proposal should be prepared simply and economically, providing a straightforward and concise delineation of the Offeror's ability to satisfy the requirements of this RFP. *Refer to Section 2.2.2b regarding Economy of Presentation.*

When an Offeror submits a Proposal, it shall be considered a complete plan for accomplishing the tasks described in this RFP and for accomplishing any supplemental tasks the Offeror has identified as required to successfully produce the deliverables. The Offeror's plan shall demonstrate an understanding of and the ability to meet and perform all contractual requirements listed in this RFP, including all contractual services.

All Proposals shall remain confidential until a Notice of Award is issued to the selected Offeror(s). Thereafter, all Proposals shall be made available to the public except for those sections which the Offeror considers, and the SFA agrees, to be trade secrets or proprietary material. *See Section 2.2.3 Confidentiality of Material.*

4.1.1 Packaging the Proposal

An electronic version of the Proposal with signatures, signed by the person with the authority to commit the Offeror, saved in pdf format on a flash drive, is required. The flash drive must be sealed in an envelope and delivered to the SFA (hand delivery recommended). If the flash drive or any files are password protected, please provide SFA any passwords separately from the proposal package by 2:00 p.m. (Hawaii Standard Time) on November ~~15~~20, 2024. **Emailed proposals will not be accepted.**

Please include the following in the Proposal:

- a. Indicate the name, address, telephone number, email and/or fax of the Offeror;
- b. Indicate the Proposal due date and time;
- c. Indicate the RFP Name and RFP Number;
- d. Be clearly marked as follows: RFP No. SFA-PCC24-01 – Contractor NAME _A and/or B; and
- e. If Contractor holds a single license, Contractor will indicate **ONLY** the license being utilized in the proposal. If the Contractor is submitting BOTH A and B proposals, Contractor will need to indicate such.

Section 4 – Proposal Content, Criteria, and Evaluation

4.1.2 Proposal Organization

Services proposed shall be adequately explained and shall contain all sections described below. The Proposal shall include the components explained in the Proposal Content in *Section 4.2 Qualifying Requirements* and *4.3 Technical Proposal*, of this RFP and shall use the same section titles for identification purposes.

The Proposal shall be organized as follows:

QUALIFYING REQUIREMENTS**Compliance Documents**

Offeror Form (OF-1)	Proposal Form 1
----------------------------	------------------------

Offeror Certification	Proposal Form 2
------------------------------	------------------------

List of Any Lawsuits or Pending Legal Action	Proposal Form 3
---	------------------------

Financial Solvency Certification	Proposal Form 4
---	------------------------

Insurance Requirements**TECHNICAL PROPOSAL**

Offeror's Information	Proposal Form 5
------------------------------	------------------------

Comparable Construction Experience	Proposal Form 6 (a-d)
---	------------------------------

Work Capabilities	Proposal Form 7
--------------------------	------------------------

Section 4 – Proposal Content, Criteria, and Evaluation

4.2 QUALIFYING REQUIREMENTS (Pass/No Pass)

4.2.1 Required Documents

The EC will determine if the Offeror possesses the required documentation and certifications to be considered for this RFP. No points shall be assigned for these requirements. The qualifying specifications will be evaluated on a pass/no pass basis.

The purpose of this step is to determine whether a Proposal is sufficiently responsive to the RFP to permit a complete evaluation. Each Proposal will be reviewed for responsiveness. Failure to meet minimum mandatory requirements (“no pass”) will be grounds for deeming a Proposal non-responsive to the RFP and for disqualifying the Proposal. Only those Proposals meeting the mandatory qualifying requirements (“pass”) will be considered for further review and evaluation.

4.2.2 Offeror Form (OF-1), Proposal Form 1

Proposals shall be submitted using the Offeror’s exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable. Offeror shall indicate its exact legal name in the appropriate spaces on the **Offeror Form (OF-1)**. Failure to do so may delay proper execution of the Contract.

4.2.3 Offeror Certification, Proposal Form 2

Offeror shall complete this form and certify that it is signed by an individual authorized to legally bind the Offeror to the Proposal. **Proposal Form 2** includes:

- a. The RFP name and number; Offeror’s point of contact.
- b. A statement indicating that the Offeror, and its subcontractors, if any, are corporations or other legal entities, and have complied with all appropriate registration requirements, if any, of the Business Registration Division.
- c. A statement that the Offeror and its subcontractors, if any, are or will be registered to do business in Hawaii and shall obtain State General Excise Tax Licenses by the start of the work.

4.2.4 List of Any Lawsuits or Pending Legal Action, Proposal Form 3

For **Proposal Form 3** of the Proposal, Offerors must provide a complete list of any lawsuits or pending legal actions, which affect or may affect the Offeror, which have taken place during the past 24 months. The list should include the status and disposition of the action.

4.2.5 Financial Solvency Certification, Proposal Form 4

The Offeror shall submit a completed and executed **Proposal Form 4** with accompanying letter from the Offeror’s surety. The signature **MUST** be the same individual executing the **OF-1**.

4.2.6 Permits, Certifications, and Licenses

The Offeror shall possess a valid State of Hawaii Contractor license A and/or B, which will be kept in force during the life of this Contract. Offeror shall provide the license number(s) and attach copies of license(s) to substantiate Offeror’s compliance with this

Section 4 – Proposal Content, Criteria, and Evaluation

requirement in the Offeror's proposal. Also please provide for consideration any specialty Contractor license numbers the Contractor may use to perform specialty work in-house.

The Offeror shall follow county permitting requirements and when necessary, obtain and pay for all permits, certificates, and licenses required for the performance of the work specified herein, shall post all notices required by law, and shall comply with all laws, ordinances, and regulations bearing on the conduct of the work specified.

4.2.7 Insurance Requirements- Refer to *Section 2.2.5 Insurance Requirements*.

Provide proof of insurance documents verifying the coverage specified.

4.3 TECHNICAL PROPOSAL (Total: 460 PTS)

In accordance with Chapter 103D, HRS, Proposals that are determined to be responsive (those that offer all of the basic requirements requested in the RFP and contain all of the required information and forms properly completed) will be further reviewed using the comparative criteria and associated percentages or "weights" outlined in this section.

Each section of the Technical Proposal will be evaluated according to the criteria set forth in that section or the evaluation scale in this section if not otherwise defined and scored by the 0 through 5 rating scale below. Depending on how the section was addressed, that assessed score (0 through 5) will then be multiplied by the total possible value per Tab.

0	1	2	3	4	5
No Response: Proposal did not address criteria	Unsatisfactory: Proposal incomplete; missing majority of elements	Below Satisfactory: Proposal partially addresses criteria; most areas deficient or weak	Satisfactory: Proposal addresses criteria; many areas deficient or weak	Above Satisfactory: Good Proposal; criteria clearly evident, but one or two areas deficient	Excellent: Strong Proposal; all aspects addressed

All Contractor(s) with an overall evaluation score of 276 or more will be included in the prequalified vendor list, subject to qualifying requirements in Section 4.2 and any other requirements within this RFP. There will be no bonus or extra points allotted.

Price is not an evaluation factor, as each project will be subject to competitive pricing as part of the individual project proposal criteria.

4.3.1 Offeror's Information, Proposal Form 5

The Offeror shall complete **Proposal Form 5** providing the requested information in a complete and concise manner. Each section will be scored based on the RFP evaluation

Section 4 – Proposal Content, Criteria, and Evaluation

rubric in Section 4.3, and points awarded based on the assigned weights as stated on **Proposal Form 5**. 100 Points possible for this section.

4.3.2 Comparable Construction Experience, Proposal Form 6

The Offeror shall complete a **Proposal Form 6** detailing a comparable work project completed by the Offeror. Scoring shall be based on completeness and the comparability to the work being requested in the RFP. **Proposal Form 6** has been provided as “a” through “d” to ensure the offeror provides 4 separate projects. Each shall be scored applying the rubric in Section 4.3 with a weight of 5 points multiplied by the scoring factor. 25 points for each project, 100 possible points.

4.3.3 Work Capabilities, Proposal Form 7

The Offeror shall submit a completed Proposal Form 7 indicating the types of work the Offeror is capable of and willing to perform. Offerors will be expected to perform the types of work indicated if the need arises and will factor in determining what projects the awardees will be selected to compete on. Misrepresenting capability may adversely affect the performance value of any awarded Contractor. In the event an awardee loses capability after award, they are required to inform the CA with sufficient justification to avoid having their past performance negatively adjusted. 10 points for each capability claimed. 260 possible points.

4.3.4 Price Proposal

Price is not an evaluation criterion and there is no provision to submit pricing as part of this Request for Proposals. Price will be determined as part of the proposal evaluation and award process for each project.

4.4 BEST AND FINAL OFFER

Following the evaluation of responses, the SFA, in its sole discretion, may ask respondents to provide their Best and Final Offer (BAFO). Only respondents to the solicitation whose offer was received prior to the deadline will have the opportunity to submit modified Proposals.

If a BAFO is identical to the initial Proposal, the Offeror need only send a Notification stating this fact and the previous submittal shall be used as the BAFO. This letter shall be in the form of a standard business letter on official business letterhead, shall indicate the Offeror's exact legal name, and shall be signed by an individual authorized to legally bind the Offeror.

If a respondent does not submit a notice of withdrawal or a BAFO with a new Technical Proposal, their immediate previous offer will be construed as their BAFO.

The BAFO, if required, shall be submitted by the date and time specified or as amended by addendum.

The contents and format of the BAFO shall still follow the specifications of *Section 4.1 Section Overview*, *4.2 Qualifying Requirements*, and *4.3 Technical Proposal*, however, the Offerors shall highlight the items which vary from the original offer. After BAFOs are received, final evaluations will be conducted for an award of Contract(s).

Section 4 – Proposal Content, Criteria, and Evaluation

4.5 PACKAGING OF BEST AND FINAL OFFER

An electronic version of the Proposal with signatures, signed by the person with the authority to commit the Offeror, saved in pdf format on a flash drive, is required. The flash drive must be sealed in an envelope and delivered to the SFA (hand delivery recommended). If the flash drive or any files are password protected, please provide SFA any passwords separately from the proposal package by the date and time specified or as amended by addendum. **Emailed proposals will not be accepted.**

4.6 FINAL EVALUATION OF THE TECHNICAL PROPOSAL

The EC shall review their previous scores and conduct final evaluations and scoring of the Technical Proposal for the Priority-listed Offerors.

4.7 RECOMMENDATION OF AWARD

The EC shall prepare a report summarizing the findings and rankings of the Priority-listed Offerors and will make the final recommendation for Contract award(s).

The award(s) shall be issued in writing to the responsible Offeror(s) whose Proposal(s) is determined to provide the best value to the SFA, taking into consideration the evaluation criteria in the RFP. The Awards will be posted on the State Procurement Office HANDS website <http://hands.ehawaii.gov>.

SECTION 5

EXHIBITS

EXHIBIT A

ATTORNEY GENERAL (AG) GENERAL CONDITIONS

(INSERTED AS AN ATTACHMENT FOLLOWING THIS PAGE)

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. Head of the purchasing agency 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 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

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

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

21. Price Adjustment.

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

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

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

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

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

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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

EXHIBIT B

INTERIM GENERAL CONDITIONS

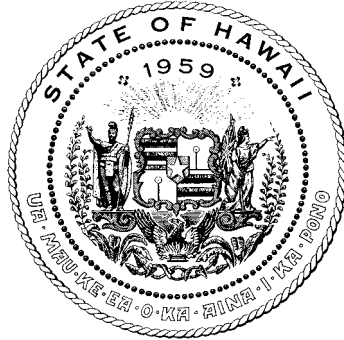
1999 EDITION

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INTERIM

GENERAL CONDITIONS

1999 EDITION



PUBLIC WORKS DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

INTERIM GENERAL CONDITIONS

1999 EDITION

FOR CONSTRUCTION

**State of Hawaii
Department of Accounting and General Services
Public Works Division**

Printed by
State of Hawaii
First Printing March 2000

PREFACE

The State of Hawaii Procurement Code forms the basis for portions of this Interim General Conditions. The Hawaii Administration Rules Procurement Code is not physically included in this Interim General Conditions, but shall govern if any provisions used in this Interim General Conditions are not consistent with the Hawaii Administration Rules Procurement Code.

Copies of the Hawaii Administration Rules Procurement Code may be obtained from the State Procurement Office, Department of Accounting and General Services, State of Hawaii, fourth floor Kalanimoku Building Room 416, 1153 Punchbowl Street, Honolulu Hawaii.

Approved for Publication

Comptroller, State of Hawaii
Department of Accounting and General Services

Approved as to Form

Deputy Attorney General, State of Hawaii

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ARTICLE 1 - Definitions

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

- 1.1 **ADDENDUM (plural - Addenda)** A written or graphic document, including Drawings and Specifications, issued by the Comptroller during the bidding period which modify or interpret the bidding documents, by additions, deletions, clarifications or corrections which shall be considered and made a part of the bid proposal and the contract when executed.
- 1.2 **ADDITION** (to the contract sum) Amount added to the contract Sum by Change Order.
- 1.3 **ADMINISTRATIVE RULES** Hawaii Administrative Rules for Chapter 103-D of the Hawaii Revised Statutes.
- 1.4 **ADMINISTRATOR** The Public Works Administrator, Department of Accounting and General Services
- 1.5 **ADVERTISEMENT** A public announcement inviting bids for work to be performed or materials to be furnished.
- 1.6 **AMENDMENT** A written document properly executed by the Contractor and Comptroller issued to amend the existing contract between the State and the Contractor.
- 1.7 **BAD WEATHER DAY** When weather or other conditions prevent a minimum of four hours of work with the Contractor's normal work force on controlling items of work at the site.
- 1.8 **BENEFICIAL OCCUPANCY** The point of project completion when the State can use the constructed facility in whole or in part for its intended purpose even though substantial completion may not be achieved.
- 1.9 **BID** See PROPOSAL
- 1.10 **BID SECURITY** The security furnished by the bidder from which the State may recover its damages in the event the bidder breaches its promise to enter into a contract with the State and fails to execute the required bonds covering the work contemplated, if its proposal is accepted.
- 1.11 **BIDDER** Any individual, partnership, firm, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, a proposal for the work contemplated.
- 1.12 **BIDDING DOCUMENTS** The advertisement "Notice to Contractors", or invitation to bid, instructions to bidders, proposal requirements, the bid form and the proposed Contract Documents including all addenda issued prior to receipt of Bids.
- 1.13 **BULLETIN** A written notice to the Contractor requesting a price and / or time proposal for contemplated changes preparatory to the issuance of a field order or change order.
- 1.14 **BY OR TO THE ENGINEER** To avoid cumbersome and confusing repetition of expressions in these General Conditions, it is provided that whenever the following words or words of like import are used, they shall be understood as if they were followed by the words "by the Engineer" or "to the Engineer", unless the context clearly indicates another meaning: contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected or condemned.
- 1.15 **CALENDAR DAY** Any day shown on the calendar beginning at midnight and ending at midnight the following day. If no designation of calendar or working day is made, "day" shall mean calendar day.
- 1.16 **CHANGE ORDER** A written order signed by the Engineer that establishes the full payment and final settlement of all claims for direct, indirect and consequential costs, including costs of delays, and establishes any adjustments to contract time related to the work covered and affected by one or more field orders, or for change work done or agreed to be done without issuance of a separate field order. A change order signed by all the parties to the contract constitutes a supplemental agreement.
- 1.17 **COMPLETION** See SUBSTANTIAL COMPLETION and FINAL COMPLETION.
- 1.18 **COMPTROLLER** The Comptroller of the State of Hawaii, Department of Accounting and General Services.
- 1.19 **CONSULTANT** A person, firm or corporation having a contract with the State to furnish services with respect to the project
- 1.20 **CONTRACT** The written agreement between the Contractor and the State of Hawaii by its Comptroller, by which the Contractor is bound to furnish all labor, equipment, and materials and to perform the specified work within the contract time stipulated, and by which the State of Hawaii is obligated to compensate the Contractor therefor at the prices set forth therein. The contract shall include the Contract Documents and also any and all amendments and change orders which are required to complete the construction in an acceptable manner.

- 1.21 CONTRACT COMPLETION DATE** The calendar day on which all work on the project, required by the contract, must be completed. See CONTRACT TIME and FINAL COMPLETION.
- 1.22 CONTRACT DOCUMENTS** The Contract, Addenda (which pertain to the Contract Documents, Contractor's Proposal (including Wage Schedule, List of Subcontractors and other documentation accompanying the Bid and any post bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Contract, the Notice to Proceed, the Bonds, these GENERAL CONDITIONS, the SPECIAL CONDITIONS, the Specifications and the Drawings as the same are more specifically identified in the Contract together with all written Amendments, Change Orders, Field Orders, a written order for minor changes in the work and Engineer's written interpretations and clarifications issued on or after the effective date of the Contract.
- 1.23 CONTRACT PRICE** The amount designated on the face of the contract for the performance of work including allowances for extra if any.
- 1.24 CONTRACT TIME** The number of working or calendar days provided in the contract for completion of the contract, exclusive of authorized time extensions. The number of days shall begin running on the effective date in the Notice to Proceed. If in lieu of providing a number of working or calendar days, the contract requires completion by a certain date, the work shall be completed by that date.
- 1.25 CONTRACTOR** Any individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of the work under the terms of the contract with the State of Hawaii, and acting directly or through its agents, or employees.
- 1.26 DEPARTMENT** The Department of Accounting and General Services, State of Hawaii (abbreviated DAGS).
- 1.27 DRAWINGS (or Plans)** The contract drawings in graphic or pictorial form, which show the design, location, character, dimensions and details of the Work to be done and which shall be a part of the Contract Documents.
- 1.28 ENGINEER** The Public Works Administrator, or the authorized person to act in the Administrator's behalf.
- 1.29 EQUAL OR APPROVED EQUAL** Whenever this term is used in the drawings or specifications, it shall be interpreted to mean a brand or article, prequalified in accordance with Section 6.3 SUBSTITUTION OF MATERIALS AND EQUIPMENT, that may be used in place of the one specified.
- 1.30 FIELD ORDER** A written order issued by the Engineer or the Engineer's authorized representative to the Contractor requiring the contract work to be performed in accordance with a change or changes in the work. A field order may (1) establish a price adjustment and/or time adjustment in an amount the Engineer believes is reasonable for the change; or (2) may declare that the Engineer does not intend to adjust contract time or price for the work; or (3) may request the Contractor to submit a proposal for an adjustment to the contract time and/or price by a certain date.
- 1.31 FINAL COMPLETION** The date set by the Comptroller that all work required by the contract and any amendments or changes thereto is in full compliance with the contract.
- 1.32 FORCE ACCOUNT** Term used when Work is ordered to be done without prior agreements as to lump sum or unit price cost thereof and is to be billed for at cost of labor, materials and equipment, insurances, taxes, etc., plus an agreed percentage for overhead and profit.
- 1.33 GUARANTEE** Legally enforceable assurance of the duration of satisfactory performance of quality of a product or Work
- 1.34 GOODS** Materials. §103D-104
- 1.35 HAZARDOUS MATERIALS** Any and all radioactive materials, asbestos, polychlorinated biphenyls, petroleum, crude oil, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, toxic substances or materials cited in Hazardous Material Laws. Abandoned motor vehicles or parts thereof are not hazardous material.
- 1.36 HOLIDAYS** The days of each year which are set apart and established as State holidays pursuant to Chapter 8, Hawaii Revised Statutes.
- 1.37 INSPECTOR** The person assigned by the Engineer to make detailed inspections of contract performance and materials supplied for the work.
- 1.38 LAWS** All Federal, State, City and County Laws, ordinances, rules and regulations, and standard specifications, including any amendments thereto effective as of the date of the call for sealed bids.
- 1.39 LIQUIDATED DAMAGES** The amount prescribed in the General Conditions, Section 7.26 FAILURE TO COMPLETE THE WORK ON TIME to be paid to the State or to be deducted from any payments due or to become due the Contractor for each working day or calendar day (as applicable) delay in completing the whole or any specified portion of the work beyond the Contract Time.
- 1.40 LETTER OF AWARD** A written notice from the Comptroller to the successful bidder(s) stating that its proposal has been accepted by the State.
- 1.41 MAJOR UNIT PRICE ITEM** A unit price item which, when extended on its estimated quantities in the proposal form, exceeds five percent (5%) of the

- total base bid proposal less any allowance and contingent items included in the proposal.
- 1.42 NON-CONFORMING WORK** Work that does not fulfill the requirements of the Contract Documents.
- 1.43 NOTICE TO CONTRACTOR** The advertisement for proposals for all work or materials on which bids are required. Such advertisement will indicate the location of the work to be done or the character of the material to be furnished and the time and place of the opening of proposals.
- 1.44 NOTICE TO PROCEED** A written notice from the Engineer to the Contractor advising it of the date on which it is to begin the prosecution of the Work, which date shall also be the beginning of Contract Time.
- 1.45 POST CONTRACT DRAWINGS** Drawings issued after the award of the contract for the purpose of clarification and / or changes to the work indicated in the original drawings and which may be made a part of the contract.
- 1.46 PROJECT ACCEPTANCE DATE** The calendar day on which the Engineer accepts the project as sufficiently completed in compliance with the contract so that the State can occupy or utilize the Work for its intended use. See SUBSTANTIAL COMPLETION.
- 1.47 PROJECT CONTRACT LIMITS** (or Contract Zone) The portion of the site as delineated on the drawings which define the Contractor's primary area of operation for the prosecution of the work. It does not define the exact limits of all construction that may be required under the contract.
- 1.48 PROJECT GUARANTEE** A guarantee issued by the Contractor to the State. See GUARANTEE.
- 1.49 PROPOSAL** (Bid) The executed document submitted by a Bidder in the prescribed manner, in response to a request for proposals or invitation to Bid, to perform at the prices quoted, for the work specified under the contract, within the time prescribed for performance.
- 1.50 PROPOSAL FORM** The form prepared by the State on which the written offer or formal bid for the work to be done is submitted by the Bidder. By submitting a bid on the proposal form, a Bidder adopts the language therein as its own.
- 1.51 PUNCHLIST** A list compiled by the Engineer (or Contractor) stating work yet to be completed or corrected by the Contractor in order to substantially complete or finally complete the contract requirements.
- 1.52 QUESTIONNAIRE** The specified forms on which the bidder shall furnish required information as to its ability to perform and finance the work.
- 1.53 SHOP DRAWINGS** All drawings, diagrams illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
- 1.54 SPECIAL CONDITIONS** Supplements or modifies the standard clauses of the GENERAL CONDITIONS setting forth conditions or requirements peculiar to the individual project under consideration, which are not thoroughly or satisfactorily covered, described or explained in these GENERAL CONDITIONS.
- 1.55 SPECIFICATIONS** That portion of the Contract Documents consisting of written descriptions for materials, equipment, construction systems, standards, workmanship, directions, provisions and requirements that pertain to the method and manner of performing the work and certain administrative requirements applicable thereto.
- 1.56 STATE** The State of Hawaii acting through its authorized representative.
- 1.57 SUBCONTRACT** Any written agreement between the Contractor and its subcontractors which contains the conditions under which the subcontractor is to perform a portion of the work for the Contractor.
- 1.58 SUBCONTRACTOR** An individual, partnership, firm, corporation, joint venture or other legal entity, as covered in Chapter 444, Hawaii Revised Statutes, which enters into an agreement with the Contractor to perform a portion of the work for the Contractor.
- 1.59 SUBSTANTIAL COMPLETION** The status of the project when the Contractor has completed all the work and 1) all utilities and services are connected and working, 2) all equipment is in acceptable working condition, 3) additional activity by the Contractor to correct punchlist items as described herein will not prevent or disrupt use of the work or the facility in which the work is located, and 4) the building, structure, improvement or facility can be used for its intended purpose.
- 1.60 SUPERINTENDENT** The employee of the Contractor who is charged with the responsibility of all the Work.
- 1.61 SURETY** The qualified individual, firm or corporation other than the Contractor, which executes a bond with and for the Contractor to insure its acceptable performance of the contract.
- 1.62 UNUSUALLY SEVERE WEATHER** Uncommonly harsh weather including but not limited to hurricanes, tornados, tropical storms and tropical depressions, or as otherwise defined in the SPECIAL CONDITIONS.
- 1.63 WORK** The furnishing of all labor, materials, equipment, and other incidentals necessary or convenient for the successful completion of the

project and the execution of all the duties and obligations imposed by the contract.

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

ABBREVIATIONS

HAR Hawaii Administrative Rules

HRS Hawaii Revised Statutes

VECP Value Engineering cost Proposal

DOTAX State Department of Taxation

IRS Internal Revenue Service

BIDDING AND EXECUTION OF CONTRACT REQUIREMENTS

ARTICLE 2 - Proposal Requirements and Conditions

2.1 QUALIFICATION OF BIDDERS Prospective bidders must be capable of performing the work for which bids are invited, and must be capable of entering into a public contract of \$25,000 or more.

2.1.1 Notice of Intention to Bid

2.1.1.1 In accordance with Section 103D-310, Hawaii Revised Statutes, and Section 3-122-108, Hawaii Administrative Rules, a written notice of intention to bid must be filed for the construction of any public building or public work when the bid is \$25,000 or more. A written notice of intention to bid need not be filed for the mere furnishing and installing of furniture, equipment, appliances, material and any combination of these items when a Contractor's license is not required under Chapter 444 of the Hawaii Revised Statutes, as amended, and the rules and regulations of the Contractor's License Board.

2.1.1.2 The written notice must be addressed to the Comptroller, State of Hawaii, who is the officer charged with letting the contract. The words, "**INTENTION TO BID**" must be clearly written or typed on the face of the envelope containing the written notice of intention to bid. The notice may be faxed, hand carried or mailed to the office indicated in the Notice to Contractors. Submitting the intention to bid via fax is acceptable only to the Oahu office.

2.1.1.3 The written notice must be received by the office(s) indicated in the Notice to Contractors no later than 2:00 p.m. on the 10th calendar day prior to the day designated for opening bids. If the 10th calendar day prior to the day designated for opening bids is a Saturday, Sunday, or legal State holiday, then the written notice must be received by the Department no later than 2:00 p.m. on the last working day immediately prior to said Saturday, Sunday, or legal State holiday. The written notice will be time stamped when received by said office. The time designated by the time stamping device in said office shall be official. If the written notice is hand carried, then the bearer is responsible to ensure that the notice is time stamped by said office. If the notice is faxed, the time of receipt by the Department fax machine shall be official.

2.1.1.4 It is the responsibility of the prospective bidder to ensure that the written notice of intention to bid is received in time and the Department assumes no responsibility for failure of timely delivery caused by the prospective bidder or by any method of conveyance chosen by the prospective bidder.

2.1.1.5 If two (2) or more prospective bidders desire to bid jointly as a joint venture on a single project, they must file an affidavit of joint venture with their notice of intention to bid. Such affidavit of joint venture will be valid only for the specific project for which it is filed. No further license is required when all parties to the joint venture possess current

and appropriate contractor's licenses. Joint ventures are required to be licensed in accordance with Chapter 444 of the Hawaii Revised Statutes, as amended, and the rules and regulations of the Contractor's License Board when any party to the joint venture agreement does not hold a current or appropriate contractor's license. The joint venture must register with the office of the Director of Commerce and Consumer Affairs in accordance with Chapter 425 of the Hawaii Revised Statutes, as amended.

