

**GROUNDS MAINTENANCE FOR THE WAIEHU KOU SUBDIVISION PH. 2, 3, AND 4  
IFB-17-HHL-004**

TABLE OF CONTENTS

<b><u>IFB NOTIFICATION AND INFORMATION</u></b>	<b><u>PAGE</u></b>
IFB SIGN-IN SHEET .....	1
IFB NOTICE.....	1-2
MAINTENANCE WAGE RATE SCHEDULE.....	1
STATE HOLIDAY 2016 – 2017.....	1
 <b><u>CONTRACTOR'S SUBMITTAL</u></b>	
INSTRUCTIONS FOR BID SUBMITTAL.....	1-13
TITLE PAGE (BID PACKAGE ENVELOPE COVER) .....	1
BID OFFER FORM .....	1-9
 <b><u>SAMPLE DHHL CONTRACT</u></b>	
CONTRACT FOR GOODS OR SERVICES (FORM AG-003 REV. 06/22/2009).....	1-2
CONTRACTOR’S ACKNOWLEDGMENT (FORM AG-009 REV. 07/25/2008).....	1
CONTRACTOR’S STANDARDS OF CONDUCT (FORM AG-010 REV. 11/15/2005).....	1
SCOPE OF SERVICES (FORM AG-011 REV. 7/28/2005).....	1
COMPENSATION AND PAYMENT SCHEDULE (FORM AG-012 REV. 11/15/2005).....	1-2
TIME OF PERFORMANCE (FORM AG-013 REV. 11/15/2005).....	1
CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE (FORM AG-014 REV.6/26/2006) .	1
SPECIAL CONDITIONS (FORM AG-015 REV. 11/15/2005).....	1-8
103D GENERAL CONDITIONS (FORM AG-008) .....	1-16

**Clearing and Grubbing of Waiehu Kou Subdivision  
Waiehu Kou, Island of Maui**

**SPECIFICATIONS**

**GENERAL SCOPE OF WORK**

The Selected Contractor shall furnish all labor, equipment, cleaning supplies, materials and supervision to satisfactorily provide complete monthly maintenance, inspection and repairs to landscaped areas, irrigation systems, drainage systems and other related work as specified for the approximately 40-acres located within the Waiehu Kou Subdivisions, Phases 2, 3, and 4. There is not work to be done in Phase 1.

**WAIIEHU KOU SUBDIVISION, PHASE 2 AND PARK SITE**

<b>Item</b>	<b>Area Description</b>	<b>TMK</b>	<b>Approximate Size</b>
1	Commercial Lot 112	3-2-023:055	2.2 Acres
2	Open Grass Swales	Portion of 3-2-023:056	1.2 Acres
3	Retention Basin	Portion of 3-2-022:057	2.0 Acres
4	Phase 2 Park	Portion of 3-2-022:057	1.2 Acres

**Detailed Scope of Work Phase 2 (Commercial Lot 112, Open Grass Swales, and Retention Basin):**

1. Mowing/weed whacking shall occur at monthly intervals completed within 5 consecutive working days. Care should be taken to ensure that grass is not mowed too short for environmental conditions and/or terrain. Mowing height shall not exceed 4.5". Scalping is prohibited.
2. Litter and debris shall be removed from areas, fence lines, shrubs, etc., prior to mowing. No trash or debris is to be cut by the mower.
3. Grass clippings may be broadcast or bagged if the clippings are not left windrowed or blanketing the grass.
4. Open Grass Swales: Clear from the perimeter fence, down the swale, across to the opposite bank and 10' up the bank.
5. Commercial Lot 112: Clear 10' from fence as noted in red on Phase 2 map
4. All fences abutting the project must be kept free and clear of all vegetation.

**Detailed Scope of Work for Phase 2 Park Site**

1. Inspect irrigation equipment for leaks, breaks, and any malfunction monthly and make repairs as needed.
2. Weekly mowing/weed whacking, trimming around trees and signs, edging of lawn area, and weekly weeding.
3. Grass clippings shall be removed from all paved areas.
4. Removal of leaves, trash, debris, and relining of the trash receptacles shall be completed every Monday and Friday.

5. Grass not to exceed 3” in height
6. All fences abutting the project must be kept free and clear of all vegetation.
7. On an “As Needed Basis” (Contingent Item), pruning or skirting of trees.

**Deliverables**

**Phase 2 (Commercial Lot 112, Open Grass Swales, and Retention Basin)**

The purpose of the work is to maintain the grassed areas of Waiehu Kou Phase 2 (Lot 112, Open Grass Swales and Retention Basin) and minimize the potential of erosion during inclement weather, and the prevention of dust problems during other times.

**Phase 2 Park Site**

The purpose of the work is to maintain the existing landscape, including soil, and irrigation systems (existing) of the Waiehu Kou Subdivision Phase 2 Park Site in a healthy, thriving and weed free condition, to achieve the highest level of quality for public health, safety, welfare and enjoyment.

Landscaping maintenance of the Waiehu Kou Phase 2 Park shall include but is not limited to watering, weeding (manual and chemical), fertilizing, mowing, edging, trimming, skirting, pruning, applying chemicals, adjusting and repairing the irrigation system, and picking up and disposing of debris. Turf shall be maintained in a manner that promotes proper health, growth, rich natural green color and neat uniform manicured appearance, free of bare areas, ruts, holes, weeds and unwanted vegetation that present an unsightly appearance. All clippings, branches, and debris shall be bagged and hauled immediately or at the end of the workday. Receptacles must be relined for proper maintenance every Monday and Friday.

The contractor shall strive to meet these performance standards:

- Vegetation cover of at least 80% with uniform plant density.
- Existing Park Area: Weed control and maintenance program resulting in weed population below 25%.

**WAIEHU KOU SUBDIVISION, PHASE 3**

<b>Item</b>	<b>Area Description</b>	<b>TMK</b>	<b>Approximate Size</b>
1	Lot 119	Portion 3-2-012:005	2.0 Acres
2	Lot 120	3 2-012:006	8.0 Acres
3	Lot 121	Portion 3-2-012:004	4.0 Acres
4	Service Road 3A (back of Sewer Pump Station)	Portion 3-2-120:005	14’ wide

**Detailed Scope of Work:**

1. Mowing/weed whacking shall occur at monthly intervals completed within 5 consecutive working days. Care should be taken to ensure that grass is not mowed too short for environmental conditions and/or terrain. Mowing height shall not exceed 4.5". Scalping is prohibited.
2. Litter and debris shall be removed from areas, fence lines, shrubs, etc., prior to mowing. No trash or debris is to be cut by the mower.
3. Grass clippings may be broadcast or bagged if the clippings are not left windrowed or blanketing the grass. Clippings should be virtually invisible after mowing is completed.
4. Grass clippings shall be removed from all paved areas.
5. Inspect irrigation equipment (if applicable) for leaks, breaks, and any malfunction monthly and make repairs as needed
6. Monthly maintenance of Service Road 3A (14' wide) shall be done to allow vehicles to access the back of the retention basin and the back of the Waiehu Kou Sewer Pump Station.
7. All fences abutting the project must be kept free and clear of all vegetation.

**WAIIEHU KOU SUBDIVISION, PHASE 4**

<b>Item</b>	<b>Area Description</b>	<b>TMK</b>
1	Lot 99	3-2-025:056
2	Lot 100	Portion 3-2-026:051
3	Service Road 4A	Portion 3-2-026:051

**Maintenance of the following:**

**Detailed Scope of Work:**

1. Mowing/weed whacking shall occur at monthly intervals completed within 5 consecutive working days. Care should be taken to ensure that grass is not mowed too short for environmental conditions and/or terrain. Mowing height shall not exceed 4.5". Scalping is prohibited.
2. Litter and debris shall be removed from areas, fence lines, shrubs, etc., prior to mowing. No trash or debris is to be cut by the mower.
3. Grass clippings may be broadcast or bagged if the clippings are not left windrowed or blanketing the grass.
4. Grass clippings shall be removed from all paved areas.
5. All fences abutting the project must be kept free and clear of all vegetation.
6. Monthly maintenance of Service Road 4A (14' wide) shall be done to allow service vehicles to access the back of Lot No. 100
6. Hedges located along the security fence of the retention basin on Lot 99 shall be maintained and not allowed to grow higher than 4' from the base of the fence.
7. After each work day, removal of all leaves, trash, debris, and other unwanted items.
8. Monthly maintenance of the security fence around the retention basin, assuring that unwanted vegetation is kept off the fence.

9. On an “As Needed Basis” (Contingent Item), cleaning and repairing of the Public Walkway, signs, backflow preventer, water meter box, and other appurtenances.

