

DOWNLOADED SOLICITATION From Public Notice Website

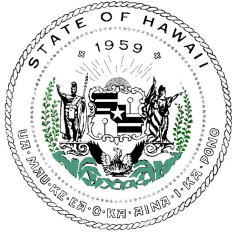
Offeror is advised that if interested in responding to this solicitation, Offeror may choose to submit its offer on a downloaded document **provided** Offeror registers its company by e-mail for this specific solicitation. If Offeror does not register its company, Offeror will not receive addenda, if any, and its offer **may be** rejected and not considered for award.

Registration or Request for Copy of Solicitation

Submit E-Mail to: jenna.k.yamauchi@hawaii.gov

Provide the following information:

- Name of Company
- Telephone Number
- Solicitation Number
- Mailing Address
- Facsimile Number
- Fedex (or equivalent) account number (document will be sent by U.S. Postal Service first class if this is not provided)
- Name of Contact Person
- E-Mail Address



DEPARTMENT OF HAWAIIAN HOME LANDS



LEGAL AD DATE: January 3, 2014

INVITATION FOR BIDS
No. IFB-14-HHL-012

SEALED OFFERS
FOR
FURNISHING AND INSTALLING ALARM EQUIPMENT
AND
ALARM MONITORING SERVICES
FOR THE DEPARTMENT OF HAWAIIAN HOME LANDS
KAPOLEI OFFICE FACILITY

WILL BE RECEIVED UP TO AND OPENED AT 2:00 P.M. (HST) ON

FEBRUARY 7, 2014

IN THE DEPARTMENT OF HAWAIIAN HOME LANDS, HALE PONOŌ CONFERENCE BUILDING, 91-5420 KAPOLEI PARKWAY, KAPOLEI, HAWAII 96707. DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO JENNA YAMAUCHI, TELEPHONE (808) 620-9532, FACSIMILE (808) 620-9559 OR E-MAIL AT jenna.k.yamauchi@hawaii.gov.

Important Dates:

Pre-Bid Conference

Written Inquiries Due Date

Friday, January 10, 2014 at 10:00 a.m. (HST)

Friday, January 17, 2014, 4:00 p.m. (HST)

Offeror _____
Name of Company

IFB-14-HHL-012

FURNISHING AND INSTALLING ALARM EQUIPMENT
AND ALARM MONITORING SERVICES
FOR THE DEPARTMENT OF HAWAIIAN HOME LANDS
KAPOLEI OFFICE FACILITY
IFB-14-HHL-012

Procurement Officer
Department of Hawaiian Home Lands
State of Hawaii
Honolulu, Hawaii 96813

Dear Sir:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications, Special Provisions and General Conditions, Form AG-008 (Revised 10/15/13) attached hereto; 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, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Offeror is:

- Sole Proprietor Partnership *Corporation Joint Venture
 Other _____

*State of incorporation: _____

Hawaii General Excise Tax License I.D. No.: _____ Federal I.D. No.: _____

Payment address (other than street address below): _____

City, State, Zip Code: _____

Business address (street address): _____

City, State, Zip Code: _____

Respectfully submitted:

Date: _____ (x) _____

Authorized (Original) Signature

Telephone No.: _____

Name and Title (Please Type or Print)

Fax No.: _____

E-mail Address: _____

** _____

Exact Legal Name of Company (Offeror)

**If Offeror is a ~~parent~~ or a ~~division~~ of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:

The following offer for Furnishing and Installing Alarm Equipment and Alarm Monitoring Services for the Department of Hawaiian Home Lands, Kapolei Office Facility, as specified herein, is hereby submitted:

1. **Alarm Equipment and Installation** Amount
\$ _____ (a)
 (A detailed list of equipment and installation charges should be attached to this Offer Form; tax included)

2. **Annual Alarm Monitoring Services (1st year)**
 (to be billed on a monthly basis, after-the-fact, tax included)

| <u>Monthly Bid Price</u> | <u>No. of Months</u> | <u>Amount</u> |
|--------------------------|----------------------|----------------|
| \$ _____ | X 12 | = \$ _____ (b) |

TOTAL BID PRICE FOR THE FIRST YEAR (line items (a) + (b)) \$ _____ (c)

.....