2.1.1.6 No persons, firm or corporation may bid where (1) the person, firm, or corporation, or (2) a corporation owned substantially by the person, firm, or corporation, or (3) a substantial stockholder or an officer of the corporation, or (4) a partner or substantial investor in the firm is in arrears in any payment owed to the State of Hawaii or any of its political subdivisions or is in default of any obligation to the State of Hawaii or to all or to any of its political subdivisions, including default as a surety or failure to perform faithfully and diligently any previous contract with the Department.

2.1.1.7 The Comptroller may, in accordance with Section 103D-310 Hawaii Revised Statutes, require the prospective Bidder to submit answers to questions contained in the STANDARD QUALIFICATION QUESTIONNAIRE FOR PROSPECTIVE BIDDERS ON PUBLIC WORKS CONTRACTS, on the form provided by the Department, properly executed and notarized, setting forth a complete statement of the experience of such prospective Bidder and its organization in performing similar work and a statement of the equipment proposed to be used, together with adequate proof of the availability of such equipment, at least two (2) working days prior to the time advertised for the opening of bids. If the information in the questionnaire proves satisfactory, the Bidder's proposal will be received. All information contained in the answers to the questionnaire shall be kept confidential. The questionnaire will be returned to the Bidder after it has served its purpose.

2.1.1.8 If upon review of the Questionnaire, or otherwise, the Bidder appears not fully qualified or able to perform the intended work, the Comptroller shall, after affording the Bidder an opportunity to be heard and if still of the opinion that the Bidder is not fully qualified to perform the work, refuse to receive or to consider any bid offered by the prospective Bidder.

2.1.1.9 Failure to complete and submit the prequalification questionnaire by the designated deadline will be sufficient cause for the Department to disqualify a prospective Bidder.

2.1.2 Tax Clearance § 103D -328 HRS)

2.1.2.1 Contractors are required to provide both state and federal tax clearances as a prerequisite to entering into a public contract of \$25,000 or more. To meet this requirement, all Bidders shall submit valid tax clearances with their bid proposals when the bid is \$25,000 or more. An additional tax clearance will be required before final payment can be made.

2.1.2.2 Tax clearances may be obtained by completing the Tax Clearance Application (Form A-6) and submitting it to the Hawaii State Department of Taxation (DOTAX) or the

Internal Revenue Service (IRS). The application may be obtained from the DOTAX, the IRS, or the Public Works Division, Kalanimoku Building, Room 422, 1151 Punchbowl Street, Honolulu, Hawaii. The application may be mailed in or walked in to either the DOTAX or the IRS. Both tax agencies encourage the use of their mail-in process, which should be completed within twenty-one (21) calendar days. Tax clearance certificates will be issued to the applicant upon determination that the applicant has filed all tax returns due, and has paid all amounts owing on such returns, including penalty and interest.

2.1.2.3 Only original tax clearance certificates or certified copies will be accepted for this purpose. Failure to submit the required tax clearance certificates may be sufficient grounds for the Department to refuse to receive or consider the prospective bidder's proposal.

2.1.2.4 Tax clearance certificates are valid for six (6) months. The six-month period will begin with the later approval date stamped on the tax clearance. An original copy of a tax clearance that bears an original green certified copy stamp will be accepted by the Department for final payment. The period of validity is two months.

2.1.2.5 The tax clearances submitted with the bid proposals must be valid on the solicitation's first legal advertisement date or any date thereafter up to the bid opening date. Valid tax clearances submitted with the proposal will remain valid for the contract award and encumbrance.

2.1.2.6 Any person, firm or corporation that is not presently doing business in the State of Hawaii and submits a Notice of Intention to Bid must submit along with said Notice of Intention to Bid a certified letter stating that said person, firm or corporation is not doing business in the State of Hawaii and is not in default of any obligations due to the State or any of its political subdivisions.

2.1.2.7 If a business cannot obtain a tax clearance certificate because of tax delinquencies, it may submit a "special letter" from DOTAX and/or the IRS. The "special letter" may only be obtained if (1) the business has an existing installment agreement with the tax agency, or (2) the delinquency is the subject of an administrative or judicial appeal. The bidder is cautioned that the "special letter" from the IRS must be certified by DOTAX. All conditions applied to tax clearance certificates for this purpose are applicable to these "special letters". Instructions to obtain the "special letter" are available from each respective tax agency.

2.1.2.8 Various combinations of tax clearance certificates and "special letters" are acceptable for this purpose as follows:

- (a) Tax clearance certificate signed by both tax agencies;
- (b) Individual tax clearance certificates from each tax agency, respectively;
- (c) Tax clearance certificate from one tax agency and a "special letter" from the other tax agency;
- (d) "Special letters" from both tax agencies.

2.1.3 Wrongful Refusal to Accept a Bid - In the event the Comptroller, for any reason, wrongfully refuses to accept what would otherwise be a responsive and responsible lowest bid, the exclusive remedy for such lowest bidder shall be the recovery of the reasonable actual costs of preparing the bid. No other bidder shall have any claim for damages. Refer to 2.13 PROTEST.

2.2 INTERPRETATION OF QUANTITIES IN BID SCHEDULE

2.2.1 When quantities for individual items of work are listed in the proposal form for which respective unit prices are asked, said quantities are estimated or approximate and are to be used by the Department only for the purpose of comparing on a uniform basis bids offered for the work. The Department does not, expressly or by implication, agree that the actual quantity of work will correspond therewith.

2.2.2 After determining the low bidder by comparison of bids submitted in accordance with the proposal form and Section 3.1 CONSIDERATION OF PROPOSALS; CANCELLATION in these specifications, the quantities of unit price items of work may increase or decrease.

2.2.3 On unit price bids, payment will be made only for the actual number of units incorporated into the finished project at the unit price bid, subject to Section 4.7 VARIATIONS IN ESTIMATED QUANTITIES.

2.3 CONTENTS OF PROPOSAL FORMS

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

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

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

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

2.4 THE SITE AND PROPOSED CONTRACT DOCUMENTS

2.4.1 The Bidder shall examine carefully the Project Site contemplated and the proposal, drawings, specifications, supplemental specifications, SPECIAL CONDITIONS, and any documents or items referenced therein and contract and bond forms therefore. The submission of a bid shall be considered as a warranty that the Bidder has made such examination and is informed of the conditions to be encountered in performing the Work and of the requirements of the drawings, specifications, supplemental specifications, SPECIAL CONDITIONS and any documents and items referenced therein, and contract and bonds.

2.5 ADDENDA AND BID CLARIFICATIONS

2.5.1 The terms and requirements of the bid documents (i.e. drawings, specifications and other bid and contract documents) cannot be changed prior to the bid opening except by a duly issued addenda or bid clarification.

2.5.2 The Department may alter, increase or decrease the scope of the work or the contract time, provisions and conditions by issuing a written addendum which sets forth such alterations, increase or decrease.

2.5.3 Bid Discrepancy - If a bidder discovers what it considers to be a discrepancy, ambiguity, omission or doubt as to the meaning of drawings, specifications and any other bid or contract documents, the bidder shall request in writing no later than 14 days before the bids are opened.

2.5.4 Addenda to the bid documents will be provided to all prospective bidders at the respective offices furnished for such purposes. Each addendum shall be an addition to the Contract Documents.

2.5.5 Upon providing an addenda, all bidders shall be deemed to be on notice of the information therein whether or not the addendum or bid clarification is actually received. All addenda and bid clarifications so issued shall become part of the Contract Documents.

2.5.6 No claim for additional compensation and/or time for performance will be allowed if the Contractor discovered, or in the exercise of reasonable care, should have discovered a discrepancy, ambiguity, omission or doubt for which an interpretation was not requested.

2.6 SUBSTITUTION OF MATERIALS AND EQUIPMENT BEFORE BID OPENING

2.6.1 Brand names of materials or equipment are specified or shown on the drawings to indicate a quality, style, appearance or performance and not to limit competition. The Bidder shall base its bid on one of the specified brand names unless alternate brands are qualified as equal or better in an addendum. Qualifications of such proposed alternate brands shall be submitted in writing and addressed to the Public Works Administrator. The face of the envelope containing the request must be clearly marked "SUBSTITUTION REQUEST". The request may be hand carried to the Public Works Division, 4th Floor of the Kalanimoku Building, Room 426, 1151 Punchbowl Street or mailed to the Public Works Division, P.O. Box 119, Honolulu, Hawaii 96810. In either case, the written request must be received by the Public Works Division no later than the time and date specified in the SPECIAL CONDITIONS. The written request will be time stamped by the Public Works Division. For the purpose of this section, the time designated by the time stamping device in the Public Works Division shall be official. If the written request is hand carried, the bearer is responsible to ensure that the request is time stamped by the Public Works Division.

2.6.2 Submit three (3) sets of the written request, technical brochures, and a statement of variances. Refer to the Appendix for the Sample "Request for Substitution."

2.6.3 Statement of Variances - The statement of variances must list all features of the proposed substitution which differ from the drawings, specifications and / or product(s) specified and must further certify that the substitution has no other variant features. The brochure and information submitted shall be clearly marked showing make, model, size, options, etc., and must include sufficient evidence to evaluate each feature listed as a variance. A request will be denied if submitted without sufficient evidence. If after installing the substituted product, an unlisted variance is discovered, Contractor shall immediately replace the product with a specified product all at no cost to the State

2.6.4 Substitution Denial - Any substitution request not complying with the above requirements will be denied. Substitution requests sent to other agencies and received by the Public Works Division after the deadline above will be denied.

2.6.5 An addendum shall be issued to inform all prospective bidders of any accepted substitution in accordance with Section 2.5 ADDENDA AND BID CLARIFICATIONS.

2.6.6 For substitutions of materials and equipment after issuance of the Letter of Award, refer to Section 6.3 SUBSTITUTION OF MATERIALS AND EQUIPMENT AFTER BID OPENING.

2.7 PREPARATION OF PROPOSAL

2.7.1 The Bidder's proposal must be submitted on the proposal form furnished by the Department. The proposal must be prepared in full accordance with the instructions thereon. The Bidder must state, both in words and numerals, the lump sum price or total sum bid at which the work contemplated is proposed to be done. These prices must be written in ink or typed. In case of a discrepancy between the prices written in words and those written in figures, the words shall govern over the figures. The Bidder shall sign the proposal in the spaces provided with ink. By submitting a bid, the Bidder adopts the language of the proposal as its own.

2.7.2 If the proposal is made by an individual, the person's name and post office address must be shown in the space provided. If made by a partnership the name and post office address of each member of the partnership must be shown and the proposal signed by all partners or evidence in the form of a partnership agreement must be submitted showing the authority of the partner to enter, on behalf of said partnership, into contract with the State. If made by a corporation the proposal must show the name, titles, and business address of the president, secretary and treasurer and also evidence in the form of a corporate resolution must be submitted showing the authority of the particular corporate representative to enter on behalf of said corporation into contract with the State. If made by a joint venture the name and post office address of each member of the individual firm, partnership or corporation comprising the joint-venture must be shown with other pertinent information required of individuals, partnerships or corporations as the case may be. The proposal must be signed by all parties to the joint-venture or evidence in the form of a Joint-Venture Agreement must be submitted showing the authority of the joint-venture's representative to enter on behalf of said joint-venture into contract with the State.

2.7.3 Pursuant to the requirements of Section 103D-302, HRS, each Bidder shall include in its bid the name of each person or firm to be engaged by the Bidder on the project as joint contractor or subcontractor indicating also the nature and scope of work to be performed by such joint contractor and/or subcontractor and their respective contractor's license number. A joint contractor or subcontractor performing less than or equal to one percent of the total bid amount is not required to be listed in the proposal. The Bidder shall be solely responsible for verifying that their joint contractor or subcontractor has the proper license at the time of the submitted bid.

2.8 BID SECURITY §3-122-223(d) HAR

2.8.1 Subject to the exceptions in Section 3-122-223(d) HAR, all lump sum bids of \$25,000 and higher, or lump sum base bids including alternates of \$25,000 and higher, that are not accompanied by bid security are non-responsive. Bid security shall be one of the following: §3-122-222(a) HAR

2.8.1.1 Surety bid bond underwritten by a company licensed to issue bonds in this State which shall be substantially in the form of the Surety Bid Bond form in the Appendix; or

2.8.1.2 Legal Tender; or

2.8.1.3 Certificate of Deposit; Credit Union share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the State by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

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

2.8.2 Unless otherwise stated, the bid security shall be in an amount equal to at least five percent (5%) of the lump sum bid or lump sum base bid including alternates or in an amount required by the terms of the federal funding, where applicable.

2.8.3 If the Bidder is a corporation, evidence in the form of a corporate resolution, authorizing the corporate representative to execute the bond must be submitted with the proposal. (See sample in Appendix.) If the Bidder is a partnership, all partners must sign the bond or evidence in the form of a partnership agreement must be submitted showing the authority of the partner.

2.8.4 If the Bidder is a joint -venture, all parties to the joint venture must sign the bond; provided, that one party to the joint-

venture may sign on behalf of the joint-venture if evidence in the form of a joint-venture agreement or power of attorney, is submitted showing the authority of the signatory to sign the bond on behalf of the joint-venture.

2.8.5 In the case where the award will be made on a group or item basis, the amount of bid security shall be based on the total bid for all groups or items submitted.

2.8.6 Bidders are cautioned that surety bid bonds which place a limit in value to the difference between the bid amount and the next acceptable bid, such value not to exceed the purported amount of the bond, are not acceptable. Also, surety bid bonds which place a time limit on the right of the State to make claim other than allowed by statutes or these GENERAL CONDITIONS are not acceptable. Bidders are hereby notified that a surety bid bond containing such limitation(s) is not acceptable and a bid accompanied by such surety bid bond will be automatically rejected.

2.9 DELIVERY OF PROPOSALS - The entire proposal shall be placed together with the bid security, in a sealed envelope no smaller than 9-1/2" x 12" so marked as to indicate the identity of the project, the project number, the date of bid opening and the name and address of the bidder and then delivered as indicated in the Notice to Contractors. Bids which do not comply with this requirement may not be considered. Proposals will be received up to the time fixed in the public notice for opening of bids and must be in the hands of the official by the time indicated. The words "SEALED BID" must be clearly written or typed on the face of the sealed envelope containing the proposal and bid security.

2.10 WITHDRAWAL OR REVISION OF PROPOSAL - may be modified prior to the deadline to submit the offers by any of the following documents.

2.10.1 Withdrawal of Proposals:

2.10.1.1 A signed, written notice received in the office designated in the solicitation; or

2.10.1.2 A written notice faxed to the office designated in the solicitation; or

2.10.1.3 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 such office prior to the time and date set for the opening.

2.10.2 Modification of Proposals:

2.10.2.1 A written notice received in the office designated in the solicitation, stating that a modification to the offer is submitted; and

2.10.2.2 The actual modification sealed securely in a separate envelope or container, accompanying the written notice.

2.11 PUBLIC OPENING OF PROPOSALS - Proposals will be opened and read publicly at the time and place indicated

in the Notice to Contractors. Bidders, their authorized agents and other interested parties are invited to be present.

2.12 DISQUALIFICATION OF BIDDERS - Any one or more of the following causes will be considered as sufficient for the disqualification of a Bidder and the rejection of its proposal or proposals:

2.12.1 Non-compliance with Section 2.1 QUALIFICATION OF BIDDERS.

2.12.2 Evidence of collusion among bidders.

2.12.3 Lack of responsibility and cooperation as shown by past work such as failing to complete all of the requirements to close the project within a reasonable time or engaging in a pattern of unreasonable or frivolous claims for extra compensation.

2.12.4 Being in arrears on existing contracts with the State of Hawaii, or having defaulted on a previous contract with the State of Hawaii.

2.12.5 Lack of proper equipment and/or sufficient experience to perform the work contemplated, as revealed by the Standard Questionnaire and Financial Statement for Bidders.

2.12.6 No contractor's license or a contractor's license which does not cover type of work contemplated.

2.12.7 More than one proposal for the same work from an individual, firm, partnership, corporation or joint venture under the same or different name.

2.12.8 Delivery of bids after the deadline specified in the advertisement calling for bids.

2.12.9 Failure to pay, or satisfactorily settle, all bills overdue for labor and materials of former contracts in force at the time of issuance of proposal forms.

2.12.10 Debarment or suspension pursuant to the provisions of Chapters 103D, 104 and 444, Hawaii Revised Statutes, as amended.

2.13 PROTEST

2.13.1 Protests shall be adjudicated in accordance with §103D-701, HRS and as amended.

2.13.2 No Protest based upon the contents of the solicitation shall be considered unless it is submitted in writing to the Comptroller, State of Hawaii prior to the date set for the receipt of proposals.

2.13.3 A protest of an award or proposed award pursuant to §103D-302 or §103D-303, HRS, shall be submitted in writing to the Comptroller within five (5) working days after the posting of the award of the Contract.

2.13.4 In addition to any other relief, when a protest is sustained and the protestor should have been awarded the contract under the solicitation but is not, then the protestor shall be entitled to the actual costs reasonably incurred in connection

with the solicitation, including bid or proposal preparation costs but not attorney's fees.

ARTICLE 3 - Award and Execution of Contract

3.1 CONSIDERATION OF PROPOSALS; CANCELLATION - After the proposals are opened and read, the figures will be extended and/or totaled in accordance with the bid prices of the acceptable proposals and the totals will be compared and the results of such comparison shall be made public. In the event of a tie bid, the low bidder shall be determined by lot. In the comparison of bids, words written in the proposals will govern over figures and unit prices will govern over totals. Until the award of the contract, the Department may cancel the solicitation, reject any and all proposals in whole or part and may waive any defects or technicalities whenever such action is deemed to be in the best interest of the State.

3.2 IRREGULAR PROPOSALS - Proposals will be considered irregular and may be rejected for the following reasons:

3.2.1 If the proposal is unsigned.

3.2.2 If bid security is not in accordance with Section 2.8 BID SECURITY.

3.2.3 If proposal is on a form other than that furnished by the Department; or if the form is altered or any part thereof detached.

3.2.4 If the proposal shows any non-compliance with applicable law, alteration of form, additions not called, conditional bids, incomplete bids, non initialed erasures, other defects, or if the prices are obviously unbalanced.

3.2.5 If the Bidder adds any provisions reserving the right to accept or reject an award.

3.2.6 If the Bidder adds any provisions reserving the right to enter into a contract pursuant to an award.

3.2.7 When a proposal is signed by an officer or officers of a corporation and a currently certified corporate resolution authorizing such signer(s) to submit such proposal is not submitted with the proposal or when the proposal is signed by an agent other than the officer or officers of a corporation or a member of a partnership and a power of attorney is not submitted with the proposal.

3.2.8 Where there is an incomplete or ambiguous listing of joint contractors and/or subcontractors the proposal may be rejected. All work which is not listed as being performed by joint contractors and/or subcontractors must be performed by the bidder with its own employees. Additions to the list of joint contractors or subcontractors will not be allowed. Whenever there is a doubt as to the completeness of the list, the Bidder will be required to submit within five (5) working days, a written confirmation that the work in question will be performed with its own work force. Whenever there is more than one joint contractor and/or subcontractor listed for the same item of work,

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

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

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

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

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

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

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

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

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

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

3.4 AWARD OF CONTRACT

3.4.1 The award of contract, if it be awarded, will be made within sixty (60) consecutive calendar days after the opening of the proposals to the lowest responsible and responsive Bidder (including the alternate or alternates which may be selected by the Comptroller in the case of alternate bids) whose proposal

complies with all the requirements prescribed, but in no case will an award be made until all necessary investigations are made. The successful Bidder will be notified, by letter mailed to the address shown on the proposal, that its bid has been accepted and that it has been awarded the contract.

3.4.2 If the contract is not awarded within the sixty (60) days noted in paragraph 3.4.1 above, the Department may request the successful Bidder to extend the time for the acceptance of its bid. The Bidder may reject such a request without penalty; and in such case, the Department may at its sole discretion make a similar offer to the next lowest responsive and responsible bidder and so on until a bid is duly accepted or until the Department elects to stop making such requests.

3.4.3 No contract will be awarded to any person or firm suspended or debarred under the provisions of Chapters 103D, 104 and Chapter 444, Hawaii Revised Statutes as amended.

3.4.4 The contract will be drawn on the forms furnished by the Comptroller. The contract will not be binding on the Department until all required signatures have been affixed thereto and written certification that funds are available for the work has been made.

3.5 CANCELLATION OF AWARD - The Department reserves the right to cancel the award of any contract at any time before the execution of said contract by all parties. The exclusive remedy to the awardee for such cancellation shall be payment of the reasonable bid preparation costs and the reimbursement of any direct expenses incurred as directed in the Notice of Award. Such cancellation will not incur any liability by the Department to any other Bidder.

3.6 RETURN OF BID SECURITY - All bid securities, except those of the four (4) lowest Bidders, will be returned following the opening and checking of the proposals. The retained bid securities of the four lowest Bidders will be returned within five (5) working days following the complete execution of the contract.

3.7 REQUIREMENT OF PERFORMANCE AND PAYMENT BONDS

3.7.1 Performance and Payment Bonds shall be required for contracts \$25,000 and higher. At the time of the execution of the contract, the successful Bidder shall file good and sufficient performance and payment bonds on the form furnished by the Department (see Appendix), each in an amount equal to one hundred percent (100%) of the amount of the contract price unless otherwise stated in the solicitation of bids. Acceptable performance and payment bonds shall be limited to the following:

3.7.1.2 Surety bonds underwritten by a company licensed to issue bonds in this State; or

3.7.1.3 A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the State by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

- (a) These instruments may be utilized only a maximum of \$100,000.
- (b) If the required security or bond amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be acceptable.

3.7.2 If the Contractor fails to deliver the required performance and payment bonds, the contractor's award shall be canceled, the Department shall have the remedies provided under Section 3.9 FAILURE TO EXECUTE THE CONTRACT and award of the contract shall be made to the next lowest responsible and responsive bidder.

3.8 EXECUTION OF THE CONTRACT

3.8.1 The contract shall be signed by the successful bidder and returned, together with satisfactory performance and payment bonds, within ten (10) calendar days after the bidder is awarded the contract for execution or within such further time as the Comptroller may allow. No proposal or contract shall be considered binding upon the State until the contract has been fully and properly executed by all parties thereto and the Comptroller has endorsed thereon its certificate, as required by Section 103D-309, HRS, that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the State's amount required by such contract.

3.8.2 On any individual award totaling less than \$25,000, the State reserves the right to execute the contract by the issuance of a State Purchase Order. Issuance of a State Purchase Order shall result in a binding contract between the parties without further action by the State. The issuance of a State Purchase Order shall not be deemed a waiver of these General Conditions and Contract Document requirements.

3.9 FAILURE TO EXECUTE THE CONTRACT

3.9.1 Before the Award - If a low Bidder without legal justification withdraws its bid after the opening of bids but before the award of the contract, the State shall be entitled to retain as liquidated damages the amount established as bid security, and may take all appropriate actions to recover the liquidated damages sum from the property or third-party obligations deposited as bid security.

3.9.2 After the Award - If the Bidder to whom a contract is awarded shall fail or neglect to enter into the contract and to furnish satisfactory security within ten (10) calendar days after such award or within such further time as the Comptroller may allow, the State shall be entitled to recover from such Bidder its actual damages, including but not limited to the difference between the bid and the next lowest responsive bid, as well as personnel and administrative costs, consulting and legal fees and other expenses incurred in arranging a contract with the next low responsive bidder or calling for new bids. The State may apply all or part of the amount of the bid security to reduce its damages. If upon determination by the State of the amount of its damages the bid security exceeds that amount, it shall release or return the excess to the person who provided same.

3.9.3 Comptroller's Options - Upon a withdrawal of the lowest responsive bid, or upon a refusal or failure of the lowest

Bidder to execute the contract, the Comptroller may thereupon award the contract to the next lowest responsible and responsive Bidder or may call for new bids, whichever method the Comptroller may deem to be in the best interests of the State.

3.10 NOTICE TO PROCEED

3.10.1 After the contract is fully executed and signed by the Comptroller, the Contractor will be sent a formal Notice to Proceed letter advising the Contractor of the date on which it may proceed with the work. The Contractor shall be allowed ten (10) consecutive working days from said date to begin its work. In the event that the Contractor refuses or neglects to start the work, the Comptroller may terminate the contract in accordance with Section 7.27 TERMINATION OF CONTRACT FOR CAUSE.

3.10.2 The Contractor may commence its operations strictly at its own risk prior to receipt of the formal notice to proceed, provided it makes a written request and has received approval from the Engineer in writing. All work performed shall be conducted in accordance with Section 7.1 PROSECUTION OF THE WORK.

3.10.3 In certain cases, the State, with agreement of the Contractor, may issue a Notice to Proceed before full execution of the contract by the Comptroller and it may further issue a Notice to Proceed concurrently with the Notice of Award.

3.10.4 In the event the Notice to Proceed is not issued within one hundred and eighty (180) days after the date of the award of contract the Contractor may submit a claim for increased labor and material costs (but not overhead costs) which are directly attributable to the delay beyond the first 180 days. Such claims shall be accompanied with the necessary documentation to justify the claim. No payment will be made for escalation costs that are not fully justified.

GENERAL CONDITIONS

ARTICLE 4 - Scope of Work

4.1 INTENT OF CONTRACT, DUTY OF CONTRACTOR - The intent of the Contract is to provide for the construction, complete in every detail, of the Work described at the accepted bid price and within the time established by the contract. The Contractor has the duty to furnish all labor, materials, equipment, tools, transportation, incidentals and supplies and to determine the means, methods and schedules required to complete the work in accordance with the drawings, specifications and terms of the contract.

4.2 CHANGES - The Engineer may at any time, during the progress of the work, by written order, and without notice to the sureties, make changes in the work as may be found to be necessary or desirable. Such changes shall not invalidate the Contract nor release the Surety, and the Contractor will perform the work as changed, as though it had been a part of the original Contract.

4.2.1 Minor Changes - Minor changes in the work may be directed by the Engineer with no change in contract price or time of performance. Minor changes are consistent with the intent of the Contract Documents and do not substantially alter the type of work to be performed or involve any adjustment to the contract sum or extension of the contract time.

4.2.2 Oral Orders

4.2.2.1 Any oral order, direction, instruction, interpretation or determination from the Engineer or any other person which in the opinion of the Contractor causes any change, shall be considered as a change only if the Contractor gives the Engineer written notice of its intent to treat such oral order, direction, instruction, interpretation or determination as a change directive. Such written notice must be delivered to the Engineer before the Contractor acts in conformity with the oral order, direction, instruction, interpretation or determination, but not more than five (5) days after delivery of the oral order to the Contractor. The written notice shall state the date, circumstances, whether a time extension will be requested, and source of the order that the Contractor regards as a change. Such written notice may not be waived and shall be a condition precedent to the filing of any claim by the Contractor. Unless the Contractor acts in accordance with this procedure, any such oral order shall not be treated as a change for which the Contractor may make a claim for an increase in the contract time or contract price related to such work.