### **Deliverables**

The purpose of the work is to maintain the grassed areas of Waiehu Kou Phase 4 (Lot 99, Lot 100 and Service Road 4A) and minimize the potential of erosion during inclement weather, and the prevention of dust problems during other times.

### **GENERAL REQUIREMENTS:**

The contractor shall furnish all supervision, licenses, transportation, labor, equipment and materials as necessary to perform all specified landscape maintenance tasks:

- All equipment shall be of such type as to accurately and effectively perform the task intended and to cause no hazards or dangers to the properties or the public while doing so. Equipment shall be maintained in good condition so as not to produce excessive noise or noxious fumes beyond normal function without damage to the properties or danger to the general public.
- All personnel employed by the contractor shall be thoroughly and correctly trained by the contractor. The contractor shall be responsible for all safety training of its employees and its subcontractors.
- The contractor shall provide qualified supervision to direct all contracted personnel and maintenance operations at all times.
- Rubbish and landscape debris such as clippings and trimmings shall be removed from the site at the end of each work day at the contractor’s expense.
- The contractor shall provide all applicable safety and warning equipment at all times while working on this contract.
- The contractor shall provide a list of phone numbers of personnel who can be contacted in case of an emergency at the project site.
- The contractor shall adhere to the State Department of Health, State Department of Agriculture, and U.S. Department of Agriculture Regulations for Commercial Application of Pesticides.
- The Contractor shall be responsible for labor and materials used for maintenance.
- The maintenance personnel for the contractor shall limit their activities to maintenance tasks only and shall not perform any installations at any time unless the contractor has received approval from the DHHL.
- The contractor shall not perform work not called for in this contract without the request and approval by the DHHL. Extras shall be submitted as a written proposal showing the itemized cost of labor, equipment, and material. Payment for extras shall be paid through the Contract’s Contingency Fund.
- All fences abutting the project must be kept free and clear of all vegetation.
- Other grounds keeping tasks requested by the DHHL will be negotiated and paid from the Contingency Fund of this project.

## **EXECUTION**

### **A. Inspection**

- The contractor and the DHHL shall conduct a joint inspection of the contract areas to define and establish the level of acceptability of the project.
- Inspections may be held at the Project Site. The contractor or its designated representative shall be present at each inspection.
- At each inspection, the contractor shall have verified that all areas have been addressed, following the written scope of work.
- The DHHL reserves the right to conduct periodic and unscheduled inspections at any time to observe and evaluate the progress of work.

### **B. Protection of Existing Plants, Irrigation and Others**

The contractor shall be held responsible for all existing plants, irrigation systems and other landscaped conditions and all work must be protected to the satisfaction of the DHHL.

### **C. Reports**

The contractor shall provide weekly reports of the work that has been done on the project along with pictures of the completed work. The reports will be required in order to process the monthly payment. If no work is performed during any given week a non-performance report is required.

# PHASE 2 MAP

## OPEN GRASS SWALES

Clear from the perimeter fence, down the swale, across to the top of the opposite bank and 10' over.

Park

Retention Basin

Maintain 10' from fence line.

Lot 112





Service Rd 3A

Lot 119

Unique Jumpers Maui

Burial Site

Lot 120

Maintain 20'  
from fence

Maintain  
existing road

Maintain 10'  
from fence

Lot 121

PHASE 3 MAP



Lot 100

LOT 99

Service Road 4A

PHASE 4 MAP

Halewaiu Rd

Limu Kala St

Limu Ekele Pl

Oniti St

Leho Pl

Kaulana Na Pua Cir

Kaulana Na Pua Cir

Kahakili Hwy

Unique Jumpers Maui

**NOTICE OF INTENTION TO BID**

Date: \_\_\_\_\_

Ms. Jobie M.K. Masagatani, Chairman  
Hawaiian Homes Commission  
DEPARTMENT OF HAWAIIAN HOME LANDS  
91-5420 Kapolei Parkway  
Kapolei, Hawaii 96707

Attention: Kehaulani Quartero, Land Development Division  
**Notice of Intention to Bid due 2:00 p.m., January 24, 2017.**

Gentlemen:

In accordance with the provisions of Section 103D-310, Hawaii Revised Statutes and Hawaii Administrative Rules 3-122-111, it is the intention of the undersigned to bid on IFB No. IFB-17-HHL-004, GROUND MAINTENANCE FOR THE WAIEHU KOU SUBDIVISIONS – PHASES 2, 3, AND 4, County of Maui, State of Hawaii, for which bids will be opened on **2:00 p.m., February 3, 2017.**

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

Respectfully submitted,

\_\_\_\_\_

Signature

\_\_\_\_\_

Print Name and Title

Date: \_\_\_\_\_

Gentlemen:

The Department of Hawaiian Home Lands acknowledges on this date above, your Notice of Intention to Bid on IFB-17-HHL-004.

\_\_\_\_\_  
Jobie M. K. Masagatani, Chairman  
Hawaiian Homes Commission

# **SAMPLE**

## **STATE OF HAWAII STANDARD QUALIFICATION QUESTIONNAIRE FOR OFFERORS**

issued by the

**PROCUREMENT POLICY BOARD**

**STATE OF HAWAII**

**June 16, 2003**

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

Submitted By \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

# STANDARD QUALIFICATION QUESTIONNAIRE

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

## GENERAL INFORMATION

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

(a) Project Title \_\_\_\_\_

(b) Location \_\_\_\_\_

(c) Bid Opening Date \_\_\_\_\_

2. The Questionnaire is being submitted in behalf of:

(a) Name of Offeror \_\_\_\_\_

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

(b) Address \_\_\_\_\_

(c) Telephone No. \_\_\_\_\_

(d) Date Submitted \_\_\_\_\_

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

(a) Members of joint Venture \_\_\_\_\_

(b) Date of Joint Venture Agreement \_\_\_\_\_

(c) Is agreement between members comprising the joint venture joint and several liability? \_\_\_\_\_  
If not, state the terms of agreement in this respect: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



5. Has any officer or partner of your organization in the past five (5) years been an officer or partner of some other organization that failed to complete a contract? If so, state name of individual, other organization and reason therefore \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Has any officer or partner of your organization in the past five (5) years failed to complete a contract handled in his own name? \_\_\_\_\_ If so, state name of individual, name of Owner and reason therefore.  
\_\_\_\_\_  
\_\_\_\_\_
7. In what other lines of business are you financially interested? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. For what corporations or individuals in the past five (5) years have you performed work, and to whom do you refer? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. For what counties within the State of Hawaii have you performed work and to whom do you refer?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
10. For what Bureaus or Departments of the State government have you performed work and to whom do you refer?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
11. Have you performed work for the U. S. Government? \_\_\_\_\_ If so, when and to whom do you refer?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
12. Have you ever performed any work for any other governmental agencies outside the State of Hawaii? \_\_\_\_\_ If so, when and to whom do you refer? \_\_\_\_\_

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

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

# EQUIPMENT QUESTIONNAIRE

Submitted by \_\_\_\_\_

- A Corporation
- A Partnership
- An Individual

Principal Office \_\_\_\_\_

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

1. In what manner have you inspected this proposed work? Explain in detail. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. Explain your plan or layout for performing the proposed work. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. The work, if awarded to you, will have the personal supervision of whom?  
\_\_\_\_\_  
\_\_\_\_\_
4. Do you intend to do the hauling on the proposed work with your own force? \_\_\_\_\_ If so, give amount and type of equipment to be used. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. If you intend to sublet the hauling or perform it through an agent, state amount of sub-contract or agent's contract, and, if known, the name and address of sub-contractor or agent, amount and type of his equipment and financial responsibility \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Do you intend to do grading on the proposed work with your own forces? \_\_\_\_\_ If so, give type of equipment to be used \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





# FINANCIAL STATEMENT

Submitted by \_\_\_\_\_

- A Corporation
- A Partnership
- An Individual

Principal Office \_\_\_\_\_

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

## BALANCE SHEET

As of \_\_\_\_\_, 20\_\_\_\_\_

### Assets

#### Current assets:

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

#### Property and equipment:

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

#### Other assets:

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

Total Assets: \$ \_\_\_\_\_

**BALANCE SHEET (Continued)**

**Liabilities and Stockholder's Equity**

Current liabilities:

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

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

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

Stockholder's equity:

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

Total Liabilities and Stockholder's Equity \$ \_\_\_\_\_

**DETAILS RELATIVE TO ASSETS**

(1) Cash and cash equivalents:

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

(2) Short-term investments:

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

(3) Accounts receivable (list major debtors):

