

STATE OF HAWAII

SPECIAL CONDITIONS

SC-01: INTERCHANGEABLE TERMS

The following terms are one and the same:

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

SC-02 INSURANCE COVERAGE

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

INSURANCE REQUIREMENTS are as follows:

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

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

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



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

SC-03: COMPLETION SCHEDULE AND LIQUIDATED DAMAGES

The Contractor shall complete all work as specified or indicated in the Contract Documents on or before twenty-four months after receiving written Notice to Proceed, subject to extensions, as may be granted

In case of failure on the part of the Contractor to complete the work within the time specified, the Contractor shall pay to DHHL as liquidated damages, and not as a penalty, \$100 per calendar day for each day that the project, in its entirety, remains incomplete.



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SC-04: PROCESS THROUGH CONSULTANT OF DHHL

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

SC-05: ALLOWANCES

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

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

SC-06: COMPLIANCE WITH COPELAND “ANTI-KICKBACK” ACT

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

SC-07: ENERGY EFFICIENCY

The Contractor shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163) for the State of Hawaii.

SC-08: REVISIONS TO DHHL INTERIM GENERAL CONDITIONS (DATED AUGUST 16, 2005)

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

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

ARTICLE 2: PROPOSAL REQUIREMENTS AND CONDITIONS



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In section 2.1.1.2, delete the second sentence, *“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.”*

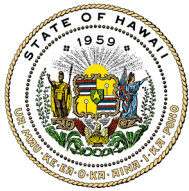
Replace section 2.1.1.7 on page 11 in its entirety with the following:

2.1.1.7 The Chairman may, in accordance with Section 103D-310 Hawaii Revised Statutes, require the prospective Bidder to submit answers to questions contained in the STANDARD QUALIFICATION QUESTIONNAIRE FOR PROSPECTIVE BIDDERS ON PUBLIC WORKS CONTRACTS, on the form provided by the Department, properly executed and notarized, setting forth a complete statement of the experience of such prospective Bidder and its organization in performing similar work and a statement of the equipment proposed to be used, together with adequate proof of the availability of such equipment, 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 questionnaire 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 questionnaire 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 questionnaire is hand carried, then the bearer is responsible to ensure that the notice is time stamped by said office. E-mail and facsimile (FAX) transmissions are not acceptable in whole or in part, under any circumstances. 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.

In section 2.6.1, delete the third sentence, *“The face of the envelope containing the request must be clearly marked ‘SUBSTITUTION REQUEST’”*.

Revise section 2.10 as follows:

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.~~ The time designated by the time stamping device in DHHL shall be official.



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

2.14 PROTESTS

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

ARTICLE 3: AWARD AND EXECUTION OF CONTRACT

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

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

The certificate of compliance shall be obtained on the State of Hawaii, DLIR Application for Certificate of Compliance with Section 3-122-112, HAR,



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Form LIR#27 which is available at <http://hawaii.gov/labor/forms/forms/DCD-LIR27.pdf>, or at neighbor island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to the purchasing agency.

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

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

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

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

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

The HCE provides the vendor with a "Certificate of Vendor Compliance" with current status as of the issuance date, accepted for both contracting purposes



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and final payment. Vendors that elect to use the HCE services are required to pay an annual fee of \$12.00.

ARTICLE 4: SCOPE OF WORK

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

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

ARTICLE 5: CONTROL OF WORK

5.2 – AUTHORITY OF THE PROJECT MANAGER

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

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

5.5 - SHOP DRAWINGS AND OTHER SUBMITTALS

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

5.6 – COORDINATION OF CONTRACT DOCUMENTS

After Section 5.6.4.1, insert the following new section:

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

5.9.3 – MANAGERING WORK

- Replace the word: “Managering” in this section title with “Engineering.”
- In the first, second, and fourth sentences of this section, replace the words “Managering” with “engineering.”
- In Section 5.9.3.4 – Replace the phrase “Civil Manager” with “Civil Engineer.”



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1. 5.12 – VALUE MANAGERING INCENTIVE

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

5.13 – SUBCONTRACTS

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

ARTICLE 7: PROSECUTION AND PROGRESS

Modify the following subsection on page 45 under:

7.2 - COMMENCEMENT REQUIREMENTS

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

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

7.3 - INSURANCE REQUIREMENTS

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

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

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



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- b. Automobile insurance providing coverage of no less than ONE MILLION DOLLARS (\$1,000,000.00) per accident.”

ARTICLE 8: MEASUREMENT AND PAYMENT

Modify the following subsections:

8.1 - MEASUREMENT OF QUANTITIES

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

8.4 - PROGRESS AND/OR PARTIAL PAYMENTS

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

8.4.6 Final Payment Requirements (§3-122-112, HAR). Contractor will submit the following with its invoice for final payment on the contract:

- (a) An original tax clearance certificate, not over two months old.
- (b) An original “Certification of Compliance for Final Payment” (SPO Form-22).

8.6 - RETAINAGE

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

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

- After Section 8.6.1, add the following new sections:

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

8.6.1.2. Contractor or Subcontractor may negotiate with, and retain from its respective subcontractors, a different retainage percentage which cannot exceed ten percent (10%).



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- Insert at the beginning of Section 8.6.3 on page 80: “Subject to approval by the Chairman, and at the Chairman’s sole discretion.”

SC-09: STATE GENERAL EXCISE TAX

This project is not exempt from the State of Hawaii General Excise Tax. The Contractor’s bid shall include the General Excise Tax for all work.