4.2.2.2 No more than five (5) days after receipt of the written notice from the Contractor, a Field Order shall be issued for the subject work if the State agrees that it constitutes a change. If no Field Order is issued in the time established, it shall be deemed a rejection of Contractor's claim for a change. If the Contractor objects to the failure to issue a Field Order, it shall file a written protest with the Engineer within thirty (30) days after delivery to the Engineer of the Contractor's written notice of its intention to treat the oral order as a change. In all cases, the Contractor shall proceed with the work. The protest shall be determined as provided in Section 7.25 DISPUTES AND CLAIMS.

4.2.3 Field Orders – Upon receipt of a Field Order, the Contractor shall proceed with the changes as ordered. If the Contractor does not agree with any of the terms or conditions or in the adjustment or non-adjustment to the contract time and / or contract price, Contractor shall file a notice of intent to claim within thirty (30) calendar days after receipt of the written Field Order that was not agreed upon by both parties. Failure to file such protest within the time specified shall constitute agreement on the part of the Contractor with the terms, conditions, amounts and adjustment or non-adjustment to contract price and / or contract time set forth in the Field Order. The requirement for timely written notice shall be a condition precedent to the assertion of a claim.

4.2.4 Change Orders

4.2.4.1 The Department will issue sequentially numbered Change Orders at times it deems appropriate during the contract period. A Change Order may contain the adjustment in contract price and / or time for a number of Field Orders. The Change Order will be issued in the format attached (refer

to the Appendix). No payment for any change will be made until the change order is issued.

4.2.4.2 The penal sum of the Surety Performance and Payment Bonds will be adjusted by the amount of each and every Change Order.

4.2.4.3 Upon receipt of a Change Order, if the Contractor does not agree with any of the terms or conditions or in the adjustment or non-adjustment to the contract time and / or contract price, Contractor shall file a notice of intent to claim within thirty (30) calendar days after receipt of the written Change Order that was not agreed upon by both parties. Failure to file such protest within the time specified shall constitute agreement on the part of the Contractor with the terms, conditions, amounts and adjustment or non-adjustment to contract price and / or contract time set forth in the Change Order. The requirement for timely written notice shall be a condition precedent to the assertion of a claim.

4.3 DUTY OF CONTRACTOR TO PROVIDE PROPOSAL FOR CHANGES

4.3.1 A Field Order may request the Contractor to supply the Department with a proposal for an adjustment to the contract time or contract price for the work described therein. Any such request for a proposal shall not affect the duty of the Contractor to proceed as ordered with the work described in the Field Order.

4.3.2 The Engineer from time to time may issue a Bulletin to the Contractor requesting price and / or time adjustment proposals for contemplated changes in the work. A Bulletin is not a directive for the Contractor to perform the work described therein.

4.3.3 Within fifteen (15) days after receipt of a Bulletin or Field Order containing a request for proposal, the Contractor shall submit to the Engineer a detailed written statement in a format similar to the one shown in the Appendix to these General Conditions setting forth all charges the Contractor proposes for the change and the proposed adjustment of the contract time, all properly itemized and supported by sufficient substantiating data to permit evaluation. No time extension will be granted for delays caused by late Contractor pricing of changes or proposed changes. If the project is delayed because Contractor failed to submit the cost proposal within the fifteen (15) days, or as allowed by the Engineer, liquidated damages will be assessed in accordance with Section 7.26 FAILURE TO COMPLETE THE WORK ON TIME.

4.3.4 No payment shall be allowed to the Contractor for pricing or negotiating proposed or actual changes.

4.4 PRICE ADJUSTMENT §3-125-13 HAR

4.4.1 Any adjustment in the contract price pursuant to a change or claim in this contract shall be made in one or more of the following ways:

4.4.1.1 By agreement to a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

4.4.1.2 By unit prices specified in the contract or subsequently agreed upon;

4.4.1.3 Whenever there is a variation in quantity for any work covered by any line item in the schedule of costs submitted as required by Section 7.2 COMMENCEMENT REQUIREMENTS, by the Department at its discretion, adjusting the lump sum price proportionately;

4.4.1.4 In such other manner as the parties may mutually agree;

4.4.1.5 At the sole option of the Engineer, by the costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as specified in Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT and the force account provision of Section 8.3 PAYMENT FOR ADDITIONAL WORK; or

4.4.1.6 In the absence of an agreement between the two parties, by a unilateral determination by the Engineer of the reasonable and necessary costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as computed by the Engineer in accordance with applicable sections of Chapters 3-123 and 3-126 of the Hawaii Administrative Rules and Regulations, and Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.

4.5 ALLOWANCES FOR OVERHEAD AND PROFIT §3-125-13 HAR

4.5.1 In determining the cost or credit to the Department resulting from a change, the allowances for all overhead, including, extended overhead resulting from adjustments to contract time (including home office, branch office and field overhead, and related delay impact costs) and profit combined, shall not exceed the percentages set forth below:

4.5.1.1 For the Contractor, for any work performed by its own labor forces, fifteen percent (15%) of the direct cost;

4.5.1.2 For each subcontractor involved, for any work performed by its own forces, fifteen percent (15%) of the direct cost;

4.5.1.3 For the Contractor or any subcontractor, for work performed by their subcontractors, seven percent (7%) of the amount due the performing subcontractor.

4.5.2 Not more than three markup allowance line item additions not exceeding the maximum percentage shown above will be allowed for profit and overhead, regardless of the number of tier subcontractors.

4.5.3 The allowance percentages will be applied to all credits and to the net increase of direct costs where work is added and deleted by the changes.

4.6 PAYMENT FOR DELETED MATERIAL

4.6.1 **Canceled Orders** - If acceptable material was ordered by the Contractor for any item deleted by an ordered change in the work prior to the date of notification of such deletion by the Engineer, the Contractor shall use its best efforts to cancel the order. The Department shall pay reasonable

cancellation charges required by the supplier excluding any markup for overhead and profit to the Contractor.

4.6.2 Returned Materials - If acceptable deleted material is in the possession of the Contractor or is ultimately received by the Contractor, if such material is returnable to the supplier and the Engineer so directs, the material shall be returned and the Contractor will be paid for the reasonable charges made by the supplier for the return of the material, excluding any markup for overhead and profit to the Contractor. The cost to the Contractor for handling the returned material will be paid for as provided in Section 4.4 PRICE ADJUSTMENT.

4.6.3 Uncancelled Materials - If orders for acceptable deleted material cannot be canceled at a reasonable cost, it will be paid for at the actual cost to the Contractor including an appropriate markup for overhead and profit as set forth in Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT. In such case, the material paid for shall become the property of the State and the cost of further storage and handling shall be paid for as provided in Section 4.4 PRICE ADJUSTMENT.

4.7 VARIATIONS IN ESTIMATED QUANTITIES §3-125-10 HAR

4.7.1 Where the quantity of a major unit price item in this contract is estimated on the proposal form and where the actual quantity of such pay item varies more than fifteen percent (15%) above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. The adjustment shall be subject to Section 4.4 PRICE ADJUSTMENT and Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT. If the quantity variation is such as to cause an increase in the time necessary for completion, the Engineer shall, upon receipt of a written request for an extension of time within thirty (30) days of the item's completion, ascertain the facts and make such adjustment to the completion date as the Engineer finds justified.

4.8 VARIATIONS IN BOTTOM ELEVATIONS The Contractor shall plan and construct to the bottom elevations of footings, piles, drilled shafts, or cofferdams as shown on the drawings. When the bottom of a pile, drilled shaft, or cofferdam is shown as an estimated or approximate elevation, the Contractor shall plan and construct to that elevation or to any deeper elevation required by the drawings or direction of the Engineer. In the event the bottom elevation is lowered, the Contractor shall be entitled to additional payment in accordance with Sections 4.4 PRICE ADJUSTMENT and 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT. In the event the bottom elevation is raised, the State shall be entitled to a credit in accordance with Sections 4.2 CHANGES, 4.4 PRICE ADJUSTMENT and 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.

4.9 DIFFERING SITE CONDITIONS §3-125-11 HAR

4.9.1 During the progress of the work, if the Contractor encounters conditions at the site differing materially from those

shown in the drawings and specifications, Contractor shall promptly, and before any such conditions are disturbed or damaged (except in an emergency as required by subsection 7.17.8), notify the Engineer in writing of:

4.9.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the contract; or

4.9.1.2 Unknown physical conditions at the site, of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

4.9.2 After receipt of written notice, the Engineer shall promptly investigate the site, and if it is found that such conditions do materially differ and cause an increase in the Contractor's cost of, or the time required to, perform any part of the Work, whether or not changed as a result of such conditions, an adjustment shall be made and the contract modified accordingly. Any adjustment in contract price made pursuant to this Section 4.9 shall be determined in accordance with Sections 4.4 PRICE ADJUSTMENT and 7.25 DISPUTES AND CLAIMS.

4.9.3 Nothing contained in this Section 4.9 shall be grounds for an adjustment in compensation if the Contractor had actual knowledge or should have known of the existence of such conditions prior to the submission of bids.

4.10 UTILITIES AND SERVICES

4.10.1 The cost of all the following will be included in the contract price and the Contractor shall be fully responsible for:

4.10.1.1 Reviewing and checking all such information and data,

4.10.1.2 Locating all underground and overhead utilities shown or indicated in the contract documents,

4.10.1.3 Coordination of the Work with the Owners of such underground and overhead utilities during construction, and

4.10.1.4 The safety and protection of all such underground and overhead utilities as provided in Section 7.17 PROTECTION OF PERSONS AND PROPERTY and repairing any damage thereto resulting from the work.

4.10.2 Unknown Utilities - During the progress of the work, if an underground utility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents, or found at a location that is substantially different than shown or indicated in the Contract Documents, Contractor shall promptly, and before any such conditions are disturbed or damaged (except in an emergency as required by subsection 7.17.8), notify the Engineer. Contractor shall be responsible for the safety and protection of the underground utility as provided in Section 7.17 PROTECTION OF PERSONS AND PROPERTY. Refer to subsections 4.9.2 and 4.9.3.

4.10.3 If the Engineer determines a change in the Contract Documents is required, a Field Order or Change Order will be issued. Upon issuance of a duly authorized Field Order or Change Order regarding the disposition of a newly discovered

utility, Contractor shall be responsible for damages to the utility, including any damage claims due to the disruption of service caused by the utility being damaged.

4.10.4 Restoration of Damaged Utilities - The Contractor shall repair and restore to pre-damaged condition any utilities or any other property it damaged. The Contractor shall be liable for any resulting damages, to the Work or to the utility owner or property owner and shall pay any claim due to the disruption of service caused by the utilities being damaged. Contractor shall defend and save harmless the State from all suits, actions or claims of any character brought on account of such damages, whether or not the State may have been partially at fault. Contractor shall obtain public liability and property damage insurance pursuant to Article 7 PROSECUTION AND PROGRESS to cover such risk of damage.

4.10.5 In the event the Contractor, simultaneously with the discovery of an unknown utility or other property, damages that utility or other property, the Contractor shall immediately notify the Engineer. If the Contractor is without fault in such a situation, notwithstanding subsection 4.10.4, the Contractor shall not be liable for resulting damages or the defense of the State from claims brought on account of said damages to unknown utilities or other property. Upon instruction from the Engineer, the Contractor shall repair all damages and execute a plan for dealing with the damaged utility or other property. This repair work shall be considered additional work as covered in Section 4.2 CHANGES.

ARTICLE 5 - Control of Work

5.1 AUTHORITY OF THE ENGINEER

5.1.1 The Engineer shall make final and conclusive decisions on all questions which may arise relating to the quality and acceptability of the materials furnished and work performed, the manner of performance and rate of progress of the work, the interpretation of the Contract Documents, the acceptable fulfillment of the contract on the part of the Contractor, the compensation under the Contract and the mutual rights of the parties to the Contract.

5.1.2 The Engineer shall have the authority to enforce and make effective such decisions and orders at the Contractor's expense when the Contractor fails to carry such decisions and orders out promptly and diligently.

5.1.3 The Engineer shall have the authority to suspend the work wholly or in part as provided in Section 7.24 SUSPENSION OF WORK.

5.1.4 The Engineer may delegate specific authority to act for the Engineer to a specific person or persons. Such delegation of authority shall be established in writing to the Contractor.

5.2 AUTHORITY OF THE INSPECTOR

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

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

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

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

5.4 SHOP DRAWINGS AND OTHER SUBMITTALS

5.4.1 The following documents shall be submitted where required by the contract documents:

5.4.1.1 Shop Drawings

- (a) The Contractor shall prepare, and thoroughly check, approve, all shop drawings, including those prepared by subcontractors or any other persons. The Contractor shall indicate its approval by stamping and signing each drawing. Any shop drawing submitted without being reviewed, stamped and signed will be considered as not having been submitted, and any delay caused thereby shall be the Contractor's responsibility.
- (b) Shop drawings shall indicate in detail all parts of an item of work, including erection and setting instructions and engagements with work of other trades or other separate contractors. Shop drawings for structural steel, millwork and pre-cast concrete shall consist of calculations, fabrication details, erection drawings and other working drawings, as necessary, to show the details, dimensions, sizes of members, anchor bolt plans, insert locations and other information necessary for the complete fabrication and erection of the structure to be constructed.
- (c) All shop drawings as required by the contract, or as determined by the Engineer to be necessary to illustrate details of the Work shall be submitted to the Engineer with such promptness as to cause no delay in the work or in that of any other Contractor. Delay caused by the failure of the Contractor to submit shop drawings on a timely basis to allow for review, possible resubmittal and acceptance will not be considered as a justifiable reason for a contract time extension. Contractor, at its own risk, may proceed with the work affected by the shop drawings before receiving acceptance, however the Department shall not be liable for any costs or time required for the correction of work done without the benefit of accepted shop drawings.

- (d) It is the Contractor's obligation and responsibility to check all of its and its subcontractor's shop drawings and be fully responsible for them and for coordination with connecting and other related work. The Contractor shall prepare, and submit to the Engineer coordination drawings showing the installation locations of all plumbing, piping, duct and electrical work including equipment throughout the project. By approving and submitting shop drawings, the Contractor thereby represents that it has determined and verified all field measurements and field construction criteria, or will do so, and that it has checked and coordinated each shop drawing with the requirements of the work and the contract documents. When shop drawings are prepared and processed before field measurements and field construction criteria can be or have been determined or verified, the Contractor shall make all necessary adjustments in the work or resubmit further shop drawings, all at no change in contract price or time.

5.4.1.2 Shop Drawing Form - Each drawing and/or series of drawings submitted must be accompanied by a letter of transmittal giving a list of the titles and number of the drawings. Each series shall be numbered consecutively for ready reference and each drawing shall be marked with the following information:

- (a) Date of Submission
- (b) Name of Project
- (c) Project Number
- (d) Location of Project
- (e) Name of submitting Contractor and Subcontractor
- (f) Revision Number

5.4.1.3 The size of the sheets that shop drawings are prepared on shall be as appropriate to suit the drawing being presented so that the information is clearly and legibly depicted. At the determination of the Engineer, for each sheet of drawings, the submittal shall consist of either; one reproducible transparency and five prints, or eight prints.

5.4.14 Descriptive Sheets and Other Submittals When a submittal is required by the contract, the Contractor shall submit to the Engineer eight (8) complete sets of descriptive sheets such as brochures, catalogs, illustrations, etc., which will completely describe the material, product, equipment, furniture or appliances to be used in the project as shown in the drawings and specifications. Prior to the submittal, the Contractor will review and check all descriptive sheets for conformity to the contract requirements and indicate such conformity by marking or stamping and signing each sheet. It is the responsibility of the Contractor to submit descriptive sheets for review and acceptance by the Engineer as required at the earliest possible date after the date of award in order to meet the construction schedule. Delays caused by the failure of the Contractor to submit descriptive sheets as required will not be considered as justifiable reasons for contract time extension.

5.4.15 **Material Samples and Color Samples** - When sample submittals are required by the contract, the Contractor shall review, approve, indicate its approval and submit to the Engineer samples of the materials to be used in the project and color selection samples. It is the responsibility of the Contractor to submit material and color samples for review as required at the earliest possible date after the date of award in order to meet the construction schedule. Delays caused by the failure of the Contractor to submit material and color samples will not be considered as justifiable reasons for contract time extension.

5.4.2 Submittal Variances - The Contractor shall include with the submittal, written notification clearly identifying all deviations or variances from the contract drawings, specifications and other Contract Documents. The notice shall be in a written form separate from the submittal. The variances shall also be clearly indicated on the shop drawing, descriptive sheet, material sample or color sample. Failure to so notify of and identify such variances shall be grounds for the subsequent rejection of the related work or materials, notwithstanding that the submittal was accepted by the Engineer. If the variances are not acceptable to the Engineer, the Contractor will be required to furnish the item as specified or indicated on the contract documents at no additional cost or time.

5.4.3 Review and Acceptance Process - Submittals will be returned to the Contractor within twenty one (21) days (for projects on Oahu) and twenty five (25) days (for projects on the islands of Hawaii, Maui, Kauai, Molokai and Lanai) after receipt by the Engineer unless otherwise agreed between the Contractor and the Engineer or as stated elsewhere in the contract documents.

5.4.3.1 The acceptance by the Engineer of the Contractor's submittal relates only to their sufficiency and compliance with the intention of the contract. Acceptance by the Engineer of the Contractor's submittal does not relieve the Contractor of any responsibility for accuracy of dimensions, details, and proper fit, and for agreement and conformity of submittal with the contract drawings and specifications. Nor will the Engineer's acceptance relieve the Contractor of responsibility for variance from the contract documents unless the Contractor, at the time of submittal, has provided notice and identification of such variances required by this section. Acceptance of a variance shall not justify a contract price or time adjustment unless the Contractor requests such an adjustment at the time of submittal and the adjustment is explicitly agreed to in writing by the Engineer. Any such request shall include price details and proposed scheduling modifications. Acceptance of a variance is subject to all contract terms, stipulations and covenants, and is without prejudice to any and all rights under the surety bond.

5.4.3.2 If the Engineer returns a submittal to the Contractor that has been rejected, the Contractor, so as not to delay the work, shall promptly make a resubmittal conforming to the requirements of the contract documents and indicating in writing on the transmittal and the subject submittal what portions of the resubmittal has been altered in order to meet the acceptance of the Engineer. Any other differences between the resubmittal and the prior submittal shall also be specifically described in the transmittal.

5.4.3.3 No mark or notation made by the Engineer on or accompanying the return of any submittal to the Contractor shall be considered a request or order for a change in work. If the Contractor believes any such mark or notation constitutes a request for a change in the work for which it is entitled to an adjustment in contract price and/or time, the Contractor must follow the same procedures established in Section 4.2 CHANGES for oral orders, directions, instructions, interpretations or determinations from the Engineer or else lose its right to claim for an adjustment.

5.5 COORDINATION OF CONTRACT DOCUMENTS - It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. The Contract Documents are complementary: any requirement occurring in one document is as binding as though occurring in all. In the event of conflict or discrepancy the priorities stated in the following subparagraphs shall govern:

5.5.1 Addenda shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda only to the extent specified.

5.5.2 SPECIAL CONDITIONS and Proposal shall govern over the GENERAL CONDITIONS and Specifications.

5.5.3 Specifications shall govern over drawings.

5.5.4 Specification Error - Should an error or conflict appear within the specification, the Contractor shall immediately notify the Engineer. The Engineer shall promptly issue instructions as to procedure. Any requirement occurring in one or more parts of the specification is as binding as though occurring in all applicable parts.

5.5.4.1 Should an error or conflict appear within a specification section, between a listed manufacturer/product and the performance requirements of the specification section, the performance requirements shall govern.

5.5.5 Drawings:

5.5.5.1 Schedules shall govern over all other notes and drawings.

5.5.5.2 Bottom elevations of footings shown on drawings shall govern over a general note such as: "All footings shall rest on firm, undisturbed soil and extend a minimum of a certain number of feet into natural or finish grade, whichever is lower."

5.5.5.3 Except for drawing schedules and bottom elevations as noted above, general notes shall govern over all other portions of the drawings:

5.5.5.4 Larger scale drawings shall govern over smaller scale drawings.

5.5.5.5 Figured or numerical dimensions shall govern over dimensions obtained by scaling. Measurements from the drawings when scaled shall be subject to the approval of the Engineer.

5.5.5.6 In cases of discrepancies in the figures or drawings, the discrepancies shall be immediately referred to the Engineer without whose decision said discrepancy shall not be corrected by the Contractor save at its own risk and in the settlement of any complications arising from such adjustment without the knowledge and consent of the Engineer, the Contractor shall bear all extra expense involved.

5.5.5.7 Items shown on the drawings that are completely void in terms of description, details, quality and / or performance standards in both the drawings and specifications to make a price determination shall be considered an omission and the Contractor shall immediately refer same to the Engineer for a decision.

5.5.5.8 Where there is a conflict between the architectural sheets and the civil or landscaping or electrical sheets, etc., the conflict shall be considered a discrepancy and the Contractor shall immediately refer same to the Engineer for a decision.

5.5.5.9 Any requirement occurring in one or more of the sheets is as binding as though occurring in all applicable sheets.

5.6 INTERPRETATION OF DRAWINGS AND SPECIFICATIONS - The Contractor shall carefully study and compare the Contract Documents with each other, with field conditions and with the information furnished by the State and shall at once report to the Engineer errors, conflicts, ambiguities, inconsistencies or omissions discovered. Should an item not be sufficiently detailed or explained in the Contract Documents, Contractor shall report and request the Engineer's clarification and interpretation. The Engineer will issue a clarification or interpretation that is consistent with the intent of and reasonably inferred from Contract Documents.

5.7 EXAMINATION OF DRAWINGS, SPECIFICATIONS, PROJECT SITE

5.7.1 The Contractor shall examine carefully the Project Site to become familiar with the conditions to be encountered in performing the Work and the requirements of the Contract Documents.

5.7.1.1 No extra compensation will be given by reason of the Contractor's misunderstanding or lack of knowledge of the requirements of the Work to be accomplished or the conditions to be encountered in performing the project.

5.7.1.2 No extra compensation will be given by reason of the Contractor's misunderstanding or lack of knowledge when the existence of differing site, subsurface or physical conditions could have been reasonably discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the Bidding requirements or Contract Documents to be conducted by or for the Contractor.

5.7.2 When the Contract Drawings include a log of test borings showing a record of the data obtained by the Department's investigation of subsurface conditions, said log represents only the opinion of the Department as to the character of material encountered in its test borings and at only

the location of each boring. The Contractor acknowledges that underground site conditions in Hawaii vary widely. There is no warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work or any part of it, or that other conditions may not occur.

5.7.3 Reference is made to the SPECIAL CONDITIONS for identification of subsurface investigations, reports, explorations and tests utilized by the State in preparation of the Contract Documents. Such reports, drawings, boring logs etc. are not part of the Contract Documents.

5.8 COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT

5.8.1 Furnishing Drawings and Specifications - Contractor will be supplied up to twenty-four (24) copies of the Contract Drawings and Specifications. Contractor shall have and maintain at least one copy of the Contract Drawings and Specifications on the work site, at all times. Contractor shall cooperate with the Engineer, the Inspector(s), and other contractors in every possible way.

5.8.2 Superintendent - The Contractor shall have a competent superintendent or agent on the work site while work is being performed under the contract. The superintendent or agent shall be experienced in the type of project being undertaken and the work being performed. The superintendent or agent shall represent the Contractor and shall have the authority to act on behalf of the Contractor. Communications given to the superintendent or agent shall be as binding as if given to the Contractor.

5.8.2.1 If the superintendent or agent is not present at the work site, the Engineer shall have the right to suspend the work as described under Section 7.24 SUSPENSION OF WORK.

5.8.2.2 The Contractor shall file with the Engineer a written statement giving the name of the superintendent or agent assigned to the project. The Contractor shall be responsible for notifying the Engineer in writing of any change in the superintendent or agent.

5.8.2.3 The requirements of this subsection 5.8.2 may be waived by the Engineer.

5.8.3 Engineering Work - The Contractor shall properly and accurately lay out the work, perform all engineering work, and furnish all engineering materials and equipment required to establish and maintain all lines, grades, dimensions and elevations called for in the drawings or required in the progress of construction, unless otherwise noted in the contract documents. The Contractor will be held definitely and absolutely responsible for any errors in lines, grades, dimensions and elevations and shall at once, on instruction from the Engineer, correct and make good such errors or any errors, or faults in the work resulting from errors in engineering performed under the requirements of its contract to the entire satisfaction of the Engineer. Full compensation for the work shall be included in the prices paid for contract items of work. No additional allowance will be made for the correction of incorrect engineering work.

5.8.3.1 The Engineer shall furnish the requisite bench elevations.

5.8.3.2 The Contractor shall locate and verify all lines, grades, dimensions and elevations indicated on the drawings before any excavation, or construction begins. Any discrepancy shall be immediately brought to the attention of the Engineer, any change shall be made in accordance with the Engineer's instruction.

5.8.3.3 The Contractor shall verify all street survey monuments (horizontal and vertical alignment) prior to final acceptance by the Engineer in accordance with any governmental requirements.

5.8.3.4 The Contractor shall provide a surveyor or Civil Engineer licensed in the State of Hawaii to verify and establish all lines, grades, dimensions and elevations.

5.8.4 Use of Structure or Improvement - The Department shall have the right, at any time during construction of the structure or improvements, to enter same for the purpose of installing by government labor or by any other Contractor or utility any necessary work in connection with the installation of facilities, it being mutually understood and agreed, however, that the Contractors, utilities and the Department will, so far as possible work to the mutual advantage of all, where their several works in the above mentioned or in unforeseen instances touch upon or interfere with each other. As a convenience to those involved, the Engineer shall allocate the work and designate the sequence of construction in case of controversy between Contractors on separate projects under State jurisdiction.

5.8.4.1 The Department shall also have the right to use the structure, equipment, improvement or any part thereof, at any time after it is considered by the Engineer as available. In the event that the structure, equipment or any part thereof is so used, the Department shall be responsible for all expenses incidental to such use and any damages resulting from the Department's use.

5.8.4.2 Equipment warranty will commence to run before the work is complete when and if the Department begins actual use of the equipment for the purpose for which the equipment was designed and installed.

5.8.4.3 If the Department enters the structure for construction and/or occupancy and the Contractor is delayed because of interference by the Department or by extra work resulting from damage which the Contractor is not responsible for, or by extraordinary measures the Contractor must take to accommodate the Department, the Contractor shall be granted an extension of time in accordance with Section 7.21 CONTRACT TIME. However, if such use increases the cost or delays the completion of the remaining portions of work, the Contractor shall be entitled to such extra compensation or extension of time or both, as the State may determine to be proper. Any additional work necessary will be paid in accordance with Section 8.3 PAYMENT FOR ADDITIONAL WORK.

5.9 INSPECTION - The Engineer, the Department's consultants, Inspectors employed by the Department and other representatives duly authorized by the Department shall at all times have access to the work during its construction and shall

be furnished with every reasonable facility for ascertaining at any time that the materials and the workmanship are in accordance with the requirements and intentions of the contract.

All work done and all materials furnished shall be subject to inspection and acceptance.