Completed contracts

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

Other than completed contracts

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

(4) Inventories

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

**DETAILS RELATIVE TO ASSETS (Continued)**

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

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

(6) Prepaid expenses and other

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

(7) Land

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

(8) Buildings

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

(9) Vehicles, machinery and equipment

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

(10) Furniture and fixtures

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

**DETAILS RELATIVE TO ASSETS (Continued)**

(11) Cash surrender value of life insurance policies

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

(12) Deposits and other

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

**DETAILS RELATIVE TO LIABILITIES AND STOCKHOLDER'S EQUITY**

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

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

(2) Accounts payable (list major creditors)

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

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

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

(4) Accrued liabilities and other

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

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

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

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

(6) Capital stock

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

(7) Additional paid-in capital

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

(8) Treasury stock

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

**STATEMENTS OF INCOME AND RETAINED EARNINGS**

**For the Years Ended \_\_\_\_\_, 20\_\_\_\_ and 20\_\_\_\_**

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

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

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

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

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### Affidavit for Individual

STATE OF HAWAII  
 COUNTY OF \_\_\_\_\_

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

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ (Applicant must also sign here)

\_\_\_\_\_  
 Notary Public

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### Affidavit for Partnership

STATE OF HAWAII  
 COUNTY OF \_\_\_\_\_

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

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ (Members of firm must also sign here)

\_\_\_\_\_  
 Notary Public

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### Affidavit for Corporation

STATE OF HAWAII  
 COUNTY OF \_\_\_\_\_

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

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ (Officer must also sign here)

\_\_\_\_\_  
 Notary Public

**CORPORATE RESOLUTION**  
**(Name of Corporation - Use Letterhead)**

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

(address)

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

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

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

\_\_\_\_\_  
Secretary

(Names and Addresses of:)  
President  
Vice President  
Secretary

# Instructions for Bid Submittal

## General Instructions for Bid Submittal

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

*For your convenience, an “IFB Checklist for Bidders” is included in this section for your use.*

*No supplemental literature, brochures or other unsolicited information should be included in the bid packet.*

*A written response is required for each item unless indicated otherwise.*

*Bid documents and all certifications should be written legibly or typed and completed with black ink.*

## **I. BID OFFER FORM REQUIREMENTS AND CONDITIONS**

### **A. QUALIFICATION OF BIDDERS.**

Prospective Bidders, must be capable of performing the work for which bids are invited, and must be capable of entering into a public contract of \$25,000 (twenty-five thousand dollars) or more.

### **B. NOTICE OF INTENTION TO BID**

1. In accordance with Section 103D-310, Hawaii Revised Statutes, and Section 3-122-108, Hawaii Administrative Rules, a written notice of intention to bid must be submitted to the Chairman, who is the officer charged with letting the contract. The notice may be faxed, hand carried, mailed, or e-mailed to the office indicated in the Notice to Bidders.
2. The written notice must be received by the office indicated in the Notice to Bidders no later than 2:00 p.m. on the 10th calendar day prior to the day designated for opening bids. If the 10th calendar day prior to the day designated for opening bids is a Saturday, Sunday, or legal State holiday, then the written notice must be received by the Department no later than 2:00 p.m. on the last working day immediately prior to said Saturday, Sunday, or legal State holiday. The written notice will be time stamped when received by said office. The time designated by the time stamping device in said office shall be official. If the written notice is hand carried, then the bearer is responsible to ensure that the notice is time stamped by said office. If the notice is faxed, the time of receipt by the Department fax machine shall be official. If the notice is sent by email, the time indicated in the date and time field of the email as received by the Department shall be official.

3. It is the responsibility of the prospective Bidder to ensure that the written notice of intention to bid is received in time and the Department assumes no responsibility for failure of timely delivery caused by the prospective Bidder or by any method of conveyance chosen by the prospective Bidder.
4. If two (2) or more prospective Bidders desire to bid jointly as a joint venture on a single project, they must file an affidavit of joint venture with their notice of intention to bid. Such affidavit of joint venture will be valid only for the specific project for which it is filed. No further license is required when all parties to the joint venture possess current and appropriate contractor's licenses. Joint ventures are required to be licensed in accordance with Chapter 444 of the Hawaii Revised Statutes, as amended, and the rules and regulations of the Contractor's License Board when any party to the joint venture agreement does not hold a current or appropriate contractor's license. The joint venture must be registered with the office of the Director of Commerce and Consumer Affairs in accordance with Chapter 425 of the Hawaii Revised Statutes, as amended.
5. No persons, firm or corporation may bid where (1) the person, firm, or corporation, or (2) a corporation owned substantially by the person, firm, or corporation, or (3) a substantial stockholder or an officer of the corporation, or (4) a partner or substantial investor in the firm is in arrears in any payment owed to the State of Hawaii or any of its political subdivisions or is in default of any obligation to the State of Hawaii or to all or to any of its political subdivisions, including default as a surety or failure to perform faithfully and diligently any previous contract with the Department.

#### C. STANDARD QUALIFICATION QUESTIONNAIRE FOR OFFERORS

1. Prospective Bidders shall submit answers to questions contained in the STANDARD QUALIFICATION QUESTIONNAIRE FOR OFFERORS (SPO Form-21), properly executed and notarized, setting forth a complete statement of the experience of such prospective Bidder and its organization in performing similar work and a statement of the equipment proposed to be used, together with adequate proof of the availability of such equipment, no later than 2:00 p.m. on the tenth calendar day prior to the day designated for opening bids. If the tenth calendar day prior to the day designated for opening bids is a Saturday, Sunday, or legal State holiday, then the questionnaire must be received by the Department no later than 2:00 p.m. on the last working day immediately prior to said Saturday, Sunday, or legal State holiday. The questionnaire will be time stamped when received by said office. The time designated by the time stamping device in said office shall be official. If the questionnaire is hand carried, then the bearer is responsible to ensure that the notice is time stamped by said office. E-mail and facsimile (FAX) transmissions are not acceptable in whole or in part, under any circumstances. If the information in the questionnaire proves satisfactory, the Bidder's Bid offer form will be received. All information contained in the answers to the questionnaire shall be kept confidential. The questionnaire will be returned to the Bidder after it has served its purpose.

Instructions for Bid Submittal

2. If upon review of the Questionnaire, or otherwise, the Bidder appears not fully qualified or able to perform the intended work, the Chairman shall, after affording the Bidder an opportunity to be heard and if still of the opinion that the Bidder is not fully qualified to perform the work, refuse to receive or to consider any bid offered by the prospective Bidder.
3. Failure to complete and submit the prequalification questionnaire by the designated deadline will be sufficient cause for the Department to disqualify a prospective Bidder.

#### D. BID OFFER FORM

1. Prospective Bidders are being furnished with the bid offer form giving the location, description, and the contract time of the work contemplated for which a lump sum bid price is asked or containing a schedule of items, together with estimated quantities of work to be performed and materials to be furnished, for which unit bid prices and/or lump sum bid prices are asked.
2. All papers bound with or attached to the bid offer form shall be considered a part thereof and shall not be detached or altered when the Bid offer form is submitted.
3. The drawings, specifications and other documents designated in the bid offer form will also be considered a part thereof whether attached or not.
4. When quantities for individual items of work are listed in the bid offer form for which respective unit prices are asked, said quantities are estimated or approximate and are to be used by the Department only for the purpose of comparing on a uniform basis bids offered for the work. The Department does not, expressly or by implication agree that the actual quantity of work will correspond therewith.
5. On unit price bids, payment will be made only for the actual number of units incorporated into the finished project at the unit price bid, subject to DHHL Construction General Conditions (CGC), Section 4.7, VARIATIONS IN ESTIMATED QUANTITIES.
6. The Bidder's Bid offer form must be submitted on the bid offer form furnished by the Department. The Bid offer form must be prepared in full accordance with the instructions herein. The Bidder must state, both in words and numerals, the lump sum price or total sum bid at which the work contemplated is proposed to be done. These prices must be written in ink or typed. In case of a discrepancy between the prices written in words and those written in figures, the words shall govern over the figures. The Bidder shall sign the bid offer form in the spaces provided with ink.
7. If the Bid offer form is made by an individual, the person's name and post office address must be shown in the space provided. If made by a partnership, the name and post office address of each member of the partnership must be shown and the

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

8. Pursuant to the requirements of Section 103D-302, HRS, each Bidder shall include in its bid the name of each person or firm to be engaged by the Bidder on the project as joint contractor or subcontractor indicating also the nature and scope of work to be performed by such joint contractor and/or subcontractor and their respective contractor's license number. A joint contractor or subcontractor performing less than or equal to one percent of the total bid amount is not required to be listed in the Bid offer form. The Bidder shall be solely responsible for verifying that their joint contractor or subcontractor has the proper license at the time of the submitted bid.
9. It is understood and agreed that the Contractor shall make no claim for anticipated profit, loss of profit or unabsorbed field, branch or home office overhead and impact losses due to the exercise of the Departments right to eliminate entire portions of the work or to increase or decrease any or all the quantities shown in the Bid offer form.
10. By submitting a bid on the bid offer form, a Bidder accepts the language therein as its own.