3. **Annual Alarm Monitoring Services (2nd year thru 5th year)**
 (to be billed on a monthly basis, after-the-fact, tax included)

| <u>Monthly Bid Price</u> | <u>No. of Months</u> | <u>Amount</u> |
|--------------------------|----------------------|----------------|
| \$ _____ | X 48 | = \$ _____ (d) |

TOTAL BID PRICE (line items (c) + (d)) \$ _____

Offeror _____
 Name of Company

Offeror shall provide the following information:

1. Number of years providing alarm installation and alarm monitoring services for commercial businesses and government agencies on the Island of Oahu: _____

2. Contact Person: _____

Telephone Number: _____

Cell Phone Number: _____

E-mail address: _____

3. REFERENCES:

Offeror shall list at least three commercial businesses and/or government agencies on the Island of Oahu for whom offeror has performed alarm installation and alarm monitoring services comparable to the services specified herein:

| <u>Name of Company</u> | <u>Address</u> | <u>Contact Name</u> | <u>Telephone No.</u> |
|------------------------|----------------|---------------------|----------------------|
|------------------------|----------------|---------------------|----------------------|

1. _____

2. _____

3. _____

Offeror _____
Name of Company

**WAGE CERTIFICATE
FOR SERVICE CONTRACTS**
(See Special Provisions)

Subject: IFB/RFP No.: IFB-14-HHL-012

Title of IFB/RFP: Furnishing and Installing Alarm Equipment and Alarm

Monitoring Services for the Department of Hawaiian Home

Lands, Kapolei Office Facility

Pursuant to Section 103-55, Hawaii Revised Statutes (HRS), I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed will be performed under the following conditions:

1. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with; and
2. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work, with the exception of professional, managerial, supervisory, and clerical personnel who are not covered by Section 103-55, HRS.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Payment in the final settlement of the contract or the release of bonds, if applicable, or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected; and

I further understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wage required by section 103-55, HRS.

Offeror _____

Signature _____

Title _____

Date _____

SPECIFICATIONS

This section indicates the Specifications required for the furnishing and installation of alarm equipment and alarm monitoring services at the Department of Hawaiian Home Lands Kapolei Office Facility. The Specifications listed herein are the minimum requirements and are mandatory for an accepted bid.

This solicitation includes three line items:

- 1) security alarm system equipment and installation cost (a detailed breakdown listing equipment and installation charges should be attached to the Offer Form),
- 2) annual security alarm monitoring services for the first year, and
- 3) security alarm monitoring services for the remaining four years (renewed on an annual basis per Special Provisions, Term of Contract section)

DHHL will award the solicitation based on the total five year period cost.

SCOPE OF WORK

To provide and install security alarm equipment (including an access control system) and alarm monitoring services (includes monitoring security alarm equipment and existing fire panel, 24-hour maintenance and service, periodic on-site maintenance inspections, quarterly testing of panic buttons and administration of the access control system including controlling the data entry and changes as authorized by DHHL) for the Department of Hawaiian Home Lands, Kapolei Office Facility, 91-5420 Kapolei Parkway, Kapolei, Hawaii, 96707.

DHHL is currently utilizing 17 magnetic door contacts in combination with motion and audio sensors and keypads to secure the interior of its buildings. It also incorporates 10 panic buttons (some of them being wireless), 2 sirens, a temperature alert, and a cell phone backup communication.

DHHL also employs an access control system incorporated with the alarm system that controls 10 entryways and are secured by electric door strikes that use proximity readers and swipe cards. Each entryway should be independently controlled based on an individual's clearance level.

DHHL owns the existing wiring and electric door strikes. All other equipment will be provided and installed by the Offeror. Any additional labor and wiring, if necessary, to install equipment is the responsibility of the Offeror and shall be included in the bid price. There will be no additional compensation outside the total bid price.

Due to security reasons DHHL cannot include the details of the entire alarm system in this solicitation. However, a listing of existing alarm equipment and tour of the facility will be conducted at the pre-bid conference.

EQUIPMENT

All equipment installed must be non-proprietary. All control panels, keypads, or other equipment requiring programming must be either keypad programmable, or programmed in such a manner that would be reasonably expected not to preclude any other alarm company from programming, servicing, or monitoring the alarm equipment. Upon completion of installation, the alarm company will provide DHHL with all installation, programming, and user documentation, including a completed programming guide indicating all programming entries and options.