5.9.1 Such inspection and approval may extend to all or part of the work, and to the preparation, fabrication or manufacture of the materials to be used. By entering into a contract for the supply of materials, equipment or performance of labor in connection with the Work, such Material and Equipment Supplier or Labor Contractor consents to and is subject to the terms of this Section 5.9 to the same extent as the Contractor.

5.9.2 Authority to Suspend Operations - The Inspector shall have the authority to suspend operations of any work being improperly performed by issuing a written order giving the reason for shutting down the work. Should the Contractor disregard such written order, the work done thereafter will not be accepted nor paid for.

5.9.3 The inspection of the work shall not relieve the Contractor of any of its obligations to fulfill the contract as prescribed. Notwithstanding prior payment and acceptance by the Engineer, defective and nonconforming work shall be corrected to comply with the contract requirements. Unsuitable, unspecified or unapproved materials may be rejected.

5.9.4 Federal Agency Inspection - Projects financed in whole or in part with Federal funds shall be subject to inspection and corrective requirements at all times by the Federal Agency involved at no cost to the State.

5.10 REMOVAL OF DEFECTIVE, NON-CONFORMING AND UNAUTHORIZED WORK

5.10.1 All work which has been rejected as not conforming to the requirements of the Contract shall be remedied or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed for such removal or replacement. Any work done beyond the work limits shown on the drawings and specifications or established by the Engineer or any additional work done without written authority will be considered as unauthorized and will not be paid for. Work so done may be ordered removed at the Contractor expense.

5.10.2 Scheduling Corrective Work - The Contractor shall perform its corrective or remedial work at the convenience of the State and shall obtain the Engineer's approval of its schedule.

5.10.3 Failure to Correct Work - Upon failure on the part of the Contractor to comply promptly with any order of the Engineer made under the provisions of this Section 5.10, the Engineer shall have authority to cause defective work to be remedied or removed and replaced, and unauthorized work to be removed, at the Contractor's expense, and to deduct the costs from any monies due or to become due the Contractor.

5.11 VALUE ENGINEERING INCENTIVE

§3-132 HAR amended by Act 149 SLH 1999 - On projects with contract amounts in excess of \$250,000, the following Value Engineering Incentive Clause shall apply to allow the

Contractor to share in cost savings that ensue from cost reduction proposals it submits.

5.11.1 The Value Engineering Incentive Clause applies to all Value Engineering Change Proposals (cost reduction proposals, hereinafter referred to as (VECP) initiated and developed by the Contractor for changing the drawings, designs, specifications or other requirements of this contract. This clause does not, however apply to any VECP unless it is identified as such by the Contractor at the time of its submission to the Engineer.

5.11.2 Value Engineering Change Proposal - All VECP must:

5.11.2.1 Result in a savings to the State of at least four thousand dollars (\$4,000) by providing less costly items than without impairing any essential functions and characteristics such as service life, reliability, economy of operation, ease of maintenance and all necessary features of the completed work.

5.11.2.2 Require, in order to be applied to this contract, a change order to this contract.

5.11.2.3 Not adversely impact on the schedule of performance or the contract completion date.

5.11.3 VECP Required Information - The VECP will be processed expeditiously and in the same manner as prescribed for any other change order proposal. As a minimum, the following information will be submitted by the Contractor with each proposal:

5.11.3.1 A description of the difference between the existing contract requirements and the VECP, and the comparative advantages and disadvantages of each including durability, service life, reliability, economy of operation, ease of maintenance, design safety standards, desired appearance, impacts due to construction and other essential or desirable functions and characteristics as appropriate;

5.11.3.2 An itemization of the requirements of the contract which must be changed if the VECP is adopted and a recommendation as to how to make each such change;

5.11.3.3 An estimate of the reduction in performance costs that will result from adoption of the VECP taking into account the costs of implementation by the Contractor, including any amounts attributable to subcontracts, and the basis for the estimate;

5.11.3.4 A prediction of any effects the VECP would have on other costs to the State, such as State furnished property costs, costs of related items, and costs of maintenance and operation over the anticipated life of the material, equipment, or facilities as appropriate; the construction schedule, sequence and time; and bid item totals used for evaluation and payment purposes;

5.11.3.5 A statement of the time by which a change order adopting the VECP must be issued so as to obtain the maximum cost reduction during the remainder of this contract noting any effect on the contract time; and

5.11.3.6 The dates of any previous submissions of the VECP, the numbers of any Government contracts under which submitted and the previous actions by the Government, if known.

5.11.4 Required Use of Licensed Architect or Engineer - When, in the judgment of the Engineer, a VECP alters the design prepared by a registered professional architect or engineer, the Contractor shall ensure the changes to be prepared are by or under the supervision of a licensed professional architect or engineer, and stamped and so certified.

5.11.5 Unless and until a change order applies a VECP to a contract, the Contractor shall remain obligated to perform in accordance with the terms of the contract and the Department shall not be liable for delays incurred by the Contractor resulting from the time required for the Department's determination of the acceptability of the VECP.

5.11.5.1 The determination of the Engineer as to the acceptance of any VECP under a contract shall be final.

5.11.6 Acceptance of VECP - The Engineer may accept in whole or in part any VECP submitted pursuant to this section by issuing a change order to the contract. Prior to issuance of the change order, the Contractor shall submit complete final contract documents similar to those of the original contract showing the accepted changes and the new design and features as well as the following:

5.11.6.1 Design calculations;

5.11.6.2 The design criteria used; and

5.11.6.3 A detailed breakdown of costs and expenses to construct or implement such revisions.

5.11.6.4 The change order will identify the final VECP on which it is based.

5.11.7 VECP Price Adjustments - When a VECP is accepted under a contract, an adjustment in the contract price shall be made in accordance with Section 4.4 PRICE ADJUSTMENT. The adjustment shall first be established by determining the effect on the Contractor's cost of implementing the change, including any amount attributable to subcontractors and to the Department's charges to the Contractor for architectural, engineering, or other consultant services, and the staff time required to examine and review the proposal. The contract price shall then be reduced by fifty percent (50%) of the net estimated decrease in the cost of performance.

5.11.8 The Contractor may restrict the Department's right to use the data or information or both, on any sheet of a VECP or of the supporting data, submitted pursuant to this paragraph, if it is stated on that sheet as follows:

5.11.8.1 "This data or information or both shall not be disclosed outside the Department or be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this VECP. This restriction shall not limit the Department's right to use this data or information or both if obtained from another source, or is otherwise available, without limitations. If this VECP is accepted by the Department by issuance of a change order after the use of this

data or information or both in such an evaluation, the Department shall have the right to duplicate, use and disclose any data or information or both pertinent to the proposal as accepted in any manner and for any purpose whatsoever and have others so do."

5.11.9 In the event of acceptance of a VECP, the Department shall have all rights to use, duplicate or disclose in whole or in part in any manner and for any purpose whatsoever, and to have or permit others to do so, any data or information or both reasonably necessary to fully utilize such proposal.

5.11.10 The Contractor shall submit with each VECP all required information and provide all additional information as may be required by the Engineer to evaluate and implement the VECP. The cost for preparing the VECP shall be the Contractor's responsibility, and any part of the Contractor's cost for implementing the change shall be due only when the proposal is accepted and a change order is issued.

5.11.11 If the services of the Department's architect, engineer or consultant is necessary to review and evaluate a VECP, the cost therefor shall be paid for by the Contractor.

5.11.12 Each VECP shall be evaluated as applicable to this contract, and past acceptance on another Department project for a similar item shall not be automatic grounds for approval.

5.11.13 The method by which the Contractor will share a portion of the cost savings from an accepted VECP shall be for this contract only, and no consideration shall be made for future acquisition, royalty type payment or collateral savings.

5.11.13.1 The Department may accept the proposed VECP in whole or in part. The Engineer shall issue a contract change order to identify and describe the accepted VECP.

5.12 SUBCONTRACTS - Nothing contained in the contract documents shall create a contractual relationship between the Department and any subcontractor.

5.12.1 Substituting Subcontractors - Contractors may enter into subcontracts only with subcontractors listed in the proposal or with non-listed joint contractors / subcontractors permitted under subsection 2.7.3. No subcontractor may be added or deleted and substitutions will be allowed only if the subcontractor:

5.12.1.1 Fails, refuses or is unable to enter into a subcontract; or

5.12.1.2 Becomes insolvent; or

5.12.1.3 Has its subcontractor's license suspended or revoked; or

5.12.1.4 Has defaulted or has otherwise breached the subcontract in connection with the subcontracted work; or

5.12.1.5 Is unable to comply with other requirements of law applicable to contractors, subcontractors and public works projects.

5.12.2 Requesting Approval to Substitute a Subcontractor - Requests to substitute a subcontractor shall be submitted to the

Engineer for approval. Contractor agrees to hold the State harmless and indemnify the State for all claims, liabilities, or damages whatsoever, including attorney's fees arising out of or related to the approval or disapproval of the substitution.

5.12.3 Once a subcontractor's claim is established, should the Contractor intend to make the claim against the Department, it shall follow the procedure set forth under Section 7.25 DISPUTES AND CLAIMS.

5.12.4 Subcontracting - Contractor shall perform with its own organization, work amounting to not less than twenty (20%) of the total contract cost, exclusive of costs for materials and equipment the Contractor purchases for installation by its subcontractors, except that any items designated by the State in the contract as "specialty items" may be performed by a subcontract and the cost of any such specialty items so performed by the subcontract may be deducted from the total contract cost before computing the amount of work required to be performed by the Contractor with its own organization.

ARTICLE 6 - Control of Materials and Equipment

6.1 MATERIALS AND EQUIPMENT - Contractor shall furnish, pay for and install all material and equipment as called for in the drawings and specifications. Materials and equipment shall be new and the most suitable for the purpose intended unless otherwise specified. The State does not guarantee that the specified or pre-qualified product listed in the drawings and specifications are available at the time of bid or during the contract period.

6.2 SOURCE OF SUPPLY AND QUALITY OF MATERIALS

6.2.1 Only materials conforming to the drawings and specifications and, when required by the contract have been accepted by the Engineer, shall be used. In order to expedite the inspection and testing of materials, at the request of the Engineer, the Contractor shall identify its proposed sources of materials within ten (10) days after notification by the Engineer.

6.2.2 At the option of the Engineer, the materials may be accepted by the Engineer at the source of supply before delivery is started. Representative preliminary samples of the character and quantity prescribed shall be submitted by the Contractor or producer for examination and tested in accordance with the methods referred to under samples and tests.

6.2.3 Engineer's Authorization to Test Materials - Materials proposed to be used may be inspected and tested whenever the Engineer deems necessary to determine conformance to the specified requirements. The cost of testing shall be borne by the Contractor. However, should test results show that the material(s) is in compliance with the specified requirements, the cost of the testing will be borne by the State.

6.2.4 Unacceptable Materials - In the event material(s) are found to be unacceptable, the Contractor shall cease their use, remove the unacceptable material(s) that have already been installed or applied, and furnish acceptable materials all at no

additional cost to the State. No material which is in any way unfit for use shall be used.

6.3 SUBSTITUTION OF MATERIALS AND EQUIPMENT AFTER BID OPENING

6.3.1 Substitution of materials and equipment before bid opening - Refer to Section 2.6 SUBSTITUTION OF MATERIALS AND EQUIPMENT BEFORE BID OPENING. For materials and equipment submitted in compliance with Section 2.6, if after installing the substituted product, an unlisted variance is discovered, the Contractor shall immediately replace the product with a specified product at no cost to the State.

6.3.2 Substitution After Contract Award - Subject to the Engineer's determination if the material or equipment is equal to the one specified or prequalified, substitution of material or equipment may be allowed after the Letter of Award is issued only:

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

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

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

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

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

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

6.5 TEST SAMPLES

6.5.1 The Engineer may require any or all materials to be tested by means of samples or otherwise. Contractor shall

collect and forward samples requested by the Engineer. Contractor shall not use or incorporate any material represented by the samples until all required tests have been made and the material has been accepted. In all cases, the Contractor shall furnish the required samples without charge. Where samples are required from the completed work, the Contractor shall cut and furnish samples from the completed work. Samples so removed shall be replaced with identical material and refinished. No additional compensation will be allowed for furnishing test samples and their replacement with new materials.

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

6.5.3 The Engineer may retest any materials which have been tested and accepted at the source of supply after the same has been delivered to the work site. The Engineer shall reject all materials which, when retested, do not meet the requirements of the contract.

6.6 MATERIAL SAMPLES

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

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

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

6.6.4 Acceptance of any sample(s) shall be only for the characteristics or for the uses named in such acceptance and for no other purpose. Acceptance of samples shall not change or modify any contract requirement. All samples will be provided by the Contractor at no extra cost to the Department. See also Section 5.4 SHOP DRAWINGS AND OTHER SUBMITTALS.

6.7 NON-CONFORMING MATERIALS - All materials not conforming to the requirements of these contract

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

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

6.9 STORAGE OF MATERIALS - Contractor shall store all materials to preserve their quality and fitness for the work. Unless otherwise provided, any portion of the project site within the Project Contract Limit not required for public travel, may be used for storage purposes and for the Contractor's plant and equipment. Any additional space required shall be provided by the Contractor at its expense subject to the Engineer's acceptance. Contractor shall store materials on wooden platforms or other hard, clean surfaces and covered to protect it from the weather and damage. Stored materials shall be located to allow prompt inspection.

6.10 PROPERTY RIGHTS IN MATERIALS - Nothing in the contract shall be construed to vest in the Contractor any right to any materials and equipment after such materials and equipment have been attached, affixed to, or placed in the work.

6.11 ASSIGNMENT OF ANTITRUST CLAIMS FOR OVERCHARGES FOR GOODS PURCHASED - Contractor (or Vendor) and the Department recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Department. Therefore, Contractor hereby assigns to the Department any and all claims for such overcharges as to goods 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 any change order. In addition, Contractor warrants and represents that each of its first tier suppliers and subcontractors shall assign any and all such claims to the Department, subject to the aforementioned exception.

ARTICLE 7 - Prosecution and Progress

(Including Legal Relations And Responsibility)

7.1 PROSECUTION OF THE WORK

7.1.1 After approval of the contract by the Comptroller, a Notice to Proceed will be given to the Contractor as described in Section 3.10 NOTICE TO PROCEED. The Notice to Proceed will indicate the date the Contractor is expected to begin the construction and from which date contract time will be charged.

7.1.2 The Contractor shall begin work no later than ten (10) working days from the date in the Notice to Proceed and shall diligently prosecute the same to completion within the contract time allowed. The Contractor shall notify the Engineer at least three (3) working days before beginning work.

7.1.3 If any subsequent suspension and resumption of work occurs, the Contractor shall notify the Engineer at least twenty-four (24) hours before stopping or restarting actual field operations.

7.1.4 Working Prior to Notice to Proceed - The Contractor shall not begin work before the date in the Notice to Proceed. Should the Contractor begin work before receiving the Notice to Proceed, any work performed in advance of the specified date will be considered as having been done at the Contractor's risk and as a volunteer and subject to the following conditions:

7.1.4.1 Under no circumstances shall the Contractor commence work on site until it has notified the Engineer of its intentions and has been advised by the Engineer in writing that the project site is available to the Contractor. The project site will not be made available until the Contractor has complied with commencement requirements under Section 7.2 COMMENCEMENT REQUIREMENTS.

7.1.4.2 In the event the contract is not executed, the Contractor shall, at its own expense, do such work as is necessary to leave the site in a neat condition to the satisfaction of the Engineer. The Contractor shall not be reimbursed for any work performed.

7.1.4.3 All work done prior to the Notice to Proceed shall be performed in accordance with the contract documents, but will only be considered authorized work and be paid for as provided in the contract after the Notice to Proceed is issued.

7.1.5 For repairs and/or renovations of existing buildings, unless otherwise permitted by the Engineer, the Contractor shall not commence with the physical construction unless all or sufficient amount of materials are available for either continuous construction or completion of a specified portion of the work. When construction is started, the Contractor shall work expeditiously and pursue the work diligently until it is complete. If only a portion of the work is to be done in stages, the Contractor shall leave the area safe and usable for the user agency at the end of each stage.

7.2 COMMENCEMENT REQUIREMENTS - Prior to beginning work on site, the Contractor shall submit the following to the Engineer:

7.2.1 Identification of the Superintendent or authorized representative on the job site. Refer to Section 5.8 COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT.

7.2.2 Proposed Working Hours on the job. Refer to Section 7.5 NORMAL WORKING HOURS.

7.2.3 Permits and Licenses. Refer to Section 7.4 PERMITS AND LICENSES.

7.2.4 Schedule of Prices to be accepted for the agreed Monthly Payment Application. Unless the proposal provides unit price bids on all items in this project, the successful Bidder will be required, after the award of contract, to submit a schedule of prices for the various items of construction included in the contract. For projects involving more than a single building and / or facility, the breakdown cost shall reflect a separate schedule of prices for the various items of work for each building and/or facility. The sum of the prices submitted for the various items must equal the lump sum bid in the Bidder's proposal. This schedule will be subject to acceptance by the Engineer who may reject same and require the bidder to submit another or several other schedules if in the Engineer's opinion the prices are unbalanced or not sufficiently detailed. This schedule of prices shall be used for the purpose of determining the value of monthly payments due the Contractor for work installed complete in place; and may be used as the basis for determining cost and credit of added or deleted items of work, respectively.

7.2.4.1 The Contractor shall estimate at the close of each month the percentage of work completed under each of the various construction items during such month and submit the Monthly Payment Application to the Engineer for review and approval. The Contractor shall be paid the approved percentage of the price established for each item less the retention provided in Section 8.4 PROGRESS AND/OR PARTIAL PAYMENTS.

7.2.5 Proof of Insurance Coverage. Certificate of Insurance or other documentary evidence satisfactory to the Engineer that the Contractor has in place all insurance coverage required by the contract. Refer to Section 7.3 INSURANCE REQUIREMENTS.

7.2.6 Until such time as the above items are processed and approved, the Contractor shall not be allowed to commence on any operations unless authorized by the Engineer.

7.3 INSURANCE REQUIREMENTS

7.3.1 Obligation of Contractor - Contractor shall not commence any work until it obtains, at its own expense, all required herein insurance. Such insurance shall be provided by an insurance company authorized by the laws of the State to issue such insurance in the State of Hawaii. Coverage by a "Non-Admitted" carrier is permissible provided the carrier has a Best's Rating of "A-VII" or better.

7.3.2 All insurance described herein will be maintained by the Contractor for the full period of the contract and in no event will be terminated or otherwise allowed to lapse prior to written certification of final acceptance of the work by the State.

7.3.3 Certificate(s) of Insurance acceptable to the State shall be filed with the Engineer prior to commencement of the work. Certificates shall identify if the insurance company is a "captive" insurance company or a "Non-Admitted" carrier to the State of Hawaii. The best's rating must be stated for the "Non-Admitted" carrier. Certificates shall contain a provision that coverages being certified will not be cancelled or materially changes without giving the Engineer at least thirty (30) days prior written notice. If the State is to be an Additional Insured on any of the required insurance, it shall be so noted on the certificate. Should any policy be canceled before final

acceptance of the work by the State, and the Contractor fails to immediately procure replacement insurance as specified, the State, in addition to all other remedies it may have for such breach, reserves the right to procure such insurance and deduct the cost thereof from any money due to the Contractor.

7.3.4 Nothing contained in these insurance requirements is to be construed as limiting the extent of Contractor's responsibility for payment of damages resulting from its operations under this contract, including the Contractor's obligation to pay liquidated damages, nor shall it affect the Contractor's separate and independent duty to defend, indemnify and hold the State harmless pursuant to other provisions of this contract. In no instance will the State's exercise of an option to occupy and use completed portions of the work relieve the Contractor of its obligation to maintain the required insurance until the date of final acceptance of the work.

7.3.5 All insurance described herein shall be primary and cover the insured for all work to be performed under the contract, all work performed incidental thereto or directly or indirectly connected therewith, including traffic detour work or other work performed outside the work area and all change order work.

7.3.6 The Contractor shall, from time to time, furnish the Engineer, when requested, satisfactory proof of coverage of each type of insurance required covering the work. Failure to comply with the Engineer's request may result in suspension of the work, and shall be sufficient grounds to withhold future payments due the Contractor and to terminate the contract for Contractor's default.

7.3.7 Types of Insurance - Contractor shall purchase and maintain insurance described below which shall provide coverage against claims arising out of the Contractor's operations under the contract, whether such operations be by the Contractor itself or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

7.3.7.1 Worker's Compensation -The Contractor shall obtain worker's compensation insurance for all persons whom they employ in carrying out the work under this contract. This insurance shall be in strict conformity with the requirements of the most current and applicable State of Hawaii Worker's Compensation Insurance laws in effect on the date of the execution of this contract and as modified during the duration of the contract.

7.3.7.2 General Liability - The Contractor shall obtain General Liability insurance with a limit of not less than \$2,000,000 per occurrence and in the Aggregates. The General liability insurance shall include the State as an Additional Insured. The required limit of insurance may be provided by a single policy or with a combination of primary and excess policies. Refer to SPECIAL CONDITIONS for any additional requirements.

7.3.7.3 Auto Liability - The Contractor shall obtain Auto Liability Insurance covering all owned, non-owned and hired autos with a Combined single Limit of not less than \$1,000,000 per occurrence. The required limit of insurance may be provided by a single policy or with a combination of

primary and excess policies. Refer to SPECIAL CONDITIONS for any additional requirements.

7.3.7.4 Property Insurance (Builders Risk)

- (a) New Building(s) - The Contractor shall obtain Property Insurance covering building(s) being constructed under this Contract. The limit shall be equal to the completed value of the building(s) and shall insure against all-loss excluding earthquakes and floods. The coverage shall be provided by a company authorized to write insurance in the State of Hawaii as an insurer. If the project falls within the State University System, The University of Hawaii shall be named as an insured. Refer to SPECIAL CONDITIONS for any additional requirements.
- (b) Building Renovation and / or Installation Contract - The Contractor shall obtain Property Insurance with a limit equal to the completed value of the work or property being installed and shall insure against all-loss excluding earthquakes and floods. The coverage shall be provided by a company authorized to write insurance in the State of Hawaii as an insurer. If the project falls within the State University System, The University of Hawaii shall be named as an insured. Refer to SPECIAL CONDITIONS for any additional requirements.
- (c) The Contractor is not required to obtain property insurance for contracts limited to site development

7.4 PERMITS AND LICENSES

7.4.1 The State or its representative may process Federal (e.g. Corps of Engineers), State and County Permit applications. The Contractor shall pick up the pre-processed Permits at the appropriate governmental agency and pay the required fees. Other permits necessary for the proper execution of the work such as utility connection permits, elevator installation permits etc., unless processed by the State and paid for by the Contractor, shall be obtained and paid for by the Contractor.

7.4.2 Until such time as the above permits are approved, the Contractor shall not be allowed to commence any operations without written approval of the Engineer.

7.4.3 The Engineer reserves the right to waive application and processing of the building permit.

7.5 NORMAL WORKING HOURS - Prior to beginning operations, unless otherwise established by the State, the Contractor shall notify the Engineer in writing of the time in hours and minutes, A.M. and P.M. respectively, at which it desires to begin and end the day's work. If the Contractor desires to change the working hours, it shall request the Engineer's approval three (3) consecutive working days prior to the date of the change.

7.6 HOURS OF LABOR (Section 104-2 Hawaii Revised Statutes)

7.6.1 No laborer or mechanic employed on the job site of any public work of the Department or any political sub-division thereof shall be permitted or required to work on Saturday,

Sunday or a legal holiday of the State or in excess of eight hours on any other day unless the laborer or mechanic receives overtime compensation for all hours worked on Saturday, Sunday and a legal holiday of the State or in excess of eight hours on any other day. For the purposes of determining overtime compensation under this Section 7.6, the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined by the Department of Labor and Industrial Relations to be the prevailing basic hourly rate for corresponding classes of laborers and mechanics on projects of similar character in the Department.

7.6.2 Overtime compensation means, compensation based on one and one-half times the laborers or mechanics basic hourly rate of pay plus the cost to an employer of furnishing a laborer or mechanic with fringe benefits.

7.7 PREVAILING WAGES - (§ 104-2 HRS)

7.7.1 The Contractor shall at all times observe and comply with all provisions of Chapter 104, HRS, the significant requirements of which are emphasized in the Department of Labor and Industrial Relations Publication No. H104-3 entitled 'Requirements of Chapter 104, HRS Wages and Hours of Employees on Public Works Law'.

7.7.2 Wage Rate Schedule - The wage rate schedule is not physically enclosed in the bid documents. However, the wage rate schedule is incorporated herein by reference and made a part of the Bid and Contract Documents. Said wage rate schedule may be obtained from the Contracts Office, Department of Accounting and General Services, 1151 Punchbowl Street, Room 422, Honolulu, Hawaii or, via the FAX-ON-DEMAND system of the Department of Labor and Industrial Relations, phone number (808) 586-8695. When the bid documents are made available on respective neighbor islands, copies of the wage rate schedule may also be obtained from the office of the respective neighbor island DAGS District Office.

7.7.3 The Contractor or its subcontractor(s) shall pay all laborers and mechanics employed on the job site, unconditionally and not less often than once a week, and without deduction or rebate on any account except as allowed by law, the full amounts of their wages including overtime, accrued to not more than five (5) working days prior to the time of payment, at wage rates not less than those stated in the contract, regardless of any contractual relationship which may be alleged to exist between the Contractor and subcontractor and such laborers and mechanics. The wages stated in the contract shall not be less than the minimum prevailing wages (basic hourly rate plus fringe benefits), as determined by the Director of Labor and Industrial Relations and published in wage rate schedules. Any increase in wage rates, as determined by the Director of Labor and Industrial Relations and issued in the wage rate schedule, shall be applicable during the performance of the contract, in accordance with section 104-2(a) and (b), Hawaii Revised Statutes. Notwithstanding the provisions of the original contract, if the Director of Labor and Industrial Relations determines that prevailing wages have increased during the performance of the contract, the rate of pay of laborers and mechanics shall be raised accordingly.

7.7.4 The applicable wage rate schedule shall be physically included in the Contract Documents executed by the successful Bidder.

7.7.5 Posting Wage Rate Schedule - The rates of wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the job site and a copy of such wages required to be posted shall be given to each laborer and mechanic employed under the contract by the Contractor at the time the person is employed thereunder, provided that where there is a collective bargaining agreement, the Contractor does not have to provide its employees the wage rate schedules. Any revisions to the schedule of wages issued by the Director of Labor and Industrial Relations during the course of the contract shall also be posted by the Contractor and a copy provided to each laborer and mechanic employed under the contract as required above.

7.7.6 The Comptroller may withhold from the Contractor so much of the accrued payments as the Comptroller may consider necessary to pay to laborers and mechanics employed by the Contractor or any subcontractor on the job site. The accrued payments withheld shall be the difference between the wages required by this contract and the wages actually received by such laborers or mechanics.