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

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

**F. ADDENDA AND BID CLARIFICATIONS**

1. The terms and requirements of the bid documents (i.e. drawings, specifications and other bid and contract documents) cannot be changed prior to the bid opening except by a duly issued addendum.
2. The Department may alter, increase or decrease the scope of the work or the contract time, provisions and conditions by issuing a written addendum which sets forth such alterations, increase or decrease.
3. If a Bidder discovers what it considers to be a discrepancy, ambiguity, omission or doubt as to the meaning of drawings, specifications and any other bid or contract documents, the Bidder shall request in writing an interpretation from the Chairman.
4. If the Department agrees that a discrepancy, ambiguity, omission or doubt exists, it shall issue a written addendum to the bid documents to all prospective Bidders known to have received a solicitation eight (8) days before the bids are opened. The Department may extend the bid opening to allow at least eight (8) days from the notification date of the addendum. Upon notification by the Department, all Bidders/addressees shall be deemed to be on notice of the information therein whether or not the addendum is actually received. All addenda so issued shall become part of the contract documents.
5. No claim for additional compensation and/or time for performance will be allowed if the Contractor discovered, or in the exercise of reasonable care, should have discovered a discrepancy, ambiguity, omission or doubt for which an interpretation was not requested.

G. SUBSTITUTION OF MATERIALS AND EQUIPMENT BEFORE BID OPENING

1. Brand names of materials or equipment are specified or shown on the drawings to indicate a quality, style, appearance or performance and not to limit competition. The Bidder shall base its bid on one of the specified brand names unless alternate brands are qualified as equal or better in an addendum. Qualifications of such proposed alternate brands shall be submitted in writing and addressed to the Project Manager. The face of the envelope containing the request must be clearly marked "SUBSTITUTION REQUEST". The request may be hand carried or mailed to DHHL, 91-5420 Kapolei Parkway, Kapolei, Hawaii, 96707. In either case, the written request must be received by DHHL no later than fourteen (14) days before the bid opening date and time specified in the Notice to Bidders. The written request will be time stamped by DHHL. For the purpose of this section, the time designated by the time stamping device in DHHL shall be official. If the written request is hand carried, the bearer is responsible to ensure that the request is time stamped by DHHL.
2. Submit three (3) sets of the written request, technical brochures, and a statement of variances.

3. A statement of variances must list all features of the proposed substitution which differ from the drawings, specifications and/or product(s) specified and must further certify that the substitution has no other variant features. The brochure and information submitted shall be clearly marked showing make, model, size, options, etc., and must include sufficient evidence to evaluate each feature listed as a variance. A request will be denied if submitted without sufficient evidence. If after installing the substituted product, an unlisted variance is discovered, Contractor shall immediately replace the product with a specified product at no cost to the Department.
4. Any substitution request not complying with the above requirements will be denied. Substitution requests sent to other agencies and received by Project Manager after the deadline above will be denied.
5. An addendum shall be issued to inform all prospective Bidders of any accepted substitution.

#### H. DELIVERY OF BID OFFER FORM.

The entire bid offer form shall be placed in a sealed envelope and delivered as indicated in the Notice to Bidders. Bids which do not comply with this requirement may not be considered. Bid offer forms will be received up to the time fixed in the public notice for opening of bids and must be in the hands of the official by the time indicated. The time designated by the time stamping device in DHHL shall be official.

#### I. WITHDRAWAL OR REVISION OF BID OFFER FORM. Bid offer form may be modified prior to the deadline to submit the bid offer form by any of the following documents:

- 1 Withdrawal of Bid Offer Form:
  - (a) A signed, written notice received in the office designated in the solicitation; or
  - (b) A signed written notice faxed or e-mailed to the office designated in the solicitation.
- 2 Modification of Bid Offer Forms:
  - (a) A signed written notice received in the office designated in the solicitation, accompanied by a duly executed certificate of resolution for corporations, partnerships and joint-ventures, stating that a modification to the Bid offer form is submitted; and
  - (b) The actual modification sealed securely in a separate envelope or container, accompanying the written notice.
  - (c) The modification may be sent by fax or email, provided that the originals must be submitted within two working days of the fax or email.

J. PUBLIC OPENING OF BID OFFER FORMS.

Bid offer forms will be opened and read publicly at the time and place indicated in the Notice to Bidders. Bidders, their authorized agents and other interested parties are invited to be present.

K. DISQUALIFICATION OF BIDDERS. Any one or more of the following causes will be considered as sufficient for the disqualification of a Bidder and the rejection of its Bid Offer Form:

1. Non-compliance with Section I.A. QUALIFICATION OF BIDDERS;
2. Evidence of collusion among Bidders;
3. Lack of responsibility and cooperation as shown by past work such as failing to complete all the requirements to close the project within a reasonable time or engaging in a pattern of unreasonable or frivolous claims for extra compensation;
4. Being in arrears on existing contracts with the State of Hawaii, or having defaulted on a previous contract with the State of Hawaii;
5. Lack of proper equipment and/or sufficient experience to perform the work contemplated, as revealed by the Standard Qualification Questionnaire for Offerors and Financial Statement for Bidders;
6. No contractor's license or a contractor's license which does not cover type of work contemplated;
7. More than one Bid offer form for the same work from an individual, firm, partnership, corporation or joint venture under the same or different name;
8. Delivery of bids after the deadline specified in the advertisement calling for bids;
9. Failure to pay, or satisfactorily settle, all bills overdue for labor and materials of former contracts in force at the time of issuance of Bid offer form forms; and/or
10. Debarment or suspension pursuant to the provisions of Chapters 103D, 104 and 444, Hawaii Revised Statutes, as amended.

L. PROTESTS

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

M. WRONGFUL REFUSAL TO ACCEPT A BID.

In the event the Chairman, for any reason, wrongfully refuses to accept what would otherwise be a responsive and responsible lowest bid, the exclusive remedy for such lowest Bidder shall be the recovery of the reasonable actual costs of preparing the bid. No other Bidder shall have any claim for damages.

## **II AWARD AND EXECUTION OF CONTRACT**

### **A. CONSIDERATION OF BID OFFER FORMS; CANCELLATION.**

After the Bid offer forms are opened and read, the figures will be extended and/or totaled in accordance with the bid prices of the acceptable bid offer forms and the totals will be compared and the results of such comparison shall be made public. In the event of a tie bid, the low Bidder shall be determined in accordance with HAR 3-122-34. In the comparison of bids, words written in the Bid offer forms will govern over figures and unit prices will govern over totals. Until the award of the contract, the Department may cancel the solicitation, reject any and all bid offer forms in whole or part and may waive any defects or technicalities whenever such action is deemed to be in the best interest of the Department.

### **B. IRREGULAR BID OFFER FORMS.**

Bid offer forms will be considered irregular and may be rejected for the following reasons:

1. If the Bid offer form is unsigned.
2. If bid security is not in accordance with Section I.E. BID SECURITY.
3. If Bid offer form is on a form other than that furnished by the Department; or if the form is altered or any part thereof detached.
4. If the Bid offer form shows any non-compliance with applicable law, alteration of form, additions not called for, conditional bids, incomplete bids, non-initialed erasures, other defects, or if the prices are obviously unbalanced.
5. If the Bidder adds any provisions reserving the right to accept or reject an award.
6. If the Bidder adds any provisions reserving the right to enter into a contract pursuant to an award.
7. When a bid offer form is signed by an officer or officers of a corporation and a currently certified corporate resolution authorizing such signer(s) to submit such Bid offer form is not submitted with the Bid offer form or when the Bid offer form is signed by an agent other than the officer or officers of a corporation or a member of a partnership and a power of attorney is not submitted with the Bid offer form.