All communicators must be capable of transmitting either 4x2, Contact ID, or SIA standardized communications formats.

Upon notification by either party of non-renewal of ongoing services or upon successful completion of current contract obligations, the vendor will provide DHHL with any necessary installer programming or lockout codes, as well as any other software, devices, or items that would be reasonably expected for any other alarm company to be able to program, service, or monitor the alarm equipment. All equipment provided and installed will be the property of DHHL upon final payment for alarm equipment and installation (Offer Form, Page OF-2, Line Item 1).

Equipment Substitution Requests

Manufacturer's brands and stock/part numbers specified on the equipment list (to be distributed at the pre-bid conference) do not denote a preference for that make, but specify the level of quality desired. Alternate brands found to be equal to or greater in quality to the brand specified may be accepted by the Issuing Officer, however the burden to prove equality shall rest with the Bidder.

The Issuing Officer shall be the sole judge as to its acceptability. Substitution requests must be received within seven (7) calendar days after the pre-bid conference date. Any acceptable modifications or clarifications shall be made by issuance of an addendum, and shall be given by written notice to all parties.

Substitution requests shall be sent to the Issuing Officer indicated in the Special Provisions section of this IFB.

Bidders are cautioned to review the Specifications carefully and thoroughly. Bidders shall carefully review this solicitation for defects and questionable or objectionable matter. All questions shall be submitted in writing via e-mail (preferred method) to jenna.k.yamauchi@hawaii.gov or via fax at 808-620-9559. The submittal of a bid shall be considered as acceptance of the Specifications and Special Provisions as published.

SPECIAL PROVISIONS

TERMS AND ACRONYMS USED HEREIN

| | | |
|---------------------|---|---|
| Procurement Officer | = | The contracting officer for the Department of Hawaiian Home Lands |
| DHHL | = | Department of Hawaiian Home Lands |
| SPO | = | State Procurement Office of the State of Hawaii |
| Bidder or Offeror | = | Any individual, partnership, firm, corporation, joint venture, or other entity submitting directly or through a duly authorized representative or agent, a bid for the good, service, or construction contemplated. |
| HRS | = | Hawaii Revised Statutes |
| HAR | = | Hawaii Administrative Rules |
| IFB | = | Invitation for Bids |
| RFP | = | Request for Proposals |
| GET | = | General Excise Tax |

1.0 SCOPE

The furnishing and installation of alarm equipment and alarm monitoring services for the DHHL Kapolei Office Facility shall be in accordance with these Specifications and Special Provisions of IFB No. IFB-14-HHL-012. The State's General Conditions, Form AG-008 (4/15/2009) and applicable contract forms, although not physically attached, are included by reference and made a part hereof. Copies of these documents can be obtained by making a request to the Procurement Officer.

2.0 AUTHORITY

This IFB is issued under the provisions of the State Procurement Code (HRS Chapter 103D) and the State Procurement Office's applicable Directives, Circulars and administrative rules. All prospective Offerors are charged with the presumptive knowledge of all applicable legal authorities. Submission of a valid executed offer by any prospective Offeror shall constitute admission of such knowledge on the part of such prospective Offeror.

Any Agreement arising out of this offer is subject to the approval of the State Department of the Attorney General, as to form, and to all further approvals as required by statute, administrative rule, order, or other directive.

3.0 PROCUREMENT OFFICER

The Procurement Officer is responsible for administering and overseeing the Contract, including monitoring and assessing contractor performance. The Procurement Officer for the Contract is:

Jenna Yamauchi
91-5420 Kapolei Parkway
Kapolei, HI 96707
Telephone: (808) 620-9532
Facsimile: (808) 620-9559

4.0 ISSUING OFFICER

The individual listed below is the **sole** point of contact from the date of release of this IFB until the selection of the Offeror to which a Contract will be awarded:

Jenna Yamauchi
91-5420 Kapolei Parkway
Kapolei, HI 96707

Telephone: (808) 620-9532

Facsimile: (808) 620-9559

e-mail: jenna.k.yamauchi@hawaii.gov

5.0 CONTRACT ADMINISTRATOR

For the purpose of this contract, the Contract Administrator is Ms. Jenna Yamauchi, or his designated representative, telephone (808) 620-9532.