7.8 FAILURE TO PAY REQUIRED WAGES (§ 104-4, HRS) - If the Department finds that any laborer or mechanic employed on the job site by the Contractor or any subcontractor has been or is being paid wages at a rate less than the required rate by the contract, or has not received their full overtime compensation, the Department may, by written notice to the Contractor, terminate its right, or the right of any subcontractor, to proceed with the work or with the part of the work on which the required wages or overtime compensation have not been paid and may complete such work or part by contract or otherwise, and the Contractor and its sureties shall be liable to the Department for any excess costs occasioned thereby.

7.9 PAYROLLS AND PAYROLL RECORDS
(§ 104-3 HRS)

7.9.1 A certified copy of each weekly payroll shall be submitted to the Comptroller within seven (7) calendar days after the end of each weekly payroll period. Failure to do so on a timely basis shall be cause for disqualification from bidding in accordance with the provisions of Section 2.12 DISQUALIFICATION OF BIDDERS. The Contractor shall be responsible for the timely submission of certified copies of payrolls of all subcontractors. The certification shall affirm that payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision, any amendments thereto during the period of the contract, and that the classifications set forth for each laborer and mechanic conform with the work they performed.

7.9.2 Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the General Contractor and its subcontractors, if any, during the course of the work and preserved for a period of four (4) years thereafter. Such records shall contain the name of each employee, their correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. Such records shall be made available for

inspection at a place designated by the Comptroller, the Director of Labor and any authorized persons who may also interview employees during working hours on the job site.

7.9.3 Note that the falsification of certifications noted in this Section 7.9 may subject the Contractor or subcontractor to penalties and debarment under the laws referenced in Section 7.14 LAWS TO BE OBSERVED and / or criminal prosecution.

7.10 OVERTIME AND NIGHT WORK

7.10.1 Overtime work shall be considered as work performed in excess of eight (8) hours in any one day or work performed on Saturday, Sunday or legal holiday of the State. Overtime and night work are permissible when approved by the Engineer in writing, or as called for elsewhere within these GENERAL CONDITIONS.

7.10.2 Overtime Notification - Contractor shall inform the Engineer in writing at least two (2) working days in advance as to exactly what specific work is to be done during any overtime and night period to insure that proper inspection will be available.

7.10.3 In the event that work other than that contained in the above notification is performed and for which the Engineer determines State inspection services were necessary but not available because of the lack of notification, the Contractor may be required to remove all such work and perform the work over again in the presence of State inspection personnel.

7.10.4 Any hours worked in excess of the normal eight (8) working hours per day or on Saturdays, Sundays or legal State holidays will not be considered a working day.

7.10.5 The State hereby reserves the right to cancel the overtime, night, Saturday, Sunday or legal State holiday work when it is found that work during these periods is detrimental to the public welfare or the user agency.

7.11 OVERTIME AND NIGHT PAYMENT FOR STATE INSPECTION SERVICE

7.11.1 Whenever the Contractor's operations require the State's inspection and staff personnel to work overtime or at night, the Contractor shall reimburse the State for the cost of such services unless otherwise instructed in the Contract. The Engineer will notify the Contractor of the minimum number of required Department employees and other personnel engaged by the Department prior to the start of any such work. The costs chargeable to the Contractor shall include but not be limited to the following:

7.11.1.1 The cost of salaries which are determined by the State and includes overtime and night time differential for the Department's staff and inspection personnel. In addition to the cost of the salaries, the Contractor shall reimburse the State's share of contributions to the employee's retirement, medical plan, social security, vacation, sick leave, worker's compensation funds, per diem, and other applicable fringe benefits and overhead expenses.

7.11.1.2 The transportation cost incurred by the Department's staff and inspection personnel which are based

on established rental rates or mileage allowance in use by the Department for the particular equipment or vehicle.

7.11.1.3 Fees and other costs billed the State by Consultants engaged on the project for overtime and/or night time work.

7.11.2 Payment for Inspection Services - The monies due the Department for staff and inspection work and use of vehicles and equipment as determined in subsection 7.11.1 shall be deducted from the monies due or to become due the Contractor. In any and all events, the Contractor shall not pay the Department's employees directly.

7.12 LIMITATIONS OF OPERATIONS

7.12.1 Contractor shall at all times conduct the work in such manner and in such sequence as will insure the least practicable interference with pedestrian and motor traffic passageways. The Contractor shall furnish convenient detours and provide and plan all other appropriate signs, flashers, personnel, warnings, barricades and other devices for handling pedestrian and motor traffic.

7.12.2 In the event that other contractors are also employed on the job site, the Contractor shall arrange its work and dispose of materials so as not to interfere with the operations of the other contractors engaged upon adjacent work. The Contractor shall join its work to that of others and existing buildings in a proper manner, and in accordance with the drawings and specifications, and perform its work in the proper sequence in relation to that of others, all as may be directed by the Engineer.

7.12.3 Each Contractor shall be responsible for any damage done by it to work performed by another contractor. Each Contractor shall so conduct its operations and maintain the work in such condition that adequate drainage shall be in effect at all times.

7.12.4 In the event that the Contractor fails to prosecute its work as provided in this Section 7.12 or disregards the directions of the Engineer, the Engineer may suspend the work until such time as the Contractor provides for the prosecution of the work with minimum interference to traffic and passageways or other contractors, adequate drainage, the repair of damage and complies with the direction of the Engineer. No payment will be made for the costs of such suspension.

7.13 ASSIGNMENT OR CHANGE OF NAME §3-125-14 HAR

7.13.1 Assignment - The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of this contract or any part hereof or any right, title or interest herein or any monies due or to become due hereunder without the prior written consent of the Comptroller.

7.13.2 The Contractor may assign money due or to become due it under the contract and such assignment will be recognized by the Department, if given proper notice thereof, to the extent permitted by law; but any assignment of monies shall be subject to all proper set-offs in favor of the State and to all deductions provided in the contract and particularly all monies withheld or unpaid, whether assigned or not, shall be to use by the

Department for the completion of the work in the event that the Contractors should be in default therein.

7.13.3 Recognition of a Successor in Interest; Assignment - When in the best interest of the State, a successor in interest may be recognized in an assignment agreement in which the transferor and the transferee and the State shall agree that:

7.13.3.1 The transferee assumes all of the transferor's obligations;

7.13.3.2 Transferor remains liable for all obligations under the contract but waives all rights under the contract against the State; and

7.13.3.3 The transferor shall continue to furnish, and the transferee shall also furnish, all required bonds.

7.13.4 Change of Name - When a Contractor requests to change the name in which it holds a contract with the State, the Comptroller shall, upon receipt of a document indicating such change of 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.

7.13.5 All change of name or novation agreements effected hereunder other than by the Comptroller shall be reported to the Comptroller within thirty (30) days of the date that the agreement becomes effective.

7.13.6 Notwithstanding the provisions of paragraphs 7.13.3.1 through 7.13.3.3 above, 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 Comptroller.

7.14 LAWS TO BE OBSERVED

7.14.1 The Contractor at all times shall observe and comply with all Federal, State and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, and the conduct of the work. The Contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto before and after the date of this contract.

7.14.2 The Contractor shall defend, protect, hold harmless and indemnify the State and its Departments and Agencies and all their officers, representatives, employees or agents against any claim or liability arising from or based on the violation of any such laws, ordinances, rules and regulations, orders or decrees, whether such violation is committed by the Contractor or its Subcontractor(s) or any employee of either or both. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the Contractor shall forthwith report the same to the Engineer in writing.

7.14.3 While the Contractor must comply with all applicable laws, attention is directed to: Wage and Hours of Employees on Public Works, Chapter 104, Hawaii Revised Statutes (HRS);

Hawaii Public Procurement Code, Authority to debar or suspend, Section 103D-702, HRS; Hawaii Employment Relations Act, Chapter 377, HRS; Hawaii Employment Security Law, Chapter 383, HRS; Worker's Compensation Law, Chapter 386, HRS; Wage and Hour Law, Chapter 387, HRS; Occupational Safety and Health, Chapter 396, HRS; and Authority to Debar or Suspend, Chapter 126, subchapter 2, Hawaii Administrative Rules (HAR).

7.15 PATENTED DEVICES, MATERIALS AND PROCESSES - If the Contractor desires to use any design, device, material, or process covered by letters of patent or copyright, the right for such use shall be procured by the Contractor from the patentee or owner. The Contractor shall defend, protect, indemnify and hold harmless the State and its Departments and Agencies, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright in connection with the work to be performed under the contract, shall defend, protect, indemnify and hold harmless the State and its Departments and Agencies for any costs, expenses and damages which it may be obligated to pay by reason of any such infringement at any time during the prosecution or after the completion of the work. This section shall not apply to any design, device, material or process covered by letters of patent or copyright, which the Contractor is required to use by the drawings or specifications.

7.16 SANITARY, HEALTH AND SAFETY PROVISIONS

7.16.1 The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements of the State and local Boards of Health, or other bodies or tribunals having jurisdiction. Unless otherwise stated in the drawings or specifications, the Contractor shall install toilet facilities conveniently located at the job site and maintain same in a neat and sanitary condition for the use of the employees on the job site for the duration of the contract. The toilet facilities shall conform to the requirements of the State Department of Health. The cost of installing, maintaining and removing the toilet facilities shall be considered incidental to and paid for under various contract pay items for work or under the lump sum bids as the case may be, and no additional compensation will be made therefor. These requirements shall not modify or abrogate in any way the requirements or regulations of the State Department of Health.

7.16.2 Attention is directed to Federal, State and local laws, rules and regulations concerning construction safety and health standards. The Contractor shall not require any worker to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to their health or safety.

7.17 PROTECTION OF PERSONS AND PROPERTY

7.17.1 Safety Precautions and Programs - The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

7.17.1.1 All persons on the Work site or who may be affected by the Work;

7.17.1.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor and its subcontractors; and

7.17.1.3 Other property at the site or adjacent thereto, including trees, shrubs lawns walks pavement, roadways structures, and utilities not designated for removal, relocation or replacement in the course of construction.

7.17.2 Contractor shall give notices and comply with applicable laws, ordinances, regulations, rules, and lawful orders of any public body having jurisdiction for the safety of persons or property or their protection from damage, injury or loss; and the Contractor shall erect and maintain reasonable safeguards for safety and protection, including posting danger signs, or other warnings against hazards.

7.17.3 The Contractor shall notify Owners of adjacent properties and of underground (or overhead) utilities when performing work which may affect the Owners; and shall cooperate with the Owners in the protection, removal and replacement of their property.

7.17.4 All damage, injury or loss to any property referred to in paragraphs 7.17.1.2 and 7.17.1.3 caused by the fault or negligence or damage or loss attributable to acts or omissions directly or indirectly in whole or part by the Contractor a subcontractor or any one directly or indirectly employed by them, or by anyone for whose acts they might be liable, shall be remedied promptly by the Contractor.

7.17.5 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the protection of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor

7.17.6 The Contractor shall not load or permit any part of the construction to be loaded so as to endanger its safety. The Contractor shall not injure or destroy trees or shrubs nor remove or cut them without permission of the Engineer. Contractor shall protect all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed.

7.17.7 In the event the Contractor encounters on the site, material reasonably believed to be asbestos or other hazard material that has not been rendered harmless, the Contractor shall stop work in the area and notify the Engineer promptly. The work in the affected area shall be resumed in the absence of hazard materials or when the hazard has been rendered harmless.

7.17.8 Emergencies - In an emergency affecting the safety and protection of persons or the Work or property at the site or adjacent thereto, Contractor without special instructions or authorization from the Engineer, shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Contractor shall give the Engineer prompt written notice of the emergency and actions taken. Additional compensation or extension of time claimed by the Contractor on account of an

emergency shall be determined under the provisions of Section 7.25 DISPUTES AND CLAIMS.

7.18 ARCHAEOLOGICAL SITES

7.18.1 Should historic sites such as walls, platforms, pavements and mounds, or remains such as artifacts, burials, concentration of charcoal or shells be encountered during construction, work shall cease in the immediate vicinity of the find and the find shall be protected from further damage. The Contractor shall immediately notify the Engineer and contact the State Historic Preservation Division which will assess the significance of the find and recommend the appropriate mitigation measures, if necessary.

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

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

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

7.19 RESPONSIBILITY FOR DAMAGE CLAIMS; INDEMNITY

7.19.1 The Contractor shall indemnify the State and the Department against all loss of or damage to the State's or the Department's existing property and facilities arising out of any act or omission committed in the performance of the work by the Contractor, any subcontractor or their employees and agents. Contractor shall defend, hold harmless and indemnify the Department and the State, their employees, officers and agents against all losses, claims, suits, liability and expense, including but not limited to attorneys' fees, arising out of injury to or death of persons (including employees of the State and the Department, the Contractor or any subcontractor) or damage to property resulting from or in connection with performance of the work and not caused solely by the negligence of the State or the Department, their agents, officers and employees. The State or the Department may participate in the defense of any claim or suit without relieving the Contractor of any obligation hereunder. The purchase of liability insurance shall not relieve the Contractor of the obligations described herein.

7.19.2 The Contractor agrees that it will not attempt to hold the State and its Departments and Agencies and their officers, representatives, employees or agents, liable or responsible for any losses or damages to third parties from the action of the elements, the nature of the work to be done under these GENERAL CONDITIONS or from any unforeseen

obstructions, acts of God, vandalism, fires or encumbrances which may be encountered in the prosecution of the work.

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

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

7.20 CHARACTER OF WORKERS OR EQUIPMENT

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

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

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

7.20.3 Insufficient Workers - A sufficient number of workers shall be present to ensure the work is accomplished at an acceptable rate. In addition, the proper ratio of apprentice to journey worker shall be maintained to ensure the work is properly supervised and performed. In the event that the Engineer finds insufficient workers are present to accomplish

the work at an acceptable rate of progress or if a adequate number of journey workers are not present and no corrective action is taken by the Contractor after being informed in writing, the Engineer may terminate the contract as provided for under Section 7.27 TERMINATION OF CONTRACT FOR CAUSE.

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

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

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

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

7.21 CONTRACT TIME

7.21.1 Time is of the essence for this contract.

7.21.2 Calculation of Contract Time - When the contract time is on a working day basis, the total contract time allowed for the performance of the work shall be the number of working days shown in the contract plus any additional working days authorized in writing as provided hereinafter. Refer to Article 1 DEFINITIONS for the definition of Working Day. The count of elapsed working days to be charged against contract time, shall begin from the date of Notice to Proceed and shall continue consecutively to the date of Project Acceptance determined by the Engineer. When the contract completion time is a fixed calendar date, it shall be the date on which all work on the project shall be completed. Maintenance periods are not included within the contract time unless specifically noted in the Contract Documents.

7.21.3 Modifications of Contract Time §3-125-4 HAR

7.21.3.1 Extensions - For increases in the scope for work caused by alterations and additional work made under Section 4.2 CHANGES, the Contractor will be granted a time extension only if the changes increase the time of performance for the Contract. If the Contractor believes that an extension of time is justified and is not adequately provided for in a Field Order, it must request the additional time sought in writing when the detailed cost breakdown required by Section 4.2 CHANGES, is submitted. The Contractor must show how the time of performance for the critical path will be affected and must also support the time extension request with schedules and statements from its subcontractors, suppliers, and/or manufacturers. Compensation for any altered or additional work will be paid as provided in Section 4.2 CHANGES.

7.21.3.2 The Department may direct changes to the work at any time until the work is finally accepted. The issuance of a Field Order at any time may alter or modify the contract duration only by the days specified therein; or if not specified therein, for the days the critical path must be extended for the change. Additional time to perform the extra work will be added to the time allowed in the contract without regard to the date the change directive was issued, even if the contract completion date has passed. A change requiring time will not constitute a waiver of pre-existing Contractor delay.

7.21.4 Delay for Permits - For delays beyond the control of the Contractor in obtaining necessary permits, one day extension for each day delay may be granted by the Engineer, provided the Contractor notifies the Engineer that the permits are not available, as soon as the delay occurs. Time extensions shall be the exclusive relief granted on account of such delays. No additional compensation will be paid for these time extensions.

7.21.5 Delays Beyond Contractor's Control

§3-125-18(4) - For delays affecting the critical path caused by acts of God, or the public enemy, fire, unusually severe weather, earthquakes, floods, epidemics, quarantine restrictions, labor disputes, freight embargoes and other reasons beyond the Contractor's control, the Contractor may be granted an extension of time provided that:

7.21.5.1 The Contractor notifies the Engineer in writing within five (5) work days after the occurrence of the circumstances described above and states the possible effects on the completion date of the contract.

7.21.5.2 No time extension will be granted for weather conditions other than unusually severe weather occurrences, and floods.

7.21.5.3 The Contractor, if requested, submits to the Engineer within ten (10) work days after the request, a written statement describing the delay to the project. The extent of delay must be substantiated as follows:

- (a) State specifically the reason or reasons for the delay and fully explain in a detailed chronology the effect of this delay to the work and/or the completion date.
- (b) Submit copies of purchase order, delivery tag, and any other pertinent documentation to support the time extension request.
- (c) Cite the period of delay and the time extension requested.
- (d) A statement either that the above circumstances have been cleared and normal working conditions restored as of a certain day or that the above circumstances will continue to prevent completion of the project.

7.21.5.4 Time extensions shall be the exclusive relief granted and no additional compensation will be paid the Contractor for such delays.

7.21.6 Delays in Delivery of Materials - For delays in delivery of materials and / or equipment which occur as a result of unforeseeable causes beyond the control and without fault or

negligence of both the Contractor, its subcontractor(s) or supplier(s), the Contractor may be granted an extension of time provided that it complies with the following procedures.

7.21.6.1 The Contractor must notify the Engineer in writing within five (5) consecutive working days after it first has any knowledge of delays or anticipated delays and state the effects such delays may have on the completion date of the contract.

7.21.6.2 The Contractor, if requested, must submit to the Engineer within ten (10) working days after a firm delivery date for the material and equipment is established, a written statement as to the delay to the progress of the project. The delay must be substantiated as follows:

- (a) State specifically the reason or reasons for the delay. Explain in a detailed chronology the effect of this delay to the other work and / or the completion date.
- (b) Submit copies of purchase order(s), factory invoice(s), bill(s) of lading, shipping manifest(s), delivery tag(s) and any other pertinent correspondence to support the time extension request.
- (c) Cite the start and end date of the delay and the days requested therefore. The delay shall not exceed the difference between the originally scheduled delivery date versus the actual delivery date.

7.21.6.3 Time extensions shall be the exclusive relief granted and no additional compensation will be paid the Contractor on account of such delay.

7.21.7 Delays For Suspension of Work - Delay during periods of suspension of the work by the Engineer shall be computed as follows:

7.21.7.1 When the performance of the work is totally suspended for one or more days (calendar or working days, as appropriate) by order of the Engineer in accordance with paragraphs 7.24.1.1, 7.24.1.2, 7.24.1.4 or 7.24.1.6 the number of days from the effective date of the Engineer's order to suspend operations to the effective date of the Engineer's order to resume operations shall not be counted as contract time and the contract completion date will be adjusted. Should the Contractor claim for additional days in excess of the suspension period, Contractor shall provide evidence justifying the additional time. During periods of partial suspensions of the work, the Contractor will be granted a time extension only if the partial suspension affects the critical path. If the Contractor believes that an extension of time is justified for a partial suspension of work, it must request the extension in writing at least five (5) working days before the partial suspension will affect the critical operation(s) in progress. The Contractor must show how the critical path was increased based on the status of the work and must also support its claim, if requested, with statements from its subcontractors. A suspension of work will not constitute a waiver of pre-existing Contractor delay.

7.21.8 Contractor Caused Delays - No time extension will be considered for the following:

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

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

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

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

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

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

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

7.22 CONSTRUCTION SCHEDULE

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

7.22.2 Submittal of and the Engineer's receipt of the construction schedule shall not imply the Department's approval of the schedule's breakdown, its individual elements, and any critical path that may be shown. Any acceptance or approval of the schedule 1) shall be for general format only and not for sequences or durations thereon, and 2) shall not be deemed an agreement by the Department that the construction means, methods and resources shown on the schedule will result in work that conforms to the contract requirements. The Contractor has the risk of all elements (whether or not shown) of the schedule and its execution. Additional compensation shall not be due the Contractor in the event that deviations from the Contractor's schedule, caused by any design revisions required to resolve site conditions or State, County, or utility requirements, affect the efficiency of its operations.

7.22.3 In the event the Contractor submits and the Department receives an accelerated schedule (shorter than the contract time), such will not constitute an agreement to modify the contract time or completion date, nor will the receipt, acceptance or approval of such a schedule incur any obligation by the Department.

7.22.4 Caution - The Department will not be responsible if the Contractor does not meet its accelerated schedule.

7.22.5 The requirements of this Section 7.22 CONSTRUCTION SCHEDULE may be waived by the Engineer.

7.23 STATEMENT OF WORKING DAYS - For all contracts on a working day basis, the Contractor will submit a statement of the number of working days for each month together with the Monthly Payment Application. The Monthly Payment Application will not be processed without the statement of working days.

7.24 SUSPENSION OF WORK §3-125-7 HAR

7.24.1 Procedure to be followed - The Engineer may, by written order, suspend the performance of the Work up to thirty (30) days and the Comptroller, for an unlimited number of days, either in whole or in part for any cause, including but not limited to:

7.24.1.1 Weather or excess bad weather days, considered unsuitable by the Engineer for prosecution of the work; or

7.24.1.2 Soil Conditions considered unsuitable by the Engineer for prosecution of the work; or

7.24.1.3 Failure of the Contractor to:

- (a) Correct conditions unsafe for the general public or for the workers;
- (b) Carry out orders given by the Engineer;
- (c) Perform the work in strict compliance with the provisions of the contract; or
- (d) Provide a qualified Superintendent on the jobsite as described under Section 5.8 COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT.

7.24.1.4 When any redesign is deemed necessary by the Engineer; or

7.24.1.5 Disturbance due to noise, odors or dust arising from the construction even if such disturbance does not violate the section on Environmental Protection contained in the specifications; or

7.24.1.6 The convenience of the State.

7.24.2 Partial, Total Suspension of Work - Suspension of work on some but not all items of work shall be considered a partial suspension. Suspension of work on the entire work at the job site shall be considered total suspension. The period of suspension shall be computed as set forth in subsection 7.21.7 -Delays for Suspension of Work.

7.24.3 Payment §3-125-7 HAR

7.24.3.1 In the event that the Contractor is ordered by the Engineer in writing as provided herein to suspend all work under the contract in accordance with paragraphs 7.24.1.4 or 7.24.1.6, the Contractor may be reimbursed for actual direct costs incurred on work at the jobsite, as authorized in writing

by the Engineer, including costs expended for the protection of the work. Payment for equipment which must standby during such suspension of work shall be made as described in clause 8.3.4.5.(e). No payment will be made for profit on any suspension costs. An allowance of five percent (5%) will be paid on any reimbursed actual costs for indirect categories of delay costs, including extended branch and home-office overhead and delay impact costs.

7.24.3.2 However, no adjustment to the contract amount or time shall be made under this Section 7.24 for any suspension, delay, or interruption:

- (a) To the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or
- (b) For which an adjustment is provided for or excluded under any other provision of this Contract.

7.24.3.3 Any adjustment in contract price made pursuant to this subsection shall be determined in accordance with this Section 7.24 and Section 4.2 CHANGES.

7.24.3.4 Claims for such compensation shall be filed with the Engineer within ten (10) calendar days after the date of the order to resume work or such claims will be waived by the Contractor. Together with the claim, the Contractor shall submit substantiating documents supporting the entire amount shown on the claim. The Engineer may make such investigations as are deemed necessary and shall be the sole judge of the claim and the Engineer's decision shall be final.

7.24.4 Claims Not Allowed - No claim under this Section 7.24 shall be allowed:

7.24.4.1 For any direct costs incurred more than twenty (20) days before the Contractor shall have notified the Engineer in writing of any suspension that the Contractor considered compensable. This requirement shall not apply as to a claim resulting from a suspension order under paragraphs 7.24.1.4 or 7.24.1.6, and

7.24.4.2 Unless the claim is asserted in writing within ten (10) calendar days after the termination of such suspension, delay, or interruption, but in no case not later than the date of final payment under the contract.

7.24.4.3 No provision of this Section 7.24 shall be construed as entitling the Contractor to compensation for delays due to failure of surety, for suspensions made at the request of the Contractor, for any delay required under the Contract, for partial suspension of work or for suspensions made by the Engineer under the provisions of paragraphs 7.24.1.1, 7.24.1.2, 7.24.1.3 and 7.24.1.5.

7.25 DISPUTES AND CLAIMS §3-126-31 HAR

7.25.1 Required Notification - As a condition precedent for any claim, the Contractor must give notice in writing to the Engineer in the manner and within the time periods stated in Section 4.2 CHANGES for claims for extra compensation,

damages, or an extension of time due for one or more of the following reasons:

7.25.1.1 Requirements not clearly covered in the contract, or not ordered by the Engineer as an extra;

7.25.1.2 Failure by the State and Contractor to agree to an Oral Order or an adjustment in price or contract time for a Field Order or a Change Order issued by the State;

7.25.1.3 An action or omission by the Engineer requiring performance changes beyond the scope of the contract;

7.25.1.4 Failure of the State to issue a Field Order for controversies within the scope of Section 4.2 CHANGES.

7.25.1.5 For any other type of claim, the Contractor shall give notice within the time periods set forth in contract provisions pertaining to that event. If no specific contract provisions pertain to the claim, then the written notice of claim must be submitted within fifteen (15) days of the event giving rise to the claim.

7.25.2 Continued Performance of Work - The Contractor shall at all times continue with performance of the contract in full compliance with the directions of the Engineer. Continued performance by the Contractor shall not be deemed a waiver of any claim for additional compensation, damages, or an extension of time for completion, provided that the written notice of claim is submitted in accordance with subsection 7.25.1

7.25.3 The requirement for timely written notice shall be a condition precedent to the assertion of a claim.

7.25.4 Requirements for Notice of Claim - The notice of claim shall clearly state the Contractor's intention to make claim and the reasons why the Contractor believes that additional compensation, changes or an extension of time may be remedies to which it is entitled. At a minimum, it shall provide the following:

7.25.4.1 Date of the protested order, decision or action;

7.25.4.2 The nature and circumstances which caused the claim;

7.25.4.3 The contract provision that support the claim;

7.25.4.4 The estimated dollar cost, if any, of the protested work and how that estimate was determined; and

7.25.4.5 An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

7.25.5 If the protest or claim is continuing, the information required in subsection 7.25.4 above shall be supplemented as requested by the Engineer.

7.25.6 Final Statement for Claim - The Contractor shall provide a final written statement of the actual adjustment in contract price and/or contract time requested for each notice of claim. Such statement shall clearly set forth that it is the final statement for that notice of claim. All such final statements shall

be submitted within thirty (30) days after completion of the work that is the subject of the claim, but in no event no later than thirty (30) days after the Project Acceptance Date or the date of termination of the Contractor, whichever comes first.

7.25.7 All claims of any nature are barred if asserted after final payment under this contract has been made, except as provided under Section 8.9 CLAIMS ARISING OUT OF PAYMENT FOR REQUIRED WORK.

7.25.8 Contractor may protest the assessment or determination by the Engineer of amounts due the State from the Contractor by providing a written notice to the Engineer within thirty (30) days of the date of the Engineer's written assessment or determination. Said notice shall comply with all requirements of subsections 7.25.4 and 7.25.6 above. The requirement of such notice cannot be waived and it is a condition precedent to any claim by the Contractor. Failure to comply with these notice provisions constitutes a waiver of any claim.