8. Where there is an incomplete or ambiguous listing of joint contractors and/or subcontractors the bid offer form may be rejected. All work which is not listed as being performed by joint contractors and/or subcontractors must be performed by the Bidder with its own employees. Additions to the list of joint contractors or subcontractors will not be allowed. Whenever there is a doubt as to the completeness of the list, the Bidder will be required to submit within five (5) working days, a written confirmation that the work in question will be performed with its own work force. Whenever there is more than one joint contractor and/or subcontractor listed for the same item of work, the Bidder will be required to either confirm in writing within five (5) working days that all joint contractors or subcontractors listed will actually be engaged on the project or obtain within five (5) working days written releases from those joint contractors and/or subcontractors who will not be engaged.
9. If in the opinion of the Chairman, the Bidder and/or its listed subcontractors do not have the contractor's licenses or combination of contractor's licenses necessary to complete all of the work.

#### C. CORRECTION OF BIDS AND WITHDRAWAL OF BIDS (§3-122-31 HAR)

1. Corrections to bids after bid openings but prior to award may be made under the following conditions:
  - (a) If the mistake is attributable to an arithmetical error, the Chairman shall so correct the mistake. In case of error in extension of bid price, the unit price shall govern.
  - (b) If the mistake is a minor informality which shall not affect price, quantity, quality, delivery, or contractual conditions, the Bidder shall request correction by submitting proof of evidentiary value which demonstrates that a mistake was made. The Chairman shall prepare a written approval or denial in response to this request. Examples of such mistakes include:
    - (1) Typographical errors;
    - (2) Transposition errors;
    - (3) Failure of a Bidder to sign the bid, but only if the unsigned bid is accompanied by other material indicating the Bidder's intent to be bound.
  - (c) For reasons not allowable under Subsections II.C.1.(a) and II.C.1.(b) when the Chairman determines that the correction or waiver of an obvious mistake is in the best interest of the Department or is warranted for the fair treatment of other Bidders.
2. Withdrawal of bids after bid opening but prior to award may be made when the bid contains a mistake attributable to an obvious error which affects price, quantity, quality, delivery, or contractual conditions, and the Bidder requests withdrawal by submitting proof of evidentiary value which demonstrates that a

mistake was made. The Chairman shall prepare a written approval or denial in response to this request.

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

#### D. AWARD OF CONTRACT

1. The award of contract, if it be awarded, will be made within one hundred twenty (120) consecutive calendar days after the opening of the Bid offer forms to the lowest responsible and responsive Bidder (including the alternate or alternates which may be selected by the Chairman in the case of alternate bids) whose Bid offer form complies with all the requirements prescribed, but in no case will an award be made until all necessary investigations are made. The successful Bidder will be notified, by letter mailed to the address shown on the Bid offer form, that its bid has been accepted and that it has been awarded the contract.
2. If the contract is not awarded within the one hundred twenty (120) days noted in Subsection II.D.1 above, the Department may request the successful Bidder to extend the time for the acceptance of its bid. The Bidder may reject such a request without penalty; and in such case, the Department may at its sole discretion make a similar offer to the next lowest responsive and responsible Bidder and so on until a bid is duly accepted or until the Department elects to stop making such requests.
3. No contract will be awarded to any person or firm suspended or debarred under the provisions of Chapters 103D, 104 and Chapter 444, Hawaii Revised Statutes as amended.
4. The contract will be drawn on the forms furnished by the Chairman. The contract will not be binding on the Department until all required signatures have been affixed thereto and written certification that funds are available for the work has been made.
5. Prior to award of the contract, the Department shall verify compliance with Sections 103D-310 and 103D-328 HRS via Hawaii Compliance Express (HCE).

#### E. CANCELLATION OF AWARD.

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

F. REQUIREMENT OF PERFORMANCE AND PAYMENT BONDS

1. Performance and Payment Bonds shall be required for construction contracts \$50,000 (fifty thousand dollars) and higher. At the time of the execution of the contract, the successful Bidder shall file good and sufficient performance and payment bonds on the form furnished by the Department, each in an amount equal to one hundred percent (100%) of the amount of the contract price unless otherwise stated in the solicitation of bids. Acceptable performance and payment bonds shall be limited to the following:
  2. Surety bonds underwritten by a company licensed to issue bonds in this State; or
  3. A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the Department by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
    - (a) These instruments may be utilized only a maximum of \$100,000 (one hundred thousand dollars).
    - (b) If the required security or bond amount totals over \$100,000 (one hundred thousand dollars), more than one instrument not exceeding \$100,000 (one hundred thousand dollars) each and issued by different financial institutions shall be acceptable.
4. If the Contractor fails to deliver the required performance and payment bonds, the Contractor's award shall be canceled, the Department shall have the remedies provided below under FAILURE TO EXECUTE THE CONTRACT and award of the contract shall be made to the next lowest responsible and responsive Bidder.

G. EXECUTION OF THE CONTRACT

1. The contract shall be signed by the successful Bidder and returned, together with satisfactory performance and payment bonds, within ten (10) calendar days after the Bidder is awarded the contract for execution or within such further time as the Chairman may allow. No Bid offer form or contract shall be considered binding upon the Department until the contract has been fully and properly executed by all parties thereto. For projects funded with State Capital Improvement Project (CIP) funds, the Chairman shall also endorse thereon its certificate, as required by Section 103D-309, HRS, that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the Department's amount required by such contract.
2. On any individual award totaling less than \$25,000 (twenty five thousand dollars), the Department reserves the right to execute the contract by the issuance of a Purchase Order. Issuance of a Purchase Order shall result in a binding contract between the parties without further action by the Department. The issuance of a

Purchase Order shall not be deemed a waiver of the General Conditions, and Contract Document requirements.

#### H. FAILURE TO EXECUTE THE CONTRACT

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

## **IFB Checklist for Bidders**

IFB-17- HHL-004

Grounds Maintenance for the Waiehu Kou Subdivision – Phases 2, 3, and 4

### **Items required prior to Bid Opening:**

- Notice of Intention to Bid, no later than 2:00 p.m., January 24, 2017 [tenth calendar day prior to the day designated for opening bids – see sec B.1.].
- SPO Form 21 (Standard Qualification Questionnaire), submitted to DHHL, Land Development Division by 2:00 p.m., January 24, 2017 [tenth calendar day prior to the day designated for opening bids – see sec C.1.].

### **Items required with Sealed Bid:**

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

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

- Bid Offer Form (included with this IFB)

The total sum bid amount must be typed or clearly written in both numbers and words in the appropriate space on page 4 of the Bid Offer Form. Illegible writing on any portion of the Bid Offer Form, except for the signee’s signature, may be grounds for considering a Bid “non-responsive”.

- Corporate Resolution (Indicating who is authorized to sign bid documents and contracts)

DEPARTMENT OF HAWAIIAN HOME LANDS

**GROUNDS MAINTENANCE FOR THE  
WAIEHU KOU SUBDIVISION – PHASES 2, 3, AND 4**

WAIEHU KOU, COUNTY OF MAUI, HAWAII

IFB NO.: IFB-17-HHL-004

**\*SEALED BID\***

Submitted by: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

Bid Package Envelope Cover

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

**BID OFFER FORM FOR**

**GROUND MAINTENANCE FOR THE WAIEHU KOU SUBDIVISION – PH 2, 3, AND 4**

**WAIEHU KOU, COUNTY OF MAUI, HAWAII**

**IFB No.: IFB-17-HHL-004**

Chairman  
Hawaiian Homes Commission  
Department of Hawaiian Home Lands  
91-5420 Kapolei Parkway  
Kapolei, Hawaii 96707

The undersigned has carefully examined, read, and understands the terms and conditions in the Plans and Specifications, Special Conditions attached hereto, DHHL Construction General Conditions, and General Conditions specified in the Invitation for Bids (IFB) No. IFB-17-HHL-004. The State of Hawaii's (State) Contract for Goods and Services Based on Competitive Sealed Bids AG-003 Rev. 6/22/2009, AG-008 103D General Conditions, are included by reference and made part hereof and available upon written request to the Procurement Officer. The undersigned hereby submits the following offer to perform the work for IFB No. IFB-17-HHL-004 as specified herein, all in accordance with the true intent and meaning thereof.

The undersigned understands and agrees that:

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

Date: \_\_\_\_\_

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

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

State of incorporation: \_\_\_\_\_

Offeror is:

- Sole Proprietor       Partnership       Corporation       Joint Venture       Other: \_\_\_\_\_

Federal ID No.: \_\_\_\_\_

Hawaii General Excise Tax ID No.: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

E-Mail Address.: \_\_\_\_\_

Payment address (other than street address below)

\_\_\_\_\_  
(Street Address, City, State, Zip Code)

Business address

\_\_\_\_\_  
(Street Address, City, State, Zip Code)

Respectfully submitted:

\_\_\_\_\_  
Authorized (Original) Signature

\_\_\_\_\_  
Name and Title (Please Type or Print)

\* \_\_\_\_\_  
**Exact Legal Name of Company (Offeror)**

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

\_\_\_\_\_

The following bid is hereby submitted for Grounds Maintenance for the Waiehu Kou Subdivision – Phases 2, 3, and 4 to the Department of Hawaiian Home Lands.