6.0 TERM OF CONTRACT

The term of contract for alarm monitoring services shall be for the twelve (12) month period commencing from April 1, 2014.

Unless terminated, the contract may be extended without re-bidding, upon mutual agreement in writing between the State and the Contractor, prior to the expiration date, for not more than four (4) additional twelve (12) month periods, or parts thereof. Provided, however, the contract price for the extended period shall remain the same or lower than the contract price indicated on the Offer Form.

The Contractor or the State may terminate any extended contract period at any time upon sixty (60) days prior written notice.

Funding for succeeding periods are subject to the availability and appropriation of funds therefore.

7.0 RESPONSIBILITIES OF OFFEROR

Offeror is advised that if awarded a contract under this solicitation, Offeror shall, upon award of the contract, furnish proof of compliance with the requirements of §103D-310(c), HRS:

1. Chapter 237, tax clearance;
2. Chapter 383, unemployment insurance;
3. Chapter 386, workers compensation;
4. Chapter 392, temporary disability insurance;
5. Chapter 393, pre-paid health care;
6. Chapter 103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

Refer to the Award of Contract provision herein for instructions on furnishing the documents that are acceptable to the State as proof of compliance with the above-mentioned requirements.

8.0 OFFEROR QUALIFICATIONS

Offeror must meet the following qualifications (before award is made):

1. must have a permanent, Hawaii-based facility from where business is conducted and where Contractor will be accessible to telephone calls for complaints or requests that require immediate attention;
2. shall be a manufacturer-authorized distributor or reseller of the system offered;
3. shall have a 24-hour central monitoring facility;
4. shall have at least five (5) years of previous experience providing similar services;
5. shall confirm ability to properly install and maintain equipment offered;
6. shall maintain an adequate supply of replacement parts for system components;
7. shall have the ability to acquire replacement parts within five (5) working days. In the event replacement parts are not in stock, Contractor shall be able to provide temporary equipment to maintain the security system until replacement parts are restored; and
8. shall provide three (3) references. Business name, contact person and phone number.

9.0 CERTIFICATION OF INDEPENDENT COST DETERMINATION

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

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

10.0 SITE INSPECTION

For informational purposes, Attachment A, DHHL Kapolei Office Facility Floor Plans, has been provided. A pre-bid conference will be conducted so Offerors may inspect the location to thoroughly familiarize themselves with existing conditions, rules and regulations, and the extent and nature of work to be performed. Attendance and inspection at the pre-bid conference is not mandatory, however, submission of an offer shall be evidence that the Offeror understands the scope of the project and shall comply with specifications herein, if awarded the contract. No additional compensation, subsequent to bid opening, shall be allowed by reason of any misunderstanding or error regarding site conditions or work to be performed.

Offerors will be able to view the facility at the pre-bid conference.

11.0 PRE-BID CONFERENCE

A pre-bid conference will be held at the DHHL Kapolei Office Facility, Hale Ponoq Conference Building, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707. Attendance for the pre-bid conference is not mandatory. The date for the conference is **Friday, January 10, 2014 at 10:00 a.m. (HST)**. This pre-bid conference will be for the purpose of inspecting the building facilities and reviewing existing alarm equipment required for this solicitation.

Offerors should register for the pre-bid conference with the Issuing Officer. Attendees will be required to provide identification (i.e. business card and picture identification) to confirm association with registered Offeror.

Offeror is advised that anything discussed at the pre-bid conference does not change any part of this solicitation. All changes and/or clarifications to this solicitation shall be done in the form of written addenda.

12.0 INQUIRIES

All inquiries regarding any item in this IFB shall be in writing and received by the Issuing Officer by **Friday, January 17, 2014, 4:00 p.m. (HST)**. Only those written inquiries received by the deadline shall be responded to. An Addendum shall be issued to provide Offerors with a list of inquiries and responses. The State's responses shall not be construed to make any changes to the IFB unless otherwise revised by an addendum.

13.0 BID PREPARATION

13.1 Offer Form, Page OF-1. Bidder is requested to submit its offer using Bidder's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate space on Offer Form, page OF-1. Failure to do so may delay proper execution of the contract.