7.25.9 In addition to the requirements of subsections 7.25.4, 7.25.6, and 7.25.8, all final written statements of claim shall be certified. This certification requirement applies to the Contractor without exception, including, but not limited to, situations involving "pass through" claims of subcontractors or suppliers. The certification must be executed by a person duly authorized to bind the Contractor with respect to the claim. The certification shall state as follows:

7.25.9.1 "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the State is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

7.25.10 Decision on Claim / Appeal - The decision of the Engineer on the claim shall be final and conclusive, unless fraudulent, or unless the Contractor delivers to the Comptroller a written appeal of the Engineer's decision. Said appeal shall be delivered to the Comptroller no later than thirty (30) days after the date of the Engineer's decision.

7.25.10.1 In that event, the decision of the Comptroller shall be final and conclusive, unless fraudulent or unless the Contractor brings an action seeking judicial review of the Comptroller's decision in an appropriate circuit court of this State within six (6) months from the date of the Comptroller's decision.

7.25.11 Payment and Interest - The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting Contractor action concerning appeal. Such payments shall be without prejudice to the rights of either party. Interest on amounts ultimately determined to be due to a Contractor shall be payable at the Statutory rate applicable to judgments against the State under Chapter 662, HRS from the date of receipt of a properly certified final written statement of actual adjustment required until the date of decision; except, however, that if an action is initiated in circuit court, interest under this Section 7.25 shall only be calculated until the time such action is initiated. Interest on amounts due the State from the Contractor shall be payable at the same rate from the date of issuance of the Engineer's

notice to the Contractor. Where such payments are required to be returned by a subsequent decision, interest on such payments shall be paid at the statutory rate from the date of payment.

7.25.12 Contractor shall comply with any decision of the Engineer and proceed diligently with performance of this contract pending final resolution by a circuit court of this State of any controversy arising under, or by virtue of, this contract, except where there has been a material breach of contract by the State; provided that in any event the Contractor shall proceed diligently with the performance of the contract where the Engineer has made a written determination that continuation of work under the contract is essential to the public health and safety.

7.25.13 Waiver of Attorney's Fees - In the event of any litigation arising under, or by virtue of, this contract, the Contractor and the State agree to waive all claims against each other for attorney's fees and agree to refrain from seeking attorney's fees as part of any award or relief from any court.

7.26 FAILURE TO COMPLETE THE WORK ON TIME

7.26.1 Completion of the work within the required time is important because delay in the prosecution of the work will inconvenience the public and interfere with the State's business. In addition, the State will be damaged by the inability to obtain full use of the completed work and by increased engineering, inspection, superintendence, and administrative services in connection with the work. Furthermore, delay may detrimentally impact the financing, planning, or completion of other State projects because of the need to devote State resources to the project after the required completion date. The monetary amount of such public inconvenience, interference with State business, and damages, is difficult, if not impossible, to accurately determine and precisely prove. Therefore, it is hereby agreed that the amount of such damages shall be the appropriate sum of liquidated damages as set forth below.

7.26.1.1 When the Contractor fails to complete the Work or any portion of the Work within the time or times fixed in the contract or any extension thereof, it is agreed the Contractor shall pay liquidated damages to the Department based upon the amount stated in the Specification Section 00800 SPECIAL CONDITIONS.

7.26.1.2 If the Contractor fails to correct Punchlist deficiencies as required by Section 7.32 PROJECT ACCEPTANCE DATE, the State will be inconvenienced and damaged, therefore, it is agreed that the Contractor shall pay liquidated damages to the Department based upon the amount stated in the Specification Section 00800 SPECIAL CONDITIONS. Liquidated damages shall accrue for all days after the Contract Completion Date or any extension thereof, until the date the Punchlist items are corrected and accepted by the Engineer.

7.26.1.3 If the Contractor fails to submit final documents as required by Section 7.33 FINAL SETTLEMENT OF THE CONTRACT, the State will be inconvenienced and damaged, therefore, it is agreed that the Contractor shall pay liquidated damages to the Department based upon the amount stated in the Specification Section 00800 SPECIAL CONDITIONS. Liquidated damages shall accrue for all days after the

Contract Completion Date or any extension thereof, until the date the final documents are received by the Engineer.

7.26.1.4 The Engineer shall assess the total amount of liquidated damages in accordance with the amount stated in the Specification Section 00800 SPECIAL CONDITIONS and provide written notice of such assessment to the Contractor.

7.26.2 Acceptance of Liquidated Damages - The assessment of liquidated damages by the Engineer shall be accepted by the parties hereto as final, unless the Contractor delivers a written appeal of the Engineer's decision in accordance with subsection 7.25.10 requirements. Any allowance of time or remission of charges or liquidated damages shall in no other manner affect the rights or obligations of the parties under this contract nor be construed to prevent action under Section 7.27 TERMINATION OF CONTRACT FOR CAUSE. If the Department terminates the Contractor's right to proceed, the resulting damage will include such liquidated damages for such time as may be required for final completion of the work after the required contract completion date.

7.26.3 Payments for Liquidated Damages - Liquidated damages shall be deducted from monies due or that may become due to the Contractor under the contract or from other monies that may be due or become due to the Contractor from the State.

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

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

7.27.2 Additional Rights and Remedies - The rights and remedies of the Department provided in this contract are in addition to any other rights and remedies provided by law.

7.27.3 Costs and Charges

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

contract, then the Contractor and the surety shall be liable and shall pay the Department the amount of the excess.

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

7.27.4 Erroneous Termination for Cause - If, after notice of termination of the Contractor's right to proceed under this Section 7.27, it is determined for any reason that good cause did not exist to allow the Department to terminate as provided herein, the rights and obligations of the parties shall be the same as, and the relief afforded the Contractor shall be limited to, the provisions contained in Section 7.28 TERMINATION FOR CONVENIENCE.

7.28 TERMINATION FOR CONVENIENCE
§3-125-22 HAR

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

7.28.2 Contractor's Obligations - The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the State's approval. The Comptroller 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.

7.28.3 Right to Construction and Goods - The Comptroller may require the Contractor to transfer title and delivery to the State in the manner and to the extent directed by the Comptroller, the following:

7.28.3.1 Any completed work; and

7.28.3.2 Any partially completed construction, goods, materials, parts, tools, dies, jigs, fixtures, drawings, information, and contract rights (hereinafter called "construction material") that the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

7.28.3.3 The Contractor shall protect and preserve all property in the possession of the Contractor in which the State has an interest. If the Comptroller does not elect to retain any such property, the Contractor shall use its best efforts to sell such property and construction material for the

Department's account in accordance with the standards of section 490:2-706, HRS.

7.28.4 Compensation

7.28.4.1 Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by subchapter 15, chapter 3-122, HAR. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Comptroller may pay the Contractor, if at all, an amount set in accordance with paragraph 7.28.4.3.

7.28.4.2 The Comptroller 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 construction, supplies, and construction materials under paragraph 7.28.3.3 of this Section, and the contract price of the work not terminated.

7.28.4.3 Absent complete agreement, the Comptroller shall pay the Contractor the following amounts, less any payments previously made under the contract.

- (a) The cost of all contract work performed prior to the effective date of the notice of termination work plus a five percent (5%) markup on the actual direct costs, including amounts paid to subcontractor, less amounts previously paid or to be paid for completed portions of such work; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss. No anticipated profit or consequential damage will be due or paid.
- (b) Subcontractors shall be paid a markup of ten percent (10%) on their direct job costs incurred to the date of termination. No anticipated profit or consequential damage will be due or paid to any subcontractor. These costs must not include payments made to the Contractor for subcontract work during the contract period.
- (c) In any case, the total sum to be paid the Contractor shall not exceed the total contract price reduced by the amount of any sales of construction supplies, and construction materials.

7.28.4.4 Costs claimed, agreed to, or established by the State shall be in accordance with chapter 3-123, HAR.

7.29 CORRECTING DEFECTS - If the Contractor fails to commence to correct any defects of any nature, within ten (10) working days after the correction thereof has been requested in writing by the State, and thereafter to expeditiously complete the correction of said defects, the Engineer may without further notice to the Contractor or surety and without termination of contract, correct the defects and deduct the cost thereof from the contract price.

7.30 FINAL CLEANING - Before final inspection of the work, the Contractor shall clean all ground occupied by the Contractor in connection with the Work of all rubbish, excess materials, temporary structures and equipment, and all parts of the work must be left in a neat and presentable condition to the satisfaction of the Engineer. However, the Contractor shall not remove any warning and directional signs prior to the formal acceptance by the Engineer. Full compensation for final cleaning will be included in the prices paid for the various items of work or lump sum bid, as the case may be, and no separate payment will be made therefor.

7.31 SUBSTANTIAL COMPLETION, AND FINAL INSPECTION - Before the Department accepts the project as being completed, unless otherwise stipulated by the Engineer, the following procedure shall be followed:

7.31.1 Substantial Completion:

7.31.1.1 The Contractor and its subcontractors shall inspect the project to confirm whether the Project is Substantially Complete. This inspection effort shall include the testing of all equipment and providing a Punchlist that identifies deficiencies which must be corrected. Contractor shall make the corrections and if required repeat the procedure. Also, the Contractor shall schedule final Building, Plumbing, Electrical, Elevator, Fire and other required inspections and obtain final approvals.

- (a) When in compliance with the above requirements, the Contractor shall notify the Engineer in writing that project is Substantially Complete and ready for a Final Inspection. Along with the Substantial Completion notification, the Contractor shall provide its Punchlist(s) with the status of the deficiencies and dates when the deficiencies were corrected. The Project Inspector and / or the Engineer shall make a preliminary determination whether project is Substantially Complete.
- (b) If the Project is not Substantially Complete, the Engineer shall inform the Contractor. The Contractor shall identify deficiencies which must be corrected, update its Punchlist, make the necessary corrections and repeat the previous step. After completing the necessary work, the Contractor shall notify the Engineer in writing that Punchlist deficiencies have been corrected and the project is ready for a Final Inspection.
- (c) If the Project is Substantially Complete, the Engineer shall schedule a Final Inspection within fifteen (15) days of the Contractor's notification letter or as otherwise determined by the Engineer.

7.31.1.2 In addition, and to facilitate closing of the project, the Contractor shall also proceed to obtain the following closing documents (where applicable) prior to the Final Inspection:

- (a) Field-Posted As-Built Drawings.
- (b) Maintenance Service Contract and two (2) copies of a list of all equipment.

- (c) Operating and maintenance manuals.
- (d) Air conditioning test and balance reports.
- (e) Any other final submittal required by the technical sections of the contract.

7.31.2 Final Inspection If at the Final Inspection the Engineer determines that all work is completed, the Engineer shall notify the Contractor in accordance with Section 7.32 PROJECT ACCEPTANCE DATE. Should there be remaining deficiencies which must be corrected, the Contractor shall provide an updated Punchlist to the Engineer, within five (5) days from the Final Inspection Date. The Contractor shall make the necessary corrections.

7.31.2.1 The Engineer shall confirm the list of deficiencies noted by the Contractor's punchlist(s) and will notify the Contractor of any other deficiencies that must be corrected before final settlement.

7.31.3 The Engineer may add to or otherwise modify the Punchlist from time to time. The Contractor shall take immediate action to correct the deficiencies.

7.31.4 Revoking Substantial Completion - At any time before final Project Acceptance is issued, the Engineer may revoke the determination of Substantial Completion if the Engineer finds it was not warranted. The Engineer shall notify the Contractor in writing with the reasons and outstanding deficiencies negating the declaration. Once notified, the Contractor shall make the necessary corrections and repeat the required steps noted in subsections 7.31.1 and 7.31.2.

7.32 PROJECT ACCEPTANCE DATE

7.32.1 If upon Final Inspection, the Engineer finds that the project has been satisfactorily completed in compliance with the contract, the Engineer shall declare the project completed and accepted and will notify the Contractor in writing of the acceptance by way of the Project Acceptance Notice.

7.32.2 Protection and Maintenance - After the Project Acceptance Date, the Contractor shall be relieved of maintaining and protecting the work EXCEPT that this does not hold true for those portions of the work which have not been accepted, including Punchlist deficiencies. The State shall be responsible for the protection and maintenance of the accepted facility.

7.32.3 The date of Project Acceptance shall determine:

7.32.3.1 End of Contract Time.

7.32.3.2 Commencement of all guaranty periods except as noted in Section 7.34 CONTRACTOR'S RESPONSIBILITY FOR WORK: RISK OF LOSS.

7.32.3.3 Commencement of all maintenance services except as noted in Section 7.34 CONTRACTOR'S RESPONSIBILITY FOR WORK: RISK OF LOSS.

7.32.4 Punchlist Requirements - If a Punchlist is required under Section 7.31 SUBSTANTIAL COMPLETION AND FINAL INSPECTION, the Project Acceptance Notice will

include the Engineer's Punchlist and the date when correction of the deficiencies must be completed.

7.32.5 Upon receiving the Punchlist, the Contractor shall promptly devote the required time, labor, equipment, materials and incidentals necessary to correct the deficiencies expeditiously.

7.32.6 For those items of work that cannot be completed by the established date, the Contractor shall submit a schedule in writing to the Engineer for approval along with documentation to justify the time required, no later than five (5) working days before the date stipulated for completion of the Punchlist work. A Proposed schedule submitted after the five (5) day period will not be considered.

7.32.7 Failure to Correct Deficiencies - After the Contract Completion Date, or any extension thereof, if the Contractor fails to correct the deficiencies within the established date or agreed to Punchlist completion date, the Engineer shall assess liquidated damages as required by Section 7.26 - FAILURE TO COMPLETE THE WORK ON TIME.

7.32.8 If the Contractor fails to correct the deficiencies and complete the work by the established or agreed to date, the State also reserves the right to correct the deficiencies by whatever method it deems necessary and deduct the cost from the final payment due the contractor.

7.32.9 The Contractor may further be prohibited from bidding in accordance with Section 2.12 - DISQUALIFICATION OF BIDDERS. In addition, assessment of damages shall not prevent action under Section 7.27 - TERMINATION OF CONTRACT FOR CAUSE.

7.33 FINAL SETTLEMENT OF CONTRACT - The contract will be considered settled after the project acceptance date and when the following items have been satisfactorily submitted, where applicable:

7.33.1 Necessary Submissions in addition to the items noted under paragraph 7.31.1.2.

- 7.33.1.1 All written guarantees required by the contract.
- 7.33.1.2 Complete and certified weekly payrolls for the Contractor and its Subcontractor(s).
- 7.33.1.3 Certificate of Plumbing and Electrical Inspection.
- 7.33.1.4 Certificate of Building Occupancy.
- 7.33.1.5 Certificates for Soil Treatment and Wood Treatment.
- 7.33.1.6 Certificate of Water System Chlorination.
- 7.33.1.7 Certificate of Elevator Inspection, Boiler and Pressure Pipe installation.
- 7.33.1.8 All other documents required by the Contract.

7.33.2 Failure to Submit Closing Documents - The Contractor shall submit the final Payment Application and the above applicable closing documents within sixty (60) days from

the date of Project Acceptance or the agreed to Punchlist completion date. Should the Contractor fail to comply with these requirements, the Comptroller may terminate the Contract for cause. The pertinent provisions of Section 7.27 TERMINATION OF CONTRACT FOR CAUSE shall be applicable.

7.33.3 In addition, should the Contractor fail to furnish final closing documents within the required time period, the Engineer shall assess liquidated damages as required by Section 7.26 FAILURE TO COMPLETE THE WORK ON TIME.

7.34 CONTRACTOR'S RESPONSIBILITY FOR WORK; RISK OF LOSS

7.34.1 Until the establishment of the Project Acceptance Date or Beneficial Occupancy whichever is sooner, the Contractor shall take every necessary precaution against injury or damage to any part of the work caused by the perils insured by an All Risk policy excluding earthquakes and floods, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore and make good all injuries or damage to any portion of the work occasioned by the perils insured by an All Risk policy before the date of final acceptance and shall bear the risk and expense thereof.

7.34.2 After the Project Acceptance Date or Beneficial Occupancy whichever is sooner, the Contractor shall be relieved of maintaining and protecting the work except for those portions of the work which have not been accepted including Punchlist deficiencies.

7.34.3 The risk of damage to the work from any hazard or occurrence that may be covered by a required Property Insurance policy is that of the Contractor, unless such risk of loss is placed elsewhere by express language in the contract documents. No claims for any loss or damage shall be recognized by the Department, nor will any such loss or damage excuse the complete and satisfactory performance of the contract by the Contractor.

7.35 GUARANTEE OF WORK

7.35.1 In addition to any required manufacturers warranties, all work and equipment shall be guaranteed by the Contractor against defects in materials, equipment or workmanship for one year from the Project Acceptance Date or as otherwise specified in the Contract Documents, whichever is earlier.

7.35.2 Repair of Work - If, within any guarantee period, repairs or changes are required in connection with the guaranteed work, which in the opinion of the Engineer is necessary due to materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract, the Contractor shall within five (5) working days and without expense to the Department commence to:

7.35.2.1 Place in satisfactory condition in every instance all such guaranteed work and correct all defects therein; and

7.35.2.2 Make good and repair or replace to new or pre-existing condition all damages to the building, facility, work or equipment or contents thereof, resulting from such defective materials, equipment or installation thereof.

7.35.3 Manufacturer's and Installer's Guarantee- Whenever a manufacturer's or installer's guarantee on any product specified in the respective Specification sections, exceeds one year, this guarantee shall become part of this contract in addition to the Contractor's guarantee. Contractor shall complete the guarantee forms in the name of the Department and submit such forms to the manufacturer within such time required to validate the guarantee. Contractor shall submit to the Department a photocopy of the completed guarantee form for the Department's record as evidence that such guarantee form was executed by the manufacturer.

7.35.4 If a defect is discovered during a guarantee period, all repairs and corrections to the defective items when corrected shall again be guaranteed for the original full guarantee period. The guarantee period shall be tolled and suspended for all work affected by the defect. The guarantee period for work affected by the defect shall restart for its remaining duration upon confirmation by the Engineer that the deficiencies have been repaired or remedied.

7.35.5 If guarantee is specified for greater than two (2) years, two (2) years shall prevail except for manufacturer's warranties. Manufacturer's warranties shall remain as specified in their respective Specification sections.

7.35.5.1 However, the number of years specified in the technical specifications shall prevail only if it is stated that the number of years for guarantee supercedes this provision.

7.36 WORK OF AND CHARGES BY UTILITIES

7.36.1 The Contractor shall be responsible for scheduling and coordinating the work with the utility companies and applicable Governmental agencies for permanent service installation and connections or modifications to existing utilities. The Contractor shall make available all portions of the work necessary for the utility companies to do their work. The Department shall not bear the risk of any damage to the contract work caused by any utility company, and work of repairing such damage and delay costs must be resolved between the Contractor and the utility company and their insurers.

7.36.2 Unless stated as an allowance item to be paid by the Contractor, the Department will pay the utility companies and applicable governmental agencies directly for necessary modifications and connections. Contractor charges for overhead, supervision, coordination, profit, insurance and any other incidental expenses shall be included in the Contractor's Bid whether the utility is paid directly by the Department or by an allowance item in the Contract.

7.37 RIGHT TO AUDIT RECORDS

7.37.1 Pursuant to Section 103D-317 HRS the State, at reasonable times and places, may audit the books and records of a Contractor, prospective contractor, subcontractor and prospective subcontractor relating to the Contractor's or subcontractor's cost or pricing data. The books and records shall be maintained by the Contractor and subcontractor(s) for a period of four (4) years from the date of final payment under the contract.

7.37.2 The Contractor shall insure that its subcontractors comply with this requirement and shall bear all costs (including

attorney's fees) of enforcement in the event of its subcontractor's failure or refusal to fully cooperate.

7.37.3 Additionally, Sections 231-7, 235-108, 237-39 and other HRS chapters through reference, authorizes the Department of Taxation to audit all taxpayers conducting business within the State. Contractors must make available to the Department of Taxation all books and records necessary to verify compliance with the tax laws.

7.38 RECORDS MAINTENANCE, RETENTION AND ACCESS

7.38.1 The Contractor and any subcontractor whose contract for services is valued at \$25,000 or more shall, in accordance with generally acceptable accounting practices, maintain fiscal records and supporting documents and related files, papers, and reports that adequately reflect all direct and indirect expenditures and management and fiscal practices related to the Contractor and subcontractor's performance of services under this Agreement.

7.38.2 The representative of the Department, the Comptroller of the State of Hawaii, the Attorney General, (the Federal granting agency, the Comptroller General of the United States, and any of their authorized representatives when federal funds are utilized), and the Legislative Auditor of the State of Hawaii shall have the right of access to any book, document, paper, file, or other record of the Contractor and any subcontractor that is related to the performance of services under this Agreement in order to conduct an audit or other examination and / or to make copies, excerpts and transcripts for the purposes of monitoring and evaluating the Contractor and subcontractor's performance of services and the Contractor and subcontractor's program, management, and fiscal practices to assure the proper and effective expenditure of funds and to verify all costs associated with any claims made under this Agreement.

7.38.3 The right of access shall not be limited to the required retention period but shall last as long as the records are retained. The Contractor and subcontractor shall retain all records related to the Contractor and subcontractor's performance of services under this Agreement for four (4) years from the date of final payment, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the four (4) year period, the Contractor and subcontractors shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the four (4) year retention period, whichever occurs later. Furthermore, it shall be the Contractor's responsibility to enforce compliance with this provision by any subcontractor.

ARTICLE 8 - Measurement and Payment

8.1 MEASUREMENT OF QUANTITIES

8.1.1 All work completed under the Contract shall be measured by the Engineer according to United States standard

measures, or as stated in this Contract. The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the contract shall conform to good engineering practice. These measurements shall be considered correct and final unless the Contractor has protested same to the Engineer and has demonstrated the existence of an error by actual physical measurement before the work has progressed in a manner which would prohibit a proper check.

8.1.2 All measurements of the area of the various surface, pavement and base courses will be made in the horizontal projection of the actual surface and no deductions will be made for fixtures or structures having an area of nine (9) square feet or less. All measurements of headers, curbs, fences and any other type of construction which is to be paid for by its length, will be made in the horizontal projection of the actual driven length from toe to top of cutoff, except where slope exceeds ten percent (10%) and for piles, which will be by actual length. All materials which are specified for measurement by the cubic yard "Loose Measurement" or "Measured in the Vehicle" shall be hauled in approved vehicles and measured therein at the point of delivery. Approved vehicles for this purpose may be of any type or size satisfactory to the Engineer, provided that the body is of such type that the actual contents may be readily and accurately determined. Unless all approved vehicles on a job are of a uniform capacity each approved vehicle must bear a plainly legible identification mark indicating the specific approved capacity. The Inspector may reject all loads not hauled in such approved vehicles.

8.2 NO WAIVER OF LEGAL RIGHTS- The Engineer shall not be precluded or estopped by any measurements, estimate or certificate made either before or after the completion and acceptance of the work and payment therefor, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement estimate or certificate is untrue or incorrectly made, or rejecting the work or materials that do not conform in fact to the contract. The Engineer shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor and its sureties such damages as the Department may sustain by reason of the Contractor's failure to comply with the terms of the contract. Neither the acceptance by the Engineer or any representative of the Engineer, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, or any possession taken by the Engineer, shall operate as a waiver of any portion of the contract, or of any power herein reserved, or any right to damage herein provided. A waiver of any notice requirement or breach of the contract shall not be held to be a waiver of any other notice requirement or subsequent breach.

8.3 PAYMENT FOR ADDITIONAL WORK

8.3.1 Additional work as defined in Section 4.2 CHANGES, when ordered, shall be paid for as defined in Section 4.4 PRICE ADJUSTMENT by a duly issued change order in accordance with the terms provided therein.

8.3.2 On credit proposals and proposals covering both increases and decreases, the application of overhead and profit shall be on the net change in direct costs for the performance of the work.

8.3.3 When payment is to be made for additional work directed by a field order, the total price adjustment as specified in the field order or if not specified therein for the work contained in the related change order shall be considered full compensation for all materials, labor, insurance, taxes, equipment use or rental and overheads, both field and home office including extended home and branch office overhead and other related delay impact costs.

8.3.4 Force Account Method - When, for the convenience of the Department, payment is to be made by the Force Account method, all work performed or labor and materials and equipment furnished shall be paid for as described below. Payment by the Force Account method will not alter any rights, duties and obligations under the contract.

8.3.4.1 Labor - For all hourly workers, the Contractor will receive the rate of wage including fringe benefits when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work, which shall be agreed upon in writing before beginning work for each and every hour that said labor is actually engaged in said work.

- (a) All markups for overhead and profit shall be added subject to limitations established in Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.
- (b) No allowance for overtime compensation will be given without the written approval of the Engineer prior to performance of such work.

8.3.4.2 Insurance and Taxes - The Contractor and subcontractor(s) will also receive the actual additional costs paid for property damage, liability, workers compensation insurance premiums, State unemployment contributions, Federal unemployment taxes, social security and Medicare taxes to which a markup of up to six percent (6%) may be added.

8.3.4.3 Materials - For materials accepted by the Engineer and used, the Contractor and subcontractor(s) shall receive the actual cost of such materials delivered and incorporated into work, plus a markup allowed under Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.

8.3.4.4 Subcontractors - Subcontractor costs shall be the actual costs of the subcontractor marked up as defined in this Section 8.3 plus a markup allowed under Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.