<b>Grounds Maintenance of the Waiehu Kou Subdivision Phases 2, 3, &amp; 4</b>				
<b>Item</b>	<b>Months</b>	<b>Description</b>	<b>Unit Price</b>	<b>Unit Total</b>
<b>A. Waiehu Kou Phase 2</b>				
A1	1	Initial Clearing for Phase 2	\$ _____	\$ _____
A2	36	Retention Basin and open grass swales (approx. 3.20 acres)	\$ _____	\$ _____
A3	36	Commercial Lot No. 112 (approx. 2.20 acres)	\$ _____	\$ _____
A4	36	Phase 2 Park Site	\$ _____	\$ _____
<b>A</b>		<b>SUBTOTAL PHASE 2 (Items A1 – A4)</b>		\$ _____
<b>B. Waiehu Kou Phase 3</b>				
B1	1	Initial Clearing for Phase 3	\$ _____	\$ _____
B2	36	Retention Basin Lot 119 and surrounding area (approx. 2.0 acres)	\$ _____	\$ _____
B3	36	Retention Basin Lot 120 (approx. 8.0 acres)	\$ _____	\$ _____
B4	36	Retention Basin Lot 121 (approx. 4.0 acres)	\$ _____	\$ _____
B5	36	Maintenance of the Service Road 3A	\$ _____	\$ _____
<b>B</b>		<b>SUBTOTAL PHASE 3 (Items B1 – B5)</b>		\$ _____
<b>C. Waiehu Kou Phase 4</b>				
C1	1	Initial Clearing for Phase 4	\$ _____	\$ _____
C2	36	Retention Basin and Adjourning areas, Lot 99	\$ _____	\$ _____
C3	36	Portion of Lot 100	\$ _____	\$ _____
C4	36	Maintenance of the Service Road 4A	\$ _____	\$ _____
<b>C</b>		<b>SUBTOTAL PHASE 4 (Items C1 – C4)</b>		\$ _____
<b>D</b>		ALLOWANCE: (See SC-06)		\$ <b>100,000.00</b>
		<b>TOTAL SUM BID (A+B+C+D)</b>		\$ _____

TOTAL SUM BID = \_\_\_\_\_ Dollars(\$\_\_\_\_\_).

**The prices herein for the above items shall include all materials, labor, tools, equipment, machinery and all incidentals necessary, inclusive of general excise tax to install or to construct these items in place complete and in accordance with the plans and specifications contained in this IFB.**

The CONTRACTOR shall enter into a contract for furnishing services for a thirty-six-month period commencing on the date specified on the Notice to Proceed issued by the STATE. Unless terminated, contract shall be extended for not more than one (1) additional thirty-six-month period or portions thereof, without the necessity of rebidding, upon mutual agreement in writing, at least sixty (60) days prior to expiration.



## METHOD OF AWARD

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

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

It is further understood and agreed that:

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

## OTHER CONDITIONS

- 1) By submitting this bid, the undersigned is declaring that his firm has not been assisted or represented on this matter by an individual who has, in a State capacity, been involved in the subject matter of this contract in the past one (1) year.
- 2) By submitting this bid, the undersigned is declaring that Bidder's own organization will perform at least 20% of the contractor's work. For the purposes of this section, the Contractor's work is defined as: direct cost labor for contractor's forces; direct cost materials installed by the contractor's direct cost labor force; direct cost equipment, either owned or leased, used by the contractor's direct cost labor force; and field overhead cost to include: field supervision, field office trailer (if any), field office equipment and supplies, etc.
- 3) Upon the acceptance of the bid by the Chairman, the undersigned must enter and execute a contract for the same.
- 4) The quantities given herewith are approximate only and are subject to increase or decrease.
- 5) The estimated quantities shown for items for which a UNIT PRICE is asked in this bid are only for the purpose of comparing on a uniform basis bids offered for the work under this contract. No claim shall be filed for anticipated profit or loss because of any difference between the quantities of the various classes of work done or the materials and equipment actually installed and the said estimated quantities. Payment on UNIT PRICE items will be made only for the actual number of units incorporated into the finished project at the contract UNIT PRICE.
- 6) If the product of the UNIT PRICE BID and the number of units does not equal the total amount stated by the undersigned in the Bid for any item, it will be assumed that the error was made in computing the total amount. For the purpose of determining the lowest Bidder, the stated UNIT PRICE alone will be considered as representing the Bidder's intention and the total amount bid on such items shall be considered to be the amount arrived at by multiplying the UNIT PRICE by the number of units.
- 7) Certification for Safety and Health Programs for Bids in Excess of \$100,000. In accordance with Sections 103D-327 and 396-18, Hawaii Revised Statutes, by submitting this bid, the undersigned certifies that his firm will have a written Safety and Health Plan for this project that will be available and implemented by the Notice to Proceed date of this project. Details of the requirements of this plan may be obtained from the Department of Labor and Industrial Relations, Occupational, Safety and Health Division.
- 8) Any contract arising out of this offer is subject to the approval of the Department of the Attorney General as to form, and to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive.

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

	Date		Date
Addendum No. 1	_____	Addendum No. 5	_____
Addendum No. 2	_____	Addendum No. 6	_____

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

Respectfully submitted,

\_\_\_\_\_  
Name of Company, Joint Venture or Partnership

\_\_\_\_\_  
License No.

By \_\_\_\_\_  
Signature (\*1)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_

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

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

NOTES:

- \*1. Please attach to this page evidence of the authority of this officer to submit bids on behalf of the Company, and also the names and residence addresses of all officers of the Company.
- \*2. Fill in all blank spaces with information asked for or bid may be invalidated. **BID MUST BE INTACT; MISSING PAGES MAY INVALIDATE YOUR BID.**

CERTIFICATE OF RESOLUTION

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

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

IN WITNESS THEREOF, I have hereunto set my hand and affixed the corporate seal of said \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

.

\_\_\_\_\_  
Secretary

END OF BID

**SAMPLE FORMS**

NOTICE OF INTENTION TO BID .....1

STANDARD QUALIFICATION QUESTIONNAIRE ..... 1-17

CORPORATE RESOLUTION.....1

**TECHNICAL SPECIFICATIONS & MAPS**

SPECIFICATIONS..... 1-5

MAPS..... 1-3

## Department of Hawaiian Home Lands - Land Development Division

### SIGN-IN SHEET

<b>IFB-17 -HHL-004</b>	This project consists of furnishing all labor, equipment, cleaning supplies, materials and supervision to satisfactorily clear and maintain the approximately 40-acre site(s) within the Waiehu Kou Subdivisions, Phase 2, 3 and 4.
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#### INSTRUCTIONS

Read this packet carefully. If you have any questions, please call Richard Speer, LDD Project Manager, at 808-620-9287 or email to [richard.a.speer@hawaii.gov](mailto:richard.a.speer@hawaii.gov)

Note: Please fax this sheet to 620-9299, mail or email to [kehaulani.a.quartero@hawaii.gov](mailto:kehaulani.a.quartero@hawaii.gov) after downloading this document from the Department of Hawaiian Home Lands website. This form does not substitute for the Notice of Intent to Bid.

<b>Pre-Bid Conference/Site Inspection:</b>	Date: January 12, 2017 Time: 9:00 am Location: Lot 121 along Kekahili Highway
<b>Notice of Intention to Bid must be received by:</b>	Date: January 24, 2017 Time: 2:00 pm Location: 91-5420 Kapolei Parkway, Kapolei, HI 96707 Submittal of a Notice of Intention to Bid via facsimile at (808)620-9299 or email to <a href="mailto:kehaulani.a.quartero@hawaii.gov">kehaulani.a.quartero@hawaii.gov</a> is acceptable.
<b>Standard Qualification Questionnaire for Offerors must be received by:</b>	Date: January 24, 2017 Time: 2:00 pm Location: 91-5420 Kapolei Parkway, Kapolei, HI 96707
<b>Bid Opening:</b>	Date: <b>February 3, 2017</b> Time: 2:00 pm Location: Hale Kalaniana'ole 91-5420 Kapolei Parkway Kapolei, HI 96707
<b>Company:</b> _____	Date: _____
<b>Address:</b> _____	
<b>Phone No.</b> _____	<b>Cell No.</b> _____
<b>Fax No.</b> _____	
<b>Email Address:</b> _____	
<b>Contact Person:</b> _____	

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

**NOTICE TO BIDDERS  
INVITATION FOR BID  
Department of Hawaiian Home Lands  
Land Development Division  
IFB NO.: IFB-17-HHL-004**

SEALED BIDS for IFB No.: IFB-17-HHL-004, GROUNDS MAINTENANCE FOR THE WAIEHU KOU SUBDIVISION – PHASES 2, 3, AND 4, WAIEHU KOU, County of MAUI, State of Hawaii, will be received by the Department of Hawaiian Home Lands (DHHL), at Hale Kalaniana'ole, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, until **2:00 p.m., Hawaii Standard Time (H.S.T.) Friday, February 3, 2017**, at which time all bids will be publicly opened and read aloud. Bids received after the time fixed for opening or delivered anywhere other than as specified above will not be considered.