The authorized signature on the first page of the Offer Form shall be an original signature in ink, which shall be required before an award, if any, can be made. The signed Offer Form page OF-1 shall indicate Bidder's intent to be bound.

13.2 Bid Quotation. Unit bid price shall include labor, equipment, installation, transportation, storage, training, all applicable taxes and any other costs incurred to provide services specified.

13.3 Tax Liability. Work to be performed under this bid solicitation is a business activity taxable under Chapter 237, Hawaii Revised Statutes (HRS) and Chapter 238, HRS, where applicable. Both out-of-state vendors and Hawaii vendors are advised that the gross receipts derived from this bid solicitation are subject to the general excise tax imposed by Chapter 237, HRS at the current rate and, where applicable, to tangible property imported into the State of Hawaii for resale, subject to the applicable use tax imposed by Chapter 238, HRS.

The State of Hawaii Information on Hawaii State Taxes Administered by the Department of Taxation, Publication 1 (Revised 2012) is available online at <http://www6.hawaii.gov/tax/pubs/12pub1.pdf>.

If, however, a Bidder is a person exempt by the HRS from paying the general excise tax and therefore not liable for the taxes on this solicitation, Bidder shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

For evaluation purposes, pursuant to §103D-1008, HRS, a tax-exempt bid 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.

13.4 References. Bidder shall furnish on the appropriate Offer Form page at least three (3) references on the Island of Oahu for whom the bidder has performed custodial services. The State reserves the right to contact the listed references to inquire about the bidder's performance.

13.5 Insurance. Work included under this agreement requires the provision of liability and property damage insurance to remain in full force and effect during the life of this contract. Bidder shall refer to the *Liability Insurance* clause for additional information regarding this requirement. Accordingly, Bidder should consider these insurance requirements when preparing this proposal.

13.6 Confidential Information. Offerors shall designate those portions of their offer that contain trade secrets or other proprietary data that are to remain confidential subject to Hawaii Administrative Rules (HAR) §§ 3-122-21(a)(7) and 3-122-30 (c) and (d). Material designated as confidential shall be readily separable from the offer in order to facilitate public inspection of the non-confidential portion of the offer. Prices, makes and models, or catalogue number of items offered, deliveries and terms of payment, shall be publicly available at the time of opening regardless of any designation to the contrary.

14.0 STATUTORY REQUIREMENTS OF SECTION 103-55, HRS

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

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

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

15.0 PRICE ADJUSTMENT DUE TO WAGE INCREASE TO STATE EMPLOYEES

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

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

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

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

Example:

| | |
|---------------------------|--|
| Original contract period: | October 1, 2007, to September 30, 2008 |
| Extension period: | October 1, 2008, to September 30, 2009 |

The option to extend the original contract is exercised for the period October 1, 2008, to September 30, 2009. On March 1, 2008, the State announces a pay raise, and the Contractor soon thereafter submits a request of a price adjustment accompanied by acceptable documentation. A contract modification is issued to reflect a price adjustment for the remainder of current period of the contract, March 1, 2008, to September 30, 2008.

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

- a. Bid Price/Hr/Janitor I (A) = (A) for example = \$15.00/hr
- b. Current Hourly Wage Rate (B) = (B) for example = \$14.80/hr
- c. New Hourly Wage Rate paid to State Employees eff. 3/1/08 (C) = (C) for example = \$14.98/hr
- d. Hourly Wage Increase to State employees (D) = (D) for example = \$.18/hr
- e. Adjusted Bid Price/Hr/Officer (E) = (A) + (D), or
\$15.00 + \$.18 = \$15.18/hr

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

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

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

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

- a. 16% for Allowable Fringe Benefits
- b. \$ Adjusted for Allowable Fringe Benefits (F) = (D) x (.16) = F, or
\$.18 x .16 = \$.03
- c. Adjusted Bid Price/Hr/Officer + Fringe Benefits = (E) + (F), or
\$15.18 + \$.03 = \$15.21

7. After the contract modification for the increase is issued by the State, but before payment of an increase is made on the portion of the current contract period already performed, the Contractor shall show proof that its employees were given the retroactive wage increase.