8.3.4.5 Equipment

- (a) For machinery or special equipment (other than small tools as herein defined in clause 8.3.4.5.(h) owned or leased by the Contractor or a related entity, the use of which has been authorized by the Engineer:
 - (a.1) The Contractor will be paid at the per-hour rental rates based on the monthly rate established for said machinery or equipment in the then-current edition of the Rental Rate Blue Book for Construction Equipment including the estimated

- operating cost per hour and regional correction provided therein.
- (a.2) If no rate is listed for a particular kind, type or size of machinery or equipment, then the monthly, hourly rates shall be as agreed upon in writing by the Contractor and the Engineer prior to the use of said machinery or equipment. If there is no agreement, the Engineer will set a rate. The Contractor may contest the rate pursuant to Section 7.25 DISPUTES AND CLAIMS.
 - (a.3) Rental rates which are higher than those specified in the aforesaid Rental Rate Blue Book publication may be allowed where such higher rates can be justified by job conditions such as work in water and work on lava, etc. Request for such higher rates shall be submitted in writing to the Engineer for approval prior to the use of the machinery or equipment in question.
 - (b) For machinery or special equipment (other than small tools as herein defined in clause 8.3.4.5.(h) rented by the Contractor or a related entity specifically for the Force Account work, the use of which has been authorized by the Engineer; The Contractor will be paid the actual rental cost for the machinery or equipment, including mobilization and demobilization costs. A receipt from the equipment supplier shall be submitted to the Engineer.
 - (c) For machinery or special equipment (other than small tools as herein defined in clause 8.3.4.5.(h) rented by the Contractor or a related entity for use in the project, but which will also be used for the Force Account work, the use of which has been authorized by the Engineer; The Contractor will be paid the actual rental cost for the machinery or equipment. No additional mobilization and demobilization costs will be paid. A receipt from the equipment supplier shall be submitted to the Engineer.
 - (d) The rental rate for trucks not owned by the Contractor shall be those as established under the Hawaii State Public Utilities Commission, which will be paid for as an equipment item pursuant to paragraph 8.3.4.5. Rental rates for Contractor-owned trucks not listed in the Rental Rate Blue Book shall be agreed upon in writing by the Contractor and Engineer prior to the use of said trucks. If there is no agreement, the Engineer shall set the rate. The Contractor may contest the rate pursuant to Section 7.25 DISPUTES AND CLAIMS.
 - (e) The rental period shall begin at the time equipment reaches the site of work, shall include each day that the machinery or equipment is at the site of the work and shall terminate at the end of the day on which the equipment is no longer needed. In the event the equipment must standby due to work being delayed or halted by reason of design, traffic, or other related problems uncontrollable by the Contractor, excluding Saturdays, Sundays and Legal Holidays, unless the equipment is used to perform work on such days, the rental shall be two hours per day until the equipment is no longer needed.
 - (e.1) The rental time to be paid will be for the time actually used. Any hours or operation in excess of 8 hours in any one day must be approved by the Engineer prior to the performance of such work.
 - (e.2) Rental time will not be allowed or credited for any day on which machinery or equipment is inoperative due to its breakdown. On such days, the Contractor will be paid only for the actual hours, if any, that the machinery or equipment was in operation.
 - (e.3) In the event the Force Account work is completed in less than 8 hours, equipment rental shall nevertheless be paid for a minimum 8 hours.
 - (e.4) For the purpose of determining the rental period the continuous and consecutive days shall be the normal 8-hour shift work day, Monday through Friday excluding legal holidays. Any work day to be paid less than 8 hours shall not be considered as continuous, except for equipment removed from rental for fuel and lubrication.
 - (e.5) No additional premium beyond the normal rates used will be paid for equipment over 8 hours per day or 40 hours per week.
 - (f) All rental rates for machinery and equipment shall include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs, maintenance, tire wear, depreciation, storage, and all other incidentals.
 - (g) All machinery and equipment shall be in good working condition and suitable for the purpose for which the machinery and equipment is to be used.
 - (h) Individual pieces of equipment or tools having a replacement value of five hundred dollars (\$500) or less, whether or not consumed by use, shall be considered to be small tools and included in the allowed markup for overhead and profit and no separate payment will be made therefor.
 - (i) The total of all Force Account rental charges accrued over the duration of the contract for a specific item of equipment shall not exceed the replacement cost of that equipment.
 - (i.1) The Contractor shall provide the cost of replacement to the Engineer prior to using the equipment. If the Engineer does not agree with the replacement cost, the Engineer shall set the replacement cost. The Contractor may contest the

replacement cost pursuant to Section 7.25
DISPUTES AND CLAIMS.

- (j) Should the item of equipment be rented from an unrelated entity, the rental cost will be treated as an equipment cost under paragraph 8.3.4.5.
- (k) Transportation and/or Mobilization: The following provisions shall govern in determining the compensation to be paid to the Contractor for use of equipment or machinery on the Force Account method:
 - (k.1) The location from which the equipment is to be moved or transported shall be approved by the Engineer.
 - (k.2) Where the equipment must be transported to the site of the force account work, the Department will pay the reasonable cost of mobilizing and transporting the equipment, including its loading and unloading, from its original location to the site of force account work. Upon completion of the work the Department will pay the reasonable cost of mobilizing and transporting the equipment back to its original location or to another location, whichever cost is less.
 - (k.3) The cost of transporting the equipment shall not exceed the rates established by the Hawaii State Public Utilities Commission. If such rates are nonexistent, then the rates will be determined by the Engineer based upon the prevailing rates charged by established haulers within the locale.
 - (k.4) Where the equipment is self-propelled, the Department will pay the cost of moving the equipment by its own power from its original location to the site of the force account work. Upon completion of the work the Department will pay the reasonable cost of moving of the Equipment back to its original or another location, whichever cost is less.
 - (k.5) At the discretion of the Engineer, when the Contractor desires to use such equipment for other than Force Account work, the costs of mobilization and transportation shall be prorated between the Force Account and non Force Account work.
- (l) Pickup trucks, vans, storage trailers, unless specifically rented for the Force Account work, shall be considered incidental to the Force Account work and the costs therefor are included in the markup allowed under Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.

8.3.4.6 State Excise (Gross Income) Tax and Bond - A sum equal to the current percentage rate for the State excise (Gross Income) tax on the total sum determined in paragraphs

8.3.4.1, 8.3.4.2, 8.3.4.3 and 8.3.4.4 above, and the bond premium shall be added as compensation to the Contractor. The actual bond premium not to exceed one percent (1%) shall be added to items covered by paragraphs 8.3.4.1, 8.3.4.2, 8.3.4.3 and 8.3.4.4 when applicable.

- (a) The compensation as determined in paragraphs 8.3.4.1, 8.3.4.2, 8.3.4.3, 8.3.4.4 and 8.3.4.5 above shall be deemed to be payment in full for work paid on a force account basis.

8.3.4.7 Records - The Contractor and the Engineer shall compare records of the labor, materials and equipment rentals paid by the Force Account basis at the end of each day. These daily records, if signed by both parties, shall thereafter be the basis for the quantities to be paid for by the Force Account method. The Contractor shall not be entitled to payment for Force Account records not signed by the Engineer.

8.3.4.8 Statements - No payment will be made for work on a Force Account basis until the Contractor has submitted to the Engineer, duplicate itemized statements of the cost of such Force Account work detailed as follows:

- (a) Laborers - Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman and also the amount of fringe benefits payable if any.
- (b) Equipment - Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- (c) Materials
 - (c.1) Quantities of materials, prices and extensions
 - (c.2) Costs of transporting materials, if such cost is not reflected in the prices of the materials.
 - (c.3) Statements shall be accompanied and supported by receipted invoices for all materials used and transportation charges. However, if materials used on the Force Account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractors shall submit an affidavit certifying that such materials were taken from stock and that the amount claimed represents the actual cost to the Contractor.
- (d) Insurance - Cost of property damage, liability and worker's compensation insurance premiums, unemployment insurance contributions, and social security tax.

8.4 PROGRESS AND / OR PARTIAL PAYMENTS

8.4.1 Progress Payments - The Contractor will be allowed progress payments on a monthly basis upon preparing the

Monthly Payment Application forms and submitting them to the Engineer. The monthly payment shall be based on the items of work satisfactorily completed and the value thereof at unit prices and/or lump sum prices set forth in the contract as determined by the Engineer and will be subject to compliance with Section 7.9 PAYROLLS AND PAYROLL RECORDS.

8.4.2 In the event the Contractor or any Subcontractor fails to submit certified copies of payrolls in accordance with the requirements of Section 7.9 PAYROLLS AND PAYROLL RECORDS, the Engineer may retain the amount due for items of work for which payroll affidavits have not been submitted on a timely basis notwithstanding satisfactory completion of the work until such records have been duly submitted. The Contractor shall not be due any interest payment for any amount thus withheld.

8.4.3 Partial Payment for Materials - The Contractor will also be allowed partial payments to the extent of ninety percent (90%) of the manufacturer's, supplier's, distributor's or fabricator's invoice cost of accepted materials to be incorporated in the work on the following conditions:

8.4.3.1 The materials are delivered and properly stored at the site of Work; or

8.4.3.2 For special items of materials accepted by the Engineer, the materials are delivered to the Contractor or subcontractor(s) and properly stored in an acceptable location within a reasonable distance to the site of Work.

8.4.4 Partial payments shall be made only if the Engineer finds that:

8.4.4.1 The Contractor has submitted bills of sale for the materials or otherwise demonstrates clear title to such materials.

8.4.4.2 The materials are insured for their full replacement value to the benefit of the Department against theft, fire, damages incurred in transportation to the site, and other hazards.

8.4.4.3 The materials are not subject to deterioration.

8.4.4.4 In case of materials stored off the project site, the materials are not commingled with other materials not to be incorporated into the project.

8.5 PROMPT PAYMENT §3-125-23 HAR

8.5.1 Any money paid to a Contractor for work performed by a subcontractor or for unpaid material invoice shall be disbursed to such subcontractors and material suppliers within ten (10) days after receipt of the money from the Department, provided that there are no bona fide disputes, and

8.5.2 Upon final payment to the Contractor, full payment to all subcontractors and material suppliers shall be made within ten (10) days after receipt of the money, provided there are no bona fide disputes over the subcontractor's or material supplier's performance under the subcontract.

8.5.3 Bona Fide Disputes - The existence of a bona fide dispute with a subcontractor or material supplier shall not

release the Contractor of its prompt payment obligations as to all sums due that are not directly affected by such dispute.

8.5.4 Filing Non-Payment Complaint - Subcontractors and material suppliers may file in writing a complaint with the Comptroller regarding non-payment by the Contractor. Such complaint shall include:

8.5.4.1 The amount past due for work performed and already paid for by the Department;

8.5.4.2 That all the terms, conditions or requirements of its subcontract have been met; and

8.5.4.3 That no bona fide dispute over its performance exists. The Department will investigate the validity of the complaint.

8.5.5 The Department may withhold from future progress payments amounts to cover any sums paid to the Contractor for work performed by a subcontractor if the Department finds that the subcontractor complaint regarding non-payment by the Contractor has merit.

8.5.6 If the Engineer determines that the Contractor failed to make prompt payment required to a subcontractor or material supplier with whom it has no bona fide dispute, the Engineer shall inform the Contractor of the findings and request the Contractor make payment accordingly. If the Contractor does not act promptly, the Engineer shall take appropriate action as allowed under this contract and / or refer the matter to the Contractor Licensing Board for appropriate action under Section 444-17 Hawaii Revised Statutes regarding the Revocation, Suspension and Renewal of (Contractor) Licenses and/or initiate a petition for debarment of the Contractor from bidding on other State jobs.

8.6 RETAINAGE

8.6.1 The Department will retain five percent (5%) of the total amount of progress and / or partial payments until after completion of the entire contract in an acceptable manner at which time this balance, less any previous payments, will be certified and paid to the Contractor. After fifty percent (50%) of the work is completed, and if progress is satisfactory, the Engineer at its sole discretion may elect not to withhold further retainage. If progress is not satisfactory, the Department may continue to withhold as retainage sums not exceeding five percent (5%) of the amount earned.

8.6.2 The retainage shall not include sums deducted as liquidated damages from moneys due or that may become due the contractor under the contract.

8.6.3 Contractor may withdraw from time to time the whole or any portion of the sum retained after endorsing over to the Department and depositing with the Department any general obligation bond of the State or its political subdivisions suitable to the Department but in no case with a face value less than the value established by law of the amount to be withdrawn. The Department may sell the bond and use the proceeds therefrom in the same way as it may use monies directly retained from progress payments or the final payment.

8.7 WARRANTY OF CLEAR TITLE - The Contractor warrants and guarantees that all work and materials covered by progress or partial payments made thereon shall be free and clear of all liens, claims, security interests or encumbrances, and shall become the sole property of the Department. This provision shall not, however, be construed as an acceptance of the work nor shall it be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Department to require the fulfillment of all the items of the contract.

8.8 FINAL PAYMENT

8.8.1 Upon final settlement, the final payment amount, less all previous payments and less any sums that may have been deducted in accordance with the provisions of the contract, will be paid to the Contractor, provided the Contractor has submitted a Tax Clearance Certificate from the Department of Taxation and the Internal Revenue Service to the effect that all taxes levied or accrued under Federal and State Statutes against the contractor have been paid.

8.8.2 Sums necessary to meet any claims of any kind by the State may be retained from the sums due the Contractor until said claims have been fully and completely discharged or otherwise satisfied.

8.9 CLAIMS ARISING OUT OF PAYMENT FOR REQUIRED WORK - If the Contractor disputes any determination made by the Engineer regarding the amount of work satisfactorily completed, or the value thereof, or the manner in which payment therefore is made or calculated, it shall notify the Engineer in writing of the specific facts supporting the Contractor's position. Such notice shall be delivered to the Engineer no later than thirty (30) days after the Contractor has been tendered payment for the subject work, or, if no payment has been tendered, not later than fifty (50) days after it has submitted the Monthly Payment Application required under Section 8.4 PROGRESS AND/OR PARTIAL PAYMENTS herein to the Engineer for the work that is the subject of the dispute. The delivery of the written notice cannot be waived and shall be a condition precedent to the filing of the claim. No claim for additional compensation for extra work or change work shall be allowed under this provision, unless the notice requirements of Article 4 SCOPE OF WORK have been followed. Acceptance of partial payment of a Monthly Payment Application amount shall not be deemed a waiver of the right to make a claim described herein provided the notice provisions are followed. The existence of or filing of a payment claim herein shall not relieve the Contractor of its duty to continue with the performance of the contract in full compliance with the directions of the Engineer. Any notice of claim disputing the final payment made pursuant to Section 8.8 FINAL PAYMENT must be submitted in writing not later than thirty (30) days after final payment that is identified as such has been tendered to the Contractor.

END ARTICLE 8

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APPENDIX

The forms included in this appendix are for general reference and are subject change. To obtain the most current form or information about the form, contact the Public Works Division, 4th Floor of the Kalanimoku Building, Room 426, 1151 Punchbowl Street or mailed to the Public Works Division, P.O. Box 119, Honolulu, Hawaii 96810.

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APPENDIX
(SUBSTITUTION REQUEST)

DATE

Public Works Administrator
Public Works Division
Department of Accounting and General Services
P.O. Box 119
Honolulu, Hawaii 96810 - 0119

SUBJECT: SUBSTITUTION REQUEST

PROJECT TITLE: _____

D.A.G.S. JOB NO. _____

In accordance with the requirements of Section 00800 SPECIAL CONDITIONS, enclosed are three (3) sets of technical brochures and statement of variances for your review and approval for the item(s) shown below.

SECTION/ ITEM	SPECIFIED BRAND	SUBSTITUTE OR ALTERNATE BRAND	FEATURES	VARIANT ³ /
------------------	--------------------	----------------------------------	----------	------------------------

[I/Company certify/certifies]⁴ that the substitution request of the above item(s) has no other variant features.

SIGNATURE

NOTE:

1. Use own letterhead
2. Submit one (1) original and two (2) copies
3. If no variant features indicate "None"
4. Fill in appropriate entity

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APPENDIX**(NAME OF CORPORATION)**

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

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

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

Secretary

(Names and Addresses of :)
President
Vice President
Secretary

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APPENDIX

(CONTRACT)

THIS CONTRACT, made as of the _____ day _____, 2000, by and between the State of Hawaii, hereinafter referred to as the "State", acting by and through its Comptroller, and _____ of _____

a duly licensed contractor in the State of Hawaii, hereinafter referred to as the "Contractor",

WITNESSETH THAT:

WHEREAS, the written proposal of the Contractor has been accepted by the State as the lowest responsible bid submitted pursuant to a call for bids for the work herein described;

NOW THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties agree as follows:

A. Scope of Work. The Contractor shall furnish, in accordance with the Contract Documents, all the labor, materials, machinery, tools, superintendence, transportation, and other construction accessories, services and facilities necessary to construct and complete, at its own risk and expense, the following described work or so much of said work as shall be required by the Comptroller.

D.A.G.S. JOB NO.

B. Time of Completion. The work under this Contract shall be fully completed by the Contractor within _____ working days after receipt of the Notice to Proceed from the Comptroller.

Liquidated damages in the sum stated in the SPECIAL CONDITIONS will be deducted from the Contractor's final payment if the work is not completed prior to the expiration of the time limit specified above or of any time extension granted to the Contractor by the State.

C. Compensation. The State shall pay the Contractor for the performance of the work specified under this Contract, the Maximum sum of \$_____, this figure being the amount set forth in the Contractor's proposal, subject to such additions and deductions as provided in the GENERAL CONDITIONS of this Contract. Extras may be allowed in addition to said sum, but shall not exceed \$_____. All payments shall be made in the manner and at the times indicated in the Contract Documents.

It is understood and agreed that the compensation paid by the State to the Contractor shall include all expenses incurred by the Contractor for all loss or damage arising out of the nature of the work, from the action of the elements, or from any delay or unforeseen obstruction or difficulty encountered in the prosecution of the Work; for all risks of every description connected with the Work; and for all expenses incurred by or in consequence of the suspension or discontinuance of the work, except as set forth in the GENERAL CONDITIONS.

It is further agreed by the parties that any portion of the Contract price payable to the Contractor out of federal funds shall be paid to the Contractor only when such federal funds are so received, and this Contract shall not be construed as binding the State to pay said portion out of any fund other than those which are received from the Federal government.

D. **Guaranty of Work.** The Contractor agrees to guarantee all work under this Contract for the period(s) stipulated in the Contract Documents from the Project Acceptance Date.

If any unsatisfactory condition or damage develops within the time of this guaranty due to materials or workmanship that are defective, inferior, or not in accordance with the Contract, the Contractor shall, when notified by the State, immediately place such guaranteed work in a condition satisfactory to the State and make repairs of all damage to the buildings, equipment and grounds made necessary in fulfillment of the guaranty. Everything necessary for the fulfillment of any guaranty shall be done without any expense to the State. It is understood that the performance and payment bond furnished by the Contractor under this Contract may be used to secure performance of Contractor's guaranty.

E. **Contract Documents.** It is understood and agreed that the following documents, and any amendments or addenda thereto, comprise this Contract and are fully a part of this Contract as though attached hereto or set forth at length herein: (1) Contractor's accepted proposal; (2) GENERAL CONDITIONS; (3) Drawings; (4) Specifications, including the Notice to Contractors, Special Notice to Bidders and SPECIAL CONDITIONS, if any; (5) Combination Performance and Labor and Material Payment Bond; and (6) This Contract agreement.

F. **Entire Agreement.** This contract is the entire agreement between the parties, and no alterations, changes, or additions thereto shall be made, except in writing approved by the parties.

IN WITNESS WHEREOF, the parties have executed this Contract the day and year first above written.

STATE OF HAWAII

By _____
Its Comptroller

By _____
Seal

STATE OF _____)
 _____ COUNTY OF _____) SS

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 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: _____

APPROVED AS TO FORM:

 Deputy Attorney General

APPROVAL CONTINGENT UPON
 CERTIFICATION OF FUNDS

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APPENDIX

(SURETY [BID] [PROPOSAL] BOND)

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 the State of Hawaii, 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 (Contractor)]

Signature _____

Title _____

[Name of Surety]

Signature _____

Title _____

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(PERFORMANCE BOND - SURETY)

RFP No. SFA-PCC24-01

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APPENDIX

(PERFORMANCE BOND - CONTRACTOR)

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 State of Hawaii its successors and assigns, as Obligee, hereinafter called 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 as 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 conditionally 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 conditionally 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 conditionally 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 conditionally 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 conditionally 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, 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 Principal (Contractor)]

Signature _____

Title _____

*ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

APPENDIX

(LABOR AND MATERIAL PAYMENT BOND - SURETY)

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 of Hawaii, its successors and assigns, hereinafter called Obligor, in the amount of _____ DOLLARS (\$ _____), to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

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

D.A.G.S. JOB NO.

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 Obligor's priority on this bond. If the full amount of the liability of the Surety on the bond is insufficient to pay the full amount of the claims, then after paying the full amount due the Obligor, the remainder shall be distributed pro rata among the claimants.

Signed this _____ day of _____.

(Seal)

[Name of Principal (Contractor)]

Signature _____

Title _____

APPROVED AS TO FORM: (Seal)

[Name of Surety]

Signature _____

Deputy Attorney General

Title _____

***ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC**

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APPENDIX

(LABOR AND MATERIAL PAYMENT BOND - CONTRACTOR)

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 State of Hawaii its successors and assigns, as Obligee, hereinafter called 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 as 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 conditionally 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 conditionally 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 conditionally 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 conditionally 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 conditionally 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 the 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 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, and shall promptly pay all persons supplying labor and materials for the performance of the Contract, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

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

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

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

Signed this _____ day of _____.

(Seal)

[Name of Principal (Contractor)]

Signature _____

Title _____

***ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC**

APPENDIX**CONTRACTOR ACKNOWLEDGMENT**
(FOR USE WITH PERFORMANCE AND PAYMENT BONDS)

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 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: _____

SURETY ACKNOWLEDGMENT
(FOR USE WITH SURETY PERFORMANCE AND PAYMENT BONDS)**INDIVIDUAL ATTORNEY-IN-FACT ACTING
FOR CORPORATION**

STATE OF _____)
 : SS
 _____ COUNTY OF _____)

On this _____ day of _____, 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; and 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: _____

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APPENDIX
[STATE PROCUREMENT OFFICE]

(CERTIFICATION OF RECYCLED CONTENT)

Solicitation No.: _____

Title: _____

Issuance Date: _____

Opening Date: _____

Item No.	Product Name	Product Description	Manufacturer	Post-Consumer Recovered Material Content*	Recovered Material Content*
----------	--------------	---------------------	--------------	---	-----------------------------

*Post-consumer recovered material and recovered material content, as defined in §3-124-21, HAR, measured as percentage of total product weight. Attach manufacturer's specifications or certification, as required by §3-124-24(d), HAR. Recycled content measurements to be used for bid evaluation. If more space is required for product information, additional sheets may be attached.

I DECLARE THAT THE RECYCLED CONTENT HAS BEEN EXAMINED BY ME AND IS TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE AND CORRECT.

Authorized Representative

Company: _____

Name: _____

Name: _____

Title: _____

Address: _____

Signature: _____

Telephone: _____

Date: _____

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APPENDIX

(VALUE ENGINEERING CHANGE PROPOSAL)

	VECP NO.	DATE:
[“STATE” OR “NAME OF COUNTY”] PROJECT TITLE:	PROJECT NO:	CONTRACT NO.
	CONTRACTOR:	

A. CHANGES:

The following changes are to be performed in accordance with all contract stipulations and covenants (Specifications, Drawings, SPECIAL CONDITIONS, etc.):

B. CONTRACTOR’S QUOTATION:

The changes included under Part A above will be performed at a contract price decrease of \$ _____ In accordance with all terms of the contract documents. Six copies of our cost breakdown are attached herewith. We are aware that this value engineering change proposal must be approved by the State of Hawaii in the designated space below and that no work is to be performed until an approved change order has been given us. In case of rejection of this proposal by the State of Hawaii, we will continue all work in accordance with the existing contract terms.

NAME

TITLE

SIGNATURE

DATE

C. STATEMENT OF FUNDS:

Original contract Price	\$	_____
Amended Contract Price	\$	_____
New Contingency	\$	_____

D. SUMMARY DESCRIPTION AND POTENTIAL IMPACTS OF THE PROPOSED CHANGES:

E. TIME EXTENSION:

F. VALIDATION OF CHANGE ORDER Recommend for approval _____ CONSTRUCTION ENGINEER Approved: _____ PROCUREMENT OFFICER _____ DATE	G. REJECTION OF CHANGE ORDER _____ CONSTRUCTION ENGINEER Disapproved: _____ PROCUREMENT OFFICER _____ DATE
---	--

Reasons for rejection:

VALUE ENGINEERING CHANGE PROPOSAL
(Contractor Summary Sheet)

From _____
To _____
Project _____

Date _____
VECP No. _____
Contract No _____

Location _____

Summary of Change (Description - compare advantages and disadvantages, include all information required by the contract clauses and section §3-132-4 for value engineering change proposals)

Before (sketch, when applicable)

After

ESTIMATED COST SUMMARY (Costs shall be estimated in accordance with the change provisions contained in the General Clause of the contract. attach Cost Estimate form, for detailed estimate whenever applicable.)

	Qty	Unit Cost	Totals
A. Original	_____	_____	_____
B. Proposed	_____	_____	_____
C. Gross Savings(A-B)			_____
D. Contractor's Implementing Cost			_____
E. Total Estimated Decrease (C-D)			_____
F. State's Implementing Cost		_____	
G. Difference (E-F)		_____	
H. ½ difference (E-F*1/2)			_____
I. Reduction in Contract Price (E-H)			_____

DATE BY WHICH A CHANGE ORDER MUST BE

ISSUED SO AS TO OBTAIN MAXIMUM COST REDUCTION
Date

Contractor's Representative

Name Signature Date

Received By: STATE OF HAWAII

Name Signature Date

VALUE ENGINEERING CHANGE PROPOSAL (Contractor Required Information)

From _____	Date _____
To _____	VECP No. _____
Project _____	Contract No _____
Location _____	

INFORMATION REQUIRED OF THE CONTRACTOR (If answer to any of the following questions is "YES", explain in the remarks below)

		YES	NO
1	Does this proposal change affect the time of completion of the contract as stated in the General Conditions?		
2	Has the contractor submitted this proposed change previously to this office or any other government agency?		
3	Does this change affect other costs to the government, such as government -furnished property or costs of contract -related items?		
4	Does this proposed change increase the maintenance or operation costs of original or proposed items?		
5	Is a subcontractor involved in this proposed change to the contract?		
6	Does the Contractor intend to restrict the government's right to use any data described in this proposed change?		
7	Does this proposed change involve the use of proprietary materials?		

CHANGES OR REVISIONS TO DRAWINGS AND SPECIFICATIONS (Attach applicable contract drawings and specifications, including Contractor's or shop drawings of literature with all changes marked on the drawings and specifications.

REMARKS

Contractor's Representative

Name _____	Signature _____	Date _____
------------	-----------------	------------

Received By: STATE OF HAWAII

Name _____	Signature _____	Date _____
------------	-----------------	------------

APPENDIX**(ESTIMATE FOR FIELD ORDER OR BULLETIN)****CONTRACTOR'S ESTIMATE FOR CHANGE**

Date _____

Project

DAGS Job No: _____ Contractor / Sub _____

Reference Bulletin No: _____ Field Order _____

Description _____

MATERIALS

Description	Unit	Unit Price	Subtotal
_____	_____	_____	0.00
_____	_____	_____	0.00
_____	_____	_____	0.00
_____	_____	_____	0.00
_____	_____	_____	0.00
TOTAL FOR MATERIALS			\$0.00

01

LABOR		WAGES		FRINGE*	(Fringe) x Hrs	(Wage) x Hrs
Classification	Hrs	Hour Rate	Fringe Rate	Subtotal	Subtotal	
_____	0.0	0.00	0.00	0.00	0.00	
_____	0.0	0.00	0.00	0.00	0.00	
_____	0.0	0.00	0.00	0.00	0.00	
_____	0.0	0.00	0.00	0.00	0.00	
_____	0.0	0.00	0.00	0.00	0.00	

SUBTOTAL Fringe Rate x Hours

SUBTOTAL Wage Rate x Hours

*If requested, fringe benefits shall be identified separately under each classification

TOTAL FOR LABOR - Wages and Fringe (2 + 3)**SUBTOTAL - Materials and Labor (1 + 4)**

Overhead and Profit at 15% (maximum) 15 % of (5) \$0.00

Insurance and Taxes 0 % of (3) \$0.00

Overhead for Insurance and Taxes 6% 6 % of (7) \$0.00

TOTAL - MATERIALS and LABOR (5 + 6 + 7 + 8)**EQUIPMENT / REIMBURSABLE COSTS (per diem, air far, etc.)**

Classification	Unit/Hours	Unit	Rate	Subtotal
_____	_____	_____	_____	0.00
_____	_____	_____	_____	0.00
_____	_____	_____	_____	0.00

TOTAL FOR EQUIPMENT / REIMBURSABLE COSTS**SUBCONTRACTORS**

NAME	Amount	7% Markup	Subtotal
_____	0.00	0.00	0.00
_____	0.00	0.00	0.00
_____	0.00	0.00	0.00

TOTAL FOR SUBCONTRACTORS**TOTAL - MATERIALS, LABOR and EQUIPMENT / REIMBURSABLE (9 + 10 + 11)**

Bond Fee (if applicable) 1% maximum 0 % on (12) \$0.00

Gross Income Tax (Less Subcontractor's Cost) (11) 4.16 % on (12 + 13) \$0.00

TOTAL FOR CHANGE ORDER (12 + 13 + 14)**SAY \$ 0**

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APPENDIX

(CHANGE ORDER FORM)

CHANGE ORDER NO. _____ PROJECT TITLE: _____

DATE _____ DAGS JOB NO: _____ CONTRACT _____

ISSUED BY THE PUBLIC WORKS DIVISION CONTRACTOR: _____

A. CHANGES

THE FOLLOWING CHANGES ARE TO BE PERFORMED IN ACCORDANCE WITH ALL CONTRACT STIPULATIONS (SPECIFICATIONS, DRAWINGS, SPECIAL CONDITIONS, ETC.)