This project consists of furnishing all labor, equipment, cleaning supplies, materials and supervision to satisfactorily provide initial clearing and monthly maintenance for the approximately 40-acre site(s) within the Waiehu Kou Subdivisions, Phases 2, 3, and 4.

To be eligible to submit a bid, the Bidder and/or his subcontractors shall possess all required valid State of Hawaii licenses and specialty licenses needed to perform the work for this project. A surety bid bond will be required for this Invitation for Bids (IFB).

This project is subject to Section 103-55D, Hawaii Revised Statutes, and to the payment of not less than the prevailing salaries and wages promulgated by the State of Hawaii, Department of Human Resources Development.

Bid documents may be examined at or obtained from DHHL at the Department of Hawaiian Home Lands website:

<http://www.dhhl.hawaii.gov/procurement/>

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

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

All prospective bidders/offerors are invited to attend a PRE-BID CONFERENCE to be held **9:00 a.m., H.S.T, on January 12, 2017, at Lot 121 along Kahekili Highway**. The conference is to provide bidders/offerors with an opportunity to ask questions about the contractual requirements and technical aspects of the project. A site visit of the project site will follow the pre-bid conference. Attendance of the pre-bid conference and/or site visit is not a condition for submitting a bid, but strongly recommended. Persons needing special accommodations due to a disability may submit such requests to Richard Speer, Land Development Division, via facsimile at (808) 620-9299, or e-mail to richard.a.speer@hawaii.gov.

A written NOTICE OF INTENTION TO BID is required and shall be received by the DHHL, Land Development Division, at 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, no later than

January 24, 2017. Submittal of a NOTICE OF INTENTION TO BID via facsimile at (808) 620-9299, or e-mail to kehaulani.a.quartero@hawaii.gov is acceptable.

A properly executed and notarized STANDARD QUALIFICATION QUESTIONNAIRE FOR OFFERORS, SPO Form-21 ("Questionnaire") is required and shall be submitted by mail or hand-delivery to the DHHL Land Development Division, at 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707 for evaluation no later than January 24, 2017. The Questionnaire is included with the bid documents, and can be downloaded at the State Forms Central website:

<http://spo.hawaii.gov/all-forms/>

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

**CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS PROHIBITED.** If awarded a contract in response to this solicitation, offeror agrees to comply with HRS §11-355, which states that campaign contributions are prohibited from a State and county government contractor during the term of the contract if the contractor is paid with funds appropriated by the legislative body between the execution of the contract through the completion of the contract.

Questions regarding this project may be directed in writing to Richard Speer, Land Development Division, DHHL, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, via facsimile at (808) 620-9299, or e-mail to Richard.a.speer@hawaii.gov.

Dated at Honolulu, Hawaii, this 5th day of January 2017.

DEPARTMENT OF HAWAIIAN HOME LANDS



Jobie M. K. Masagatani, Chairman  
Hawaiian Homes Commission

Posted on the internet at: <http://spo3.hawaii.gov/notices/notices>

## MAINTENANCE WAGE RATE SCHEDULE

RANGE	BU	Classification	(Effective Date: 4/01/15)			Effective Date: 10/01/15			Effective Date: 04/01/16			Effective Date: 10/01/16			Effective Date: 04/01/17		
			Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate
BC-09	01	BUILDING MAINTENANCE WORKER I	\$ 29.24	\$ 23.18	\$ 6.06	\$ 29.80	\$ 23.64	\$ 6.16	\$ 30.38	\$ 24.12	\$ 6.26	\$ 30.96	\$ 24.60	\$ 6.36	\$ 31.55	\$ 25.09	\$ 6.46
WS-09	01	BUILDING MAINTENANCE WORKER II	\$ 30.96	\$ 24.60	\$ 6.36	\$ 31.56	\$ 25.09	\$ 6.47	\$ 32.16	\$ 25.59	\$ 6.57	\$ 32.79	\$ 26.11	\$ 6.68	\$ 33.41	\$ 26.63	\$ 6.78
BC-09	01	CARPENTER I	\$ 29.24	\$ 23.18	\$ 6.06	\$ 29.80	\$ 23.64	\$ 6.16	\$ 30.38	\$ 24.12	\$ 6.26	\$ 30.96	\$ 24.60	\$ 6.36	\$ 31.55	\$ 25.09	\$ 6.46
BC-10	01	ELECTICIAN I	\$ 30.31	\$ 24.06	\$ 6.25	\$ 30.89	\$ 24.54	\$ 6.35	\$ 31.47	\$ 25.03	\$ 6.44	\$ 32.08	\$ 25.53	\$ 6.55	\$ 32.70	\$ 26.05	\$ 6.65
BC-09	01	EQUIPMENT OPERATOR III	\$ 29.24	\$ 23.18	\$ 6.06	\$ 29.80	\$ 23.64	\$ 6.16	\$ 30.38	\$ 24.12	\$ 6.26	\$ 30.96	\$ 24.60	\$ 6.36	\$ 31.55	\$ 25.09	\$ 6.46
BC-02	01	GENERAL LABORER I	\$ 22.11	\$ 17.29	\$ 4.82	\$ 22.53	\$ 17.64	\$ 4.89	\$ 22.94	\$ 17.99	\$ 4.95	\$ 23.38	\$ 18.35	\$ 5.03	\$ 23.83	\$ 18.72	\$ 5.11
BC-03	01	GENERAL LABORER II	\$ 22.70	\$ 17.78	\$ 4.92	\$ 23.12	\$ 18.13	\$ 4.99	\$ 23.56	\$ 18.50	\$ 5.06	\$ 24.00	\$ 18.87	\$ 5.13	\$ 24.45	\$ 19.24	\$ 5.21
BC-07	01	HEAVY TRUCK DRIVER	\$ 26.36	\$ 20.80	\$ 5.56	\$ 26.87	\$ 21.22	\$ 5.65	\$ 27.38	\$ 21.65	\$ 5.73	\$ 27.89	\$ 22.08	\$ 5.81	\$ 28.44	\$ 22.52	\$ 5.92
BC-05	01	IRRIGATION SYSTEM SERVICE WORKER I	\$ 24.46	\$ 19.23	\$ 5.23	\$ 24.93	\$ 19.62	\$ 5.31	\$ 25.40	\$ 20.01	\$ 5.39	\$ 25.88	\$ 20.41	\$ 5.47	\$ 26.37	\$ 20.82	\$ 5.55
BC-10	01	MASON	\$ 30.31	\$ 24.06	\$ 6.25	\$ 30.31	\$ 24.06	\$ 6.25	\$ 31.47	\$ 25.03	\$ 6.44	\$ 30.29	\$ 24.06	\$ 6.23	\$ 30.29	\$ 24.06	\$ 6.23
BC-09	01	PAINTER I	\$ 29.24	\$ 23.18	\$ 6.06	\$ 29.80	\$ 23.64	\$ 6.16	\$ 30.38	\$ 24.12	\$ 6.26	\$ 30.96	\$ 24.60	\$ 6.36	\$ 31.55	\$ 25.09	\$ 6.46
BC-10	01	PLUMBER I	\$ 30.31	\$ 24.06	\$ 6.25	\$ 30.89	\$ 24.54	\$ 6.35	\$ 30.88	\$ 24.54	\$ 6.34	\$ 32.08	\$ 25.53	\$ 6.55	\$ 32.08	\$ 25.53	\$ 6.55
BC-07	01	TREE TRIMMER	\$ 26.36	\$ 20.80	\$ 5.56	\$ 26.36	\$ 20.80	\$ 5.56	\$ 27.38	\$ 21.65	\$ 5.73	\$ 27.89	\$ 22.08	\$ 5.81	\$ 28.44	\$ 22.52	\$ 5.92
BC-05	01	TREE TRIMMER TRUCK DRIVER	\$ 24.46	\$ 19.23	\$ 5.23	\$ 24.93	\$ 19.62	\$ 5.31	\$ 25.40	\$ 20.01	\$ 5.39	\$ 25.88	\$ 20.41	\$ 5.47	\$ 26.37	\$ 20.82	\$ 5.55
BC-06	01	TRUCK DRIVER	\$ 25.39	\$ 20.00	\$ 5.39	\$ 25.87	\$ 20.40	\$ 5.47	\$ 26.36	\$ 20.81	\$ 5.55	\$ 26.86	\$ 21.23	\$ 5.63	\$ 27.38	\$ 21.65	\$ 5.73
BC-10	01	WELDER I	\$ 30.31	\$ 24.06	\$ 6.25	\$ 30.89	\$ 24.54	\$ 6.35	\$ 31.47	\$ 25.03	\$ 6.44	\$ 32.08	\$ 25.53	\$ 6.55	\$ 32.08	\$ 25.53	\$ 6.55
F-110	02	GENERAL CONSTRUCTION & MAINTENANCE SUPERVISOR I	\$ 32.38	\$ 25.77	\$ 6.61	\$ 32.38	\$ 25.77	\$ 6.61	\$ 32.37	\$ 25.77	\$ 6.60	\$ 32.37	\$ 25.77	\$ 6.60	\$ 32.37	\$ 25.77	\$ 6.60