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

16.0 AWARD OF CONTRACT

16.1 Method of Award. Award, if made, shall be to the responsive, responsible Bidder submitting the lowest Total Annual Bid Price . Bid Item Nos. 1 to 3. Bidder must bid on every item listed in order to qualify for award. Failure to bid on every line item shall result in rejection of bid.

16.2 Responsibility of Lowest Responsive Bidder. Reference §103D-310(c), HRS. If compliance documents have not been submitted to DHHL prior to award, the lowest responsive and responsible offeror shall produce documents to the Procurement Officer to demonstrate compliance with this section.

16.3 Final Payment Requirements. Contractor is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to the tax clearance certificate, an original %Certification of Compliance for Final Payment+ (SPO Form-22), will be required for final payment. A copy of the Form is available at www.spo.hawaii.gov. Select %Forms for Vendors/Contractors+ from the Procurement of Goods, Services, & Construction - Chapter 103D, HRS, menu.

16.4 Hawaii Compliance Express. Alternately, instead of separately applying for these certificates at the various state agencies, vendors may choose to use the Hawaii Compliance Express (HCE), which allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a %Certificate of Vendor Compliance.+ The HCE provides current compliance status as of the issuance date. The %Certificate of Vendor Compliance+ indicating that vendor status is compliant with the requirements of §103D-310(c), HRS, shall be accepted for contracting and final payment purposes. Vendors that elect to use the new HCE services will be required to pay an annual fee of \$12.00 to the Hawaii Information Consortium, LLC (HIC). Vendors choosing not to participate in the HCE program will be required to provide the paper certificates as instructed in the sections previous to this one.

16.5 Timely Submission of all Certificates. The above certificates should be applied for and submitted to DHHL as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

17.0 ACCEPTANCE OF OFFER

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

18.0 CONTRACT EXECUTION

The State shall forward a formal contract to the successful bidder for execution. The contract

shall be signed by the successful bidder and returned within ten (10) days after receipt by the bidder. Upon execution of the contract, DHHL will issue a fully executed copy to the Contractor. No work will be undertaken by the Contractor prior to receiving the Notice to Proceed letter. NO PERFORMANCE AND PAYMENT BONDS ARE REQUIRED.

If the option(s) to extend are mutually agreed upon, Contractor shall enter into a supplemental agreement for each extended period.

The Contractor or the State may terminate the extended contract period at any time upon sixty (60) days prior written notice.

19.0 NOTICE TO PROCEED

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

No work is to be undertaken by the Contractor prior to the commencement date specified on the Notice to Proceed issued by the State upon execution of the contract by both parties. The State of Hawaii is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official commencement date.

20.0 LIABILITY INSURANCE

The Contractor shall maintain in full force and effect during the life of this contract, liability and property damage insurance to protect the Contractor and his subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by himself or by a 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 or policies shall name the subcontractor as additional insured.

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

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

| <u>Coverage</u> | <u>Limits</u> |
|---|---|
| Commercial General Liability (occurrence form) | \$2,000,000 combined single limit per occurrence for bodily injury and property damage |
| Basic Motor Vehicle Insurance and Liability Policies | \$1,000,000 combined single limit |

Each insurance policy required by this contract, including a subcontractor's policy, shall contain the following clauses:

1. "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the State of Hawaii, Department of Hawaiian Home Lands, P.O. Box 1879, Honolulu, Hawaii 96805."
2. Additional Insured: "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
3. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements.

Upon Contractor's execution of the contract, the Contractor agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of this contract, including those of its subcontractor(s), where appropriate. Upon request by the State, Contractor shall be responsible for furnishing a copy of the policy or policies.

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

The procuring of such required insurance shall not be construed to limit Contractor's liability hereunder nor 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.

21.0 RESPONSIBILITY FOR ACCURACY, COMPLETENESS AND ADEQUACY

The Contractor covenants and agrees that he shall be responsible and accountable for the accuracy, completeness, clarity and adequacy of the work performed. The Contractor agrees to perform the work in a good workmanlike manner with an attitude that shall involve a personal desire to place DHHL's interest above other considerations, and accept the responsibility for the services to be rendered.

22.0 SUBCONTRACTORS

The Contractor shall not delegate any duties listed in this IFB to any subcontractor unless the Contract Administrator has given written approval. The State reserves the right to approve all subcontractors and shall require the primary contractor to replace any subcontractors found to be unacceptable. The primary contractor will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract, and shall be responsible for all services whether or not the primary contractor performs them.