~~B. CONTRACTOR'S QUOTATION~~ THE CHANGES DESCRIBED IN A ABOVE WILL BE PERFORMED AT

A CONTRACT PRICE ☐ INCREASE OF \$ _____ AND A CONTRACT TIME ☐ EXTENSION OF _____ DAYS.
☐ DECREASE ☐ REDUCTION

NAME TITLE DATE

C. STATEMENT OF CONTRACT FUNDS & CONTRACT TIME

ORIGINAL CONTRACT PRICE	_____	ORIGINAL EXTRAS	_____	NOTICE TO PROCEED DATE	_____
PREVIOUS ADJUSTED CONTRACT PRICE	_____	PREVIOUS BALANCE OF EXTRAS	_____	ORIGINAL CONTRACT TIME	_____ WD
AMOUNT THIS CHANGE		AMENDMENT	_____	ORIGINAL COMPLETION DATE	_____
PLUS	_____	PLUS	_____	PREVIOUS TIME EXTENSIONS ALLOWED	_____ WD
MINUS	_____	MINUS	_____	TIME EXTENSIONS ALLOWED THIS CHANGE	_____ WD
NEW ADJUSTED CONTRACT PRICE	_____	NEW BALANCE OF EXTRAS	_____	NEW CONTRACT COMPLETION DATE	_____

D. VALIDATION OF CHANGE ORDER

APPROVAL RECOMMENDED

APPROVED

INSPECTION BRANCH CHIEF/ DISTRICT ENGINEER _____ DATE _____

PUBLIC WORKS ADMINISTRATOR _____ DATE _____

DISTRIBUTION

OFFICE - ORIGINAL INSPECTION BRANCH - 1
CONTRACTOR - 1

USER AGENCY - 1

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EXHIBIT C

SUPPLEMENTARY CONDITIONS

Section 5 – Exhibit C

The INTERIM GENERAL CONDITIONS (1999 Edition) published by the Public Works Division of the State of Hawaii Department of Accounting and General Services are incorporated herein and form a part of the Contract and Purchase Orders between the Contractor and the State of Hawaii School Facilities Authority, except as modified herein. The references below are to Sections in the INTERIM GENERAL CONDITIONS (1999 Edition). Copies of the INTERIM GENERAL CONDITIONS (1999 Edition) may be obtained from the State of Hawaii School Facilities Authority, 2759 South King Street, Room H201, Honolulu, HI 96826 or at the DAGS District Offices on Kauai, Maui and Hawaii.

The following clarifications and modifications apply to the INTERIM GENERAL CONDITIONS (1999 Edition):

- 1) When the term "Contract" is used to describe the Work associated with an individual project, the term "Contract" shall be replaced with "Purchase Order".
- 2) Whenever the term "Contract Time" is used to describe the duration associated with an individual project, the term "Contract Time" shall be replaced with "Purchase Order Completion Time".
- 3) Whenever the term "Contract Sum or Price" is used to describe the value associated with an individual project, the term "Contract Sum or Price" shall be replaced with "Purchase Order Price".
- 4) The Purchase Order Price shall set forth the fixed price, lump sum amount for which the Contractor is paid to complete the Detailed Scope of Work. Unless specifically stated for a Purchase Order, estimated quantities, lists of materials and bid prices shall not apply, the descriptions as related to costs and payment shall not apply, and the payment sections within the individual sections shall not apply.
- 5) All references to "Bid Items" shall be interpreted to mean scope of work broken down by Project Line Item Number (PLIN).
- 6) All references to "change order work", "extra work", "force account work", and any other descriptions to changes to the Detailed Scope of Work shall be interpreted to mean work described in a Detailed Scope of Work of a Supplemental Purchase Order.
- 7) Whenever the term "Bidder" is used, "Bidder" shall be replaced with "Offeror".
- 8) Whenever the term "Bid" is used, "Bid" shall be replaced with "Proposal".
- 9) Whenever the term "Comptroller" is used, "Comptroller" shall be replaced with "Contract Administrator".
- 10) Replace Accounting and General Services with "State of Hawaii School Facilities Authority".

Section 5 – Exhibit C

The following specific changes are made: Article 1 - Definitions

- 1.4 Replace this Section with the following: “ADMINISTRATOR – The Contract Administrator.”
- 1.5 Replace this Section with the following: “ADVERTISEMENT – A public announcement soliciting offers.”
- 1.9 Delete this Section.
- 1.12 Delete this Section.
- 1.13 Delete this Section.
- 1.21 Replace “Engineer” with “Project Coordinator (PC)”.
- 1.18 Delete this Section.
- 1.21 Replace “Contract” with “Purchase Order”.
- 1.23 Replace “Contract Price” with “Purchase Order Price”.
- 1.26 Replace this Section with the following: “DEPARTMENT - State of Hawaii School Facilities Authority (abbreviated SFA)”.
- 1.28 Replace this Section with the following: “ENGINEER – See Project Coordinator.”

Add the following new subsections:

- 1.65 PROJECT COORDINATOR – The Contract Administrator or the authorized engineering consultant assigned to the project.

Article 2 – Delete in its entirety

Article 3 – Delete in its entirety with the exception that Section 3.7 Requirement of Performance and Payment Bonds shall remain in full force and effect.

Modify Section 3.7 REQUIREMENT OF PERFORMANCE AND PAYMENT BONDS, by deleted subsection 3.7.1, 3.7.1.2, and 3.7.1.3 and substituting with the following new subsection 3.7.1, 3.7.1.1, and 3.7.1.2.

“3.7.1 Performance and Payment Bonds shall be required for contracts \$25,000 and higher. At the time of contract award, the successful Bidder shall file good and sufficient performance and payment bonds on the form furnished by the Department, each in an amount equal to one hundred percent (100%) of the amount of the Contract price unless otherwise stated in the solicitation of bids.

Acceptable performance and payment bonds shall be limited to the following:

3.7.1.1 Surety bonds underwritten by a company licensed to issue bonds in this State; or

Section 5 – Exhibit C

3.7.1.2 A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the State by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

- (a) These instruments may be utilized only to a maximum of \$100,000.
- (b) If the required amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be acceptable."

Modify Section 3.7 REQUIREMENT OF PERFORMANCE AND PAYMENT BONDS, by renumbering Section 3.7.2 to 3.7.3 and substituting the following new subsection 3.7.2:

"3.7.2 The Contractor shall properly acquire additional performance and payment bond protections when the Contract price is increased. The increase in protection shall equal one hundred percent (100%) of the increase in contract price. The Contractor is responsible to increase the penal amounts of the existing bonds or to obtain an additional bonds in order to secure additional protection for the Department.

- (a) Upon request of the Contracting Officer, the Contractor shall provide evidence in the form of a Bond Rider from the Surety documenting the additional performance and payment bond protections.
- (b) If the Contractor fails to deliver the required additional performance and payment bonds, the Department shall have remedies provided under Section 7.27 TERMINATION OF CONTRACT FOR CAUSE."

Modify Section 3.7 REQUIREMENT OF PERFORMANCE AND PAYMENT BONDS, by replacing subsection 3.7.3 (formerly 3.7.2) with the following new subsection 3.7.3:

"3.7.3 If the Contractor fails to deliver the required performance and payment bonds, the Contractor's award shall be cancelled, the Department shall have the remedies provided under Section

FAILURE TO EXECUTE THE CONTRACT, and award of the Contract shall be made to the next lowest responsible and responsive bidder."

Section 4.5 - Delete in its entirety

Section 5.12.4 – Is amended to replace the self-performance percentage from "not less than twenty percent (20%)" to "not less than ten percent (10%)"

Add new Section 7.2.4.2 The Schedule of Prices shall be at least broken down by Project Line Item Number (PLIN) and include each PLIN.

Section 7.22.5 Is amended to replace the "Engineer" with "Contract Administrator".

Section 5 – Exhibit C

Add new Section 7.22.6 Construction Schedule shall be maintained directly in HISFA's PMIS or uploaded to the PMIS Scheduling Tool in a format compatible with the PMIS. At the time this RFP was released, the following formats were supported:

- MPP (Microsoft Project)
- MPX (Microsoft Project, SureTrak)
- XER (Primavera P6, Primavera Contractor)
- PP (Asta Powerproject, Asta Easyplan)
- XML (Formatted for Microsoft Project, e.g. Smartsheet, OpenProject)
- XML (Primavera PMXML)
- PPX (Phoenix Project Manager)
- FTS (FastTrack Schedule)
- POD (ProjectLibre)
- GAN (GanttProject)
- PEP (TurboProject)
- PRX (Primavera P3)
- STX (Primavera SureTrak)
- CDPX (ConceptDraw PROJECT)
- CDPZ (ConceptDraw PROJECT)
- SP (Synchro Scheduler)
- ZIP (Compressed file containing one of the supported file types listed above)

The list above may change from time to time throughout the life of the contract. The Contract Administrator or Project Coordinator can provide an update list upon request. The Contractor shall also upload a pdf version of the Construction Schedule in accordance with Contract Administrator's requirements.

Section 5 – Exhibit C

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EXHIBIT D

CHECKLIST

Section 5 – Exhibit D

CHECKLIST

Offerors shall use this checklist provided to ensure all necessary documents and proposal forms are compiled as part of their Proposal. The SFA reserves the right to consider as acceptable only those Proposals submitted in compliance with all the requirements set forth in this RFP. See Section 2.4.

- ☐ **Compliance Documents** (See Section 2.2.4.)
- ☐ Proposal Forms 1 through 7 (See Section 4.1.2.)
- ☐ Photocopies of Licenses: A and/or B, (See Proposal Form 4)
- ☐ Operations and/or Field Manager(s) Resume(s) (See Proposal Form 4)
- ☐ **Insurance Requirements** (See Section 2.2.5.)

EXHIBIT E

RESERVED FOR
FUTURE USE

EXHIBIT F

CONTRACTOR'S AGREEMENT TO BE BOUND

This is to certify that the undersigned Contractor has examined a copy of the Project Labor Agreement between the State of Hawaii, the Hawaii Construction Alliance, and its Affiliated Labor Unions, and the Unions signatory to this Agreement ("PLA"). The undersigned Contractor hereby agrees to comply with all of the terms and conditions of the PLA on this Covered Project, entitled _[Name of Project]_.

The Contractor agrees to pay contributions to the bona fide fringe benefit trust funds established by the applicable Master Agreement(s) for each hour worked on the Covered Project, in the amounts designated in the applicable Master Agreement(s). By signing this Agreement To Be Bound, the Contractor adopts and agrees to be bound by the legally established trust agreements governing such trust funds, which may from time to time be amended. The Contractor authorizes the parties to such trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed. The Contractor agrees to execute a separate subscription agreement in the event the trust funds so require.

EXHIBIT G

SAMPLE LETTER OF ASSENT

LETTER OF ASSENT

Contract Administrator
School Facilities Authority
State of Hawaii
2759 S King Street, Room H201
Honolulu, Hawaii 96826

Dear Contract Administrator:

Subject: **PROJECT LABOR AGREEMENT FOR [Insert PROJECT TITLE AND PROJECT NUMBER] (PROJECT)**

This is to certify that the undersigned SUBCONTRACTOR has examined a copy of the PROJECT LABOR AGREEMENT (PLA) for the State of Hawaii, for the subject Project and hereby agrees to comply with all the terms and conditions of the PLA.

It is understood that the signing of this LETTER OF ASSENT shall be as binding on the undersigned SUBCONTRACTOR as though the SUBCONTRACTOR had signed the subject PLA.

This LETTER OF ASSENT shall become effective and binding upon the undersigned SUBCONTRACTOR on this _____ day of _____, and shall remain in full force and effect until the completion of the subject Project Construction Contract.

Sincerely,

Print Name
Company Title

SUBCONTRACTOR COMPANY NAME: _____

Contact Phone: _____

Contact Email: _____

Contact Person: _____

EXHIBIT H

SAMPLE ATTESTATION OF EXEMPTION

ATTESTATION OF EXEMPTION

Contract Administrator
School Facilities Authority
State of Hawaii
2759 S King Street, Room H201
Honolulu, Hawaii 96826

Dear Contract Administrator:

Subject: **PROJECT LABOR AGREEMENT FOR [Insert PROJECT TITLE AND PROJECT NUMBER] (PROJECT)**

This is to certify that the undersigned SUBCONTRACTOR has examined a copy of the PROJECT LABOR AGREEMENT (PLA) for the State of Hawaii, for the subject Project and attests that it will be performing only trade work not represented by PLA signatories.

If the SUBCONTRACTOR's scope of work is amended or otherwise changed to include trade work subject to the PLA this ATTESTATION OF EXEMPTION shall be withdrawn and the SUBCONTRACTOR shall execute a LETTER OF ASSENT which shall be submitted to the CONTRACTOR/SUBCONTRACTOR and shall be available to SFA upon demand.

This ATTESTATION OF EXEMPTION shall become effective and binding upon the undersigned SUBCONTRACTOR on this _____ day of _____, and shall remain in full force and effect until the completion of the subject Project Construction Contract.

Sincerely,

Print Name
Company Title

SUBCONTRACTOR COMPANY NAME: _____

Contact Phone: _____

Contact Email: _____

Contact Person: _____

Section 6

PROPOSAL FORMS

PROPOSAL FORM 1

RFP No. SFA-PCC24-01, FORM OF-1
STATE OF HAWAII, SFA

Submitted as instructed in Section 4.1.1

To Whom It May Concern:

To Whom It May Concern:

The undersigned has carefully read and understands the terms and conditions specified in the RFP and in its attachments and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, HRS, concerning prohibited State contracts.

The undersigned represents: **(Check ☒ one only)**

☐ A **Hawaii business** incorporated or organized under the laws of the State of Hawaii; **OR**

☐ A **Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii, but registered at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii.

State of incorporation: _____

Offeror is:

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

Federal I.D. No.: _____ Hawaii General Excise Tax License I.D. No.: _____

Payment address (other than street address below): _____

City, State, Zip Code: _____

Business Address (street address): _____

City, State, Zip Code: _____

Date: _____

Respectfully submitted:

Telephone No.: _____

Authorized (Original) Signature

Fax No.: _____

Name and Title (Type or Print)

E-mail Address: _____

* _____
Exact Legal Name of Company (Offeror)

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

PROPOSAL FORM 2 (PLEASE TYPE YOUR RESPONSE)

OFFEROR CERTIFICATION

Please complete the form and sign at the bottom of the page.

1. Offeror's (Contractor's) Name: _____
2. RFP No. SFA-PCC24-01 Prequalified Contractors to Provide General Contractor A and/or B Services Statewide
3. The Offeror, and its subcontractors, if any, are corporations or other legal entities, and have complied with all appropriate registration requirements, if any, of the Business Registration Division.
4. The Offeror and its subcontractors, if any, are or will be registered to do business in Hawaii and shall obtain State General Excise Tax Licenses by the start of the work.

FOR PROJECTS AWARDED UNDER THIS CONTRACT:

5. The Offeror's Proposal and the prices listed in the Proposal are firm and shall remain so throughout the Contract period.
6. The Offeror certifies that the prices and cost data were arrived at independently, without consultation, communication, or agreement with any other Offeror or competitor.
7. The Offeror certifies that unless otherwise required by law, the prices and cost data that were submitted have not been knowingly disclosed by the Offeror, directly or indirectly, to any other Offeror or competitor prior to the Award of the Contract.
8. The Offeror certifies that no attempt was made or shall be made by any Offeror to induce any other person or firm to submit or not to submit a price for the purpose of restricting competition.
9. The Offeror certifies that the price shall remain in effect for ninety (90) calendar days following the date the Proposals are due.

By signing this Certification, I, as a duly authorized representative of the Offeror and possessing the authority to bind the Offeror to the terms of this solicitation, hereby certify the information above is true and correct. Any falsification of the statements contained herein shall be grounds for rejection of the proposal, cancellation of an award, or termination of a contract.

Signature: _____

Print Name: _____

Title: _____

Date: _____

LIST OF ANY LAWSUITS OR PENDING LEGAL ACTIONS

☐ Offeror had lawsuits or pending legal actions, which affect or may affect the Offeror, which have taken place during the past 24 months. This shall include any lawsuits or pending legal actions involving the SFA.*

*If you checked the first box, please provide a list of lawsuits or pending legal actions here. The list shall include the status and disposition of the action. Please use the space provided below.

This image shows a full page of blank, white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page, typical of notebook or legal stationery. There are no margins, text, or other markings on the page.

PROPOSAL FORM 4

FINANCIAL SOLVENCY CERTIFICATION

Please answer numbers 1, 2, and 3 using the space provided, and sign at the bottom of the page.

1. Offeror's (Contractor's) Name: _____

2. Offeror's Point of Contact: _____
Name Phone Email

3. The Offeror certifies that the company has been in business for ____ years.

4. The Offeror certifies that the company is financially solvent.

5. The Offeror **MUST** attach a letter from the surety company stating the company's bonding capacity.

6. The Offeror **MUST** attach a copy of the Hawaii State Contractor's License **A and/or B**.

7. The Offeror **MUST** attach copies of Operations and/or Field Manager's resumes.

By signing this Certification, I, as a duly authorized representative of the Offeror and possessing the authority to bind the Offeror to the terms of this solicitation, hereby certify the information above is true and correct. Any falsification of the statements contained herein shall be grounds for rejection of the proposal, cancellation of an award, or termination of a contract.

Signature: _____

Print Name: _____

Title: _____

Date: _____

PROPOSAL FORM 5

OFFEROR'S INFORMATION

Contractor Name:	
DBA:	
Address:	
Remittance Address: (write "SAME" if same as above)	
Business Phone Number:	
Email:	

Contact Name	Title/Position	Cell Phone	Email

Please check the project types below that you are willing and licensed to perform and for which you will utilize your own direct labor.

Type	Place an X
Renovations	
New Construction	

Please check the types of work categories below that you are willing and licensed to perform and for which you will utilize your own direct labor.

Type	Place an X
General A	
General B	

For the categories checked above please write down the name, Contractor license type, and Contractor license number, please mention any Specialty Contractor licenses you may have.

Please X the location(s) that the Offeror can accept work:

Place X in box	Location(s)		Place X in box	Location(s)
	Oahu			Hawaii – East
	Maui			Hawaii – West
	Molokai			Kauai – East
	Lanai			Kauai - West

For each island checked above do you have workers based on that island or would you need to transport crews from another island? (8 pts. x 0 through 5) 40 max. pts.

--

Baseyard Capabilities (8 pts. x 0 through 5) 40 max. pts.

Please write down the address of each of your company baseyard(s), and the number of workers based out of each yard. Please attach information on a separate sheet of paper if more space is needed.

--

Work Hours (4 pts. x 0 through 5) 20 max. pts.

For each baseyard above please provide your regular work hours and days. Please state if the yard is capable of performing night, weekend or off hour work when necessary.

--

Please check the trades below that you are willing and licensed to perform and for which you will utilize your own direct labor. [place X in Yes or No]

No.	Discipline/Trade	YES	NO	Comment
1	General Construction			
2	Heavy Equipment Operation			
3	Crane Operation			
4	Earthwork			
5	Electrical			
6	Mechanical			
7	Flooring			
8	Grounds Maintenance			
9	Demolition			
10	Furniture Installation			
11	Painting			
12	Parking Lots and Walkways (hardscape)			
13	Plumbing			
14	PV Solar			
15	Roofing			
16	Security Systems			
17	Precast Concrete			
18	Utilities (water, sewer, drainage)			
19	Panelized Construction			
20	Landscaping			
21	Ornamental Guardrail and Fencing			
22	Irrigation and Lawn Sprinkler			
23	Welding			
24	Cabinet, Millwork, and Carpentry			
25	Carpentry Framing			
26	Glazier			

No.	Discipline/Trade	YES	NO	Comment
27	Masonry			
28	Drywall			
29	Regular and/or Coconut Tree Trimming			
30	Hazardous Material Abatement			

Please fill out all 4 experience forms

PROPOSAL FORM 6a (PLEASE TYPE YOUR RESPONSE)

COMPARABLE CONSTRUCTION EXPERIENCE

(5 pts. x 0 through 5)

1	Contractor's Name		
2	Client Name		
3	Project Name		
4	Project Number		
5	Was Final Acceptance Achieved or Anticipated after January 1, 2017? (put an X in applicable box)	Yes	
		No	
6	Initial Project Value \$		
7	Estimated % of Self Performed Work		
8	Estimated % of Subcontract Work		
9	Subcontractor Licenses (if any)		
10	Dollar Amount of Increases (if greater than 10% increase over the Initial Project Value, attach an additional sheet describing the circumstances of the changes)		
11	Client was one of the following (place X in applicable box)	City/County	
		State of Hawaii	
		Federal	
		Commercial	
12	Project Location (City, State)		
13	Project Scope:		
14	Description of any problems or major issues encountered during the project (if any) and what was done to resolve it.		

PROPOSAL FORM 6b (PLEASE TYPE YOUR RESPONSE)

COMPARABLE CONSTRUCTION EXPERIENCE

(5 pts. x 0 through 5)

1	Contractor's Name		
2	Client Name		
3	Project Name		
4	Project Number		
5	Was Final Acceptance Achieved or Anticipated after January 1, 2017? (put an X in applicable box)	Yes	
		No	
6	Initial Project Value \$		
7	Estimated % of Self Performed Work		
8	Estimated % of Subcontract Work		
9	Subcontractor Licenses (if any)		
10	Dollar Amount of Increases (if greater than 10% increase over the Initial Project Value, attach an additional sheet describing the circumstances of the changes)		
11	Client was one of the following (place X in applicable box)	City/County	
		State of Hawaii	
		Federal	
		Commercial	
12	Project Location (City, State)		
13	Project Scope:		
14	Description of any problems or major issues encountered during the project (if any) and what was done to resolve it.		

PROPOSAL FORM 6c (PLEASE TYPE YOUR RESPONSE)

COMPARABLE CONSTRUCTION EXPERIENCE

(5 pts. x 0 through 5)

1	Contractor's Name		
2	Client Name		
3	Project Name		
4	Project Number		
5	Was Final Acceptance Achieved or Anticipated after January 1, 2017? (put an X in applicable box)	Yes	
		No	
6	Initial Project Value \$		
7	Estimated % of Self Performed Work		
8	Estimated % of Subcontract Work		
9	Subcontractor Licenses (if any)		
10	Dollar Amount of Increases (if greater than 10% increase over the Initial Project Value, attach an additional sheet describing the circumstances of the changes)		
11	Client was one of the following (place X in applicable box)	City/County	
		State of Hawaii	
		Federal	
		Commercial	
12	Project Location (City, State)		
13	Project Scope:		
14	Description of any problems or major issues encountered during the project (if any) and what was done to resolve it.		

PROPOSAL FORM 6d (PLEASE TYPE YOUR RESPONSE)

COMPARABLE CONSTRUCTION EXPERIENCE

(5 pts. x 0 through 5)

v1	Contractor's Name		
2	Client Name		
3	Project Name		
4	Project Number		
5	Was Final Acceptance Achieved or Anticipated after January 1, 2017? (put an X in applicable box)	Yes	
		No	
6	Initial Project Value \$		
7	Estimated % of Self Performed Work		
8	Estimated % of Subcontract Work		
9	Subcontractor Licenses (if any)		
10	Dollar Amount of Increases (if greater than 10% increase over the Initial Project Value, attach an additional sheet describing the circumstances of the changes)		
11	Client was one of the following (place X in applicable box)	City/County	
		State of Hawaii	
		Federal	
		Commercial	
12	Project Location (City, State)		
13	Project Scope:		
14	Description of any problems or major issues encountered during the project (if any) and what was done to resolve it.		

PROPOSAL FORM 7

WORK CAPABILITIES

Evaluation of Work Capabilities [place an X in Yes or No] (10 pts. for each "Yes")

No.	Item	YES	NO
1	Can your company perform carpentry projects that may involve the installation of shelving and cabinetry?		
2	Can your company perform demolition work that may involve asbestos or lead abatement?		
3	Can you replace old iron water pipes in a building with copper piping?		
4	Can you replace copper, PVC, and DRISCO water lines?		
5	Can you replace a backflow preventer ranging in size from 3" to 12"?		
6	Can you install concrete curbing including an ADA compliant wheelchair ramp and/or walkway?		
7	Can you install expanded metal security fencing that requires welding?		
8	Can you tear off, dispose, and re-roof asphalt shingle, corrugated, and/or other metal roofs on walkways, pavilions, and/or cabins?		
9	Can you repair spalling concrete masonry unit (CMU) block?		
10	Can you paint a two-story building that will require scaffolding?		
11	Can you repair and/or replace a wooden deck including but not limited to posts, piers, pier blocks, joists, decking, handrails?		
12	Can you clear a root ball in sewer pipe of assorted sizes?		
13	Can you replace a corroded 480V breaker box with a new breaker box?		
14	Can you remove/install electric fixtures and outlets?		
15	Can you remove/replace 200 linear feet of a termite or water damaged covered walkway?		
16	Can you demolish existing and install new sinks, cabinets, and countertops?		
17	Can you relocate a 10-foot-tall tree?		
18	Can you install prefabricated classrooms on top of an existing one-story structure?		
19	Can you construct and install precast concrete wall panels for a two story classroom?		
20	Can you perform turnkey classroom renovation projects involving demolition, construction, and installation of furniture fixtures and equipment?		
21	Are you proficient in managing construction projects with Procore?		
22	Are you proficient in scheduling construction projects with professional scheduling tools like P6 or MS Project?		
23	Are you proficient with Building Information Modelling (BIM) tools?		
24	Can you prepare as built drawings?		
25	Are you licensed to abate and dispose of hazardous materials?		
26	Can you replace/install windows and doors?		