23.0 LOSSES OR DAMAGES

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

24.0 INSPECTIONS

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

25.0 RE-EXECUTION OF WORK

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

26.0 INVOICING

Contractor shall send an original monthly invoice to:

Department of Hawaiian Home Lands
Attn: Administrative Services Office
P.O. Box 1879
Honolulu, Hawaii 96805

All invoices shall reference the IFB and contract number.

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

27.0 PAYMENT

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

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

28.0 LIQUIDATED DAMAGES

Refer to the State's General Conditions. Liquidated damages is fixed at the sum of TWO HUNDRED FORTY DOLLARS (\$240.00) per each and every calendar day per location per violation the Contractor fails to perform in whole or in part any of his obligations specified herein. Liquidated damages, if assessed, may be deducted from any payments due or to become due to the Contractor.

29.0 RIGHTS AND REMEDIES FOR DEFAULT

In the event the Contractor fails, refuses, or neglects to perform the services in accordance with the requirements of these Special Provisions, the Specifications, and General Conditions herein, in addition to any other recourse allowed by law, the State reserves the right to purchase 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 the Contractor, the difference between the price named in the contract and the actual cost thereof to the State. In case any money due the Contractor is insufficient for said purpose, the Contractor shall pay the difference upon demand by the State. The State may also utilize all other remedies provided by law.

30.0 PROTEST

A protest shall be submitted in writing within five (5) working days after the posting of the award as listed below; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers.

The notice of award letter(s), if any, resulting from this solicitation shall be posted on the Procurement Reporting System, which is available on the SPO website: <http://spo.hawaii.gov/>.

Any protest pursuant to §103D-701, HRS, and Section 3-126-3, HAR, shall be submitted in writing to the Procurement Officer, DHHL, P.O. Box 1879, Honolulu, Hawaii 96805.

GENERAL CONDITIONS

Table of Contents

| | <u>Page(s)</u> |
|---|----------------|
| 1. Coordination of Services by the STATE..... | 2 |
| 2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities..... | 2 |
| 3. Personnel Requirements | 3 |
| 4. Nondiscrimination | 3 |
| 5. Conflicts of Interest | 3 |
| 6. Subcontracts and Assignments | 3 |
| 7. Indemnification and Defense..... | 4 |
| 8. Cost of Litigation..... | 4 |
| 9. Liquidated Damages | 4 |
| 10. STATE'S Right of Offset..... | 4 |
| 11. Disputes | 4 |
| 12. Suspension of Contract..... | 4 |
| 13. Termination for Default..... | 5 |
| 14. Termination for Convenience..... | 6 |
| 15. Claims Based on the Agency Procurement Officer's Actions or Omissions..... | 8 |
| 16. Costs and Expenses | 8 |
| 17. Payment Procedures; Final Payment; Tax Clearance | 9 |
| 18. Federal Funds | 9 |
| 19. Modifications of Contract..... | 9 |
| 20. Change Order..... | 10 |
| 21. Price Adjustment | 11 |
| 22. Variation in Quantity for Definite Quantity Contracts | 11 |
| 23. Changes in Cost-Reimbursement Contract..... | 11 |
| 24. Confidentiality of Material | 12 |
| 25. Publicity..... | 12 |
| 26. Ownership Rights and Copyright | 12 |
| 27. Liens and Warranties | 12 |
| 28. Audit of Books and Records of the CONTRACTOR..... | 13 |
| 29. Cost or Pricing Data | 13 |
| 30. Audit of Cost or Pricing Data | 13 |
| 31. Records Retention..... | 13 |
| 32. Antitrust Claims..... | 13 |
| 33. Patented Articles..... | 13 |
| 34. Governing Law | 14 |
| 35. Compliance with Laws | 14 |
| 36. Conflict between General Conditions and Procurement Rules | 14 |
| 37. Entire Contract..... | 14 |
| 38. Severability..... | 14 |
| 39. Waiver | 14 |
| 40. Pollution Control | 14 |
| 41. Campaign Contributions..... | 14 |
| 42. Confidentiality of Personal Information..... | 14 |

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 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.