Years 2016 and 2017  
Holidays to be observed by the  
HAWAII STATE GOVERNMENT

[www.dhrd.hawaii.gov](http://www.dhrd.hawaii.gov)  
Website where State Holiday Schedule posted

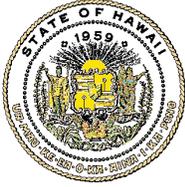
Year 2016 HAWAII STATE HOLIDAYS

<u>(Hawaii Rev. Statutes, Sec. 8-1)</u>	<u>Day Observed in 2016</u>	<u>Official Date Designated in Statute/Constitution</u>
New Year's Day.....	Jan. 1 Friday.....	The first day in January
Dr. Martin Luther King, Jr. Day.....	Jan. 18 Monday.....	The third Monday in January
Presidents' Day.....	Feb. 15 Monday.....	The third Monday in February
Prince Jonah Kuhio Kalaniana'ole Day.....	Mar. 25 Friday.....	The twenty-sixth day in March
Good Friday.....	Mar. 25 Friday.....	The Friday preceding Easter Sunday
Memorial Day.....	May 30 Monday.....	The last Monday in May
King Kamehameha I Day.....	June 10 Friday.....	The eleventh day in June
Independence Day.....	July 4 Monday.....	The fourth day in July
Statehood Day.....	Aug. 19 Friday.....	The third Friday in August
Labor Day.....	Sept. 5 Monday.....	The first Monday in September
General Election Day.....	Nov. 8 Tuesday.....	The first Tuesday in Nov. following the first Monday of even-numbered years. <i>(Hawaii State Constitution, Article 2 – Section 8)</i>
Veterans' Day.....	Nov. 11 Friday.....	The eleventh day in November
Thanksgiving.....	Nov. 24 Thursday.....	The fourth Thursday in November
Christmas.....	Dec. 26 Monday.....	The twenty-fifth day in December

Year 2017 HAWAII STATE HOLIDAYS

<u>(Hawaii Rev. Statutes, Sec. 8-1)</u>	<u>Day Observed in 2017</u>	<u>Official Date Designated in Statute/Constitution</u>
New Year's Day.....	Jan. 2 Monday .....	The first day in January
Dr. Martin Luther King, Jr. Day.....	Jan. 16 Monday.....	The third Monday in January
Presidents' Day.....	Feb. 20 Monday.....	The third Monday in February
Prince Jonah Kuhio Kalaniana'ole Day.....	Mar. 27 Monday .....	The twenty-sixth day in March
Good Friday.....	April 14 Friday.....	The Friday preceding Easter Sunday
Memorial Day.....	May 29 Monday.....	The last Monday in May
King Kamehameha I Day.....	June 12 Monday.....	The eleventh day in June
Independence Day.....	July 4 Tuesday.....	The fourth day in July
Statehood Day.....	Aug. 18 Friday.....	The third Friday in August
Labor Day.....	Sept. 4 Monday.....	The first Monday in September
Veterans' Day.....	Nov. 10 Friday.....	The eleventh day in November
Thanksgiving.....	Nov. 23 Thursday.....	The fourth Thursday in November
Christmas.....	Dec. 25 Monday.....	The twenty-fifth day in December

**FOOTNOTES:** For use solely by State government agencies. Federal government and local banking holidays may differ. For State agencies that operate on other than Monday-Friday 7:45 AM to 4:30 PM schedules, also refer to appropriate collective bargaining agreements. Created by the Department of Human Resources Development 8/11/2015; subject to change.



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

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

**RECITALS**

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

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

- 1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the Invitation for Bids number IFB-17-HHL-004 ("IFB") \* and the CONTRACTOR'S accepted bid ("Bid"), both of which, even if not physically attached to this Contract, are made a part of this Contract.
- 2. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Contract in a total amount not to exceed \_\_\_\_\_  
\* and summarized in Attachment S-1

TBD \_\_\_\_\_ DOLLARS

(\$ TBD ), including approved costs incurred and taxes, at the time and in the manner set forth in the IFB and CONTRACTOR'S Bid. And generally described in Attachment S-2.

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

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

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

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

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of \_\_\_\_\_ and 00/100 \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) per day, in accordance with the terms of paragraph 9 of the General Conditions.

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

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

**STATE**

\_\_\_\_\_  
*(Signature)*

**Jobie M. K. Masagatani**

\_\_\_\_\_  
*(Print Name)*

**Chairman, Hawaiian Homes Commission**

\_\_\_\_\_  
*(Print Title)*

\_\_\_\_\_  
*(Date)*

**CONTRACTOR**

**CORPORATE SEAL**

**(If available)**

\_\_\_\_\_  
*(Name of Contractor)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Print Name)*

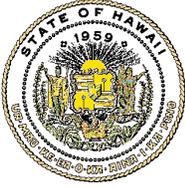
\_\_\_\_\_  
*(Print Title)*

\_\_\_\_\_  
*(Date)*

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Deputy Attorney General

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



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )
) SS.
\_\_\_\_\_ COUNTY OF \_\_\_\_\_ )

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

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of \_\_\_\_\_
My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: 2 \_\_\_\_\_

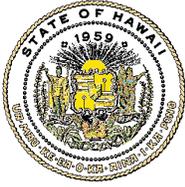
Notary Name: \_\_\_\_\_ Circuit \_\_\_\_\_

Doc. Description: Contract for Goods or Services Based Upon
Competitive Sealed Bids

(Notary Stamp or Seal)

Notary Signature \_\_\_\_\_ Date \_\_\_\_\_

NOTARY CERTIFICATION



**STATE OF HAWAII**

**CONTRACTOR'S**

**STANDARDS OF CONDUCT DECLARATION**

For the purposes of this declaration:

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

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

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

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

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

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

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

**CONTRACTOR**

By \_\_\_\_\_  
(Signature)

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Date \_\_\_\_\_



**STATE OF HAWAII**  
**SCOPE OF SERVICES**

**Project:** Ground Maintenance of Waiehu Kou Subdivision – Phases 2, 3, and 4  
**Location:** Waiehu Kou, County of Maui, Hawaii  
**Contractor:** TBD

Pursuant to 103D, Hawaii Revised Statutes, the CONTRACTOR shall perform and provide the Scope of Services listed below and detailed in Invitation for Bids IFB-17-HHL-004 and in CONTRACTOR’s proposal submitted January 18, 2017, in a proper and satisfactory manner as determined by the STATE and in accordance with all Federal, State and local laws, both of which are incorporated by reference.

Item	Months	Description
<b>A. Waiehu Kou Phase 2</b>		
A1	1	Initial Clearing for Phase 2
A2	36	Retention Basin and open grass swales (approx. 3.20 acres)
A3	36	Commercial Lot No. 112 (approx. 2.20 acres)
A4	36	Phase 2 Park Site
<b>B. Waiehu Kou Phase 3</b>		
B1	1	Initial Clearing for Phase 3
B2	36	Retention Basin Lot 119 and surrounding area (approx. 2.0 acres)
B3	36	Retention Basin Lot 120 (approx. 8.0 acres)
B4	36	Retention Basin Lot 121 (approx. 4.0 acres)
B5	36	Maintenance of the Service Road 3A
<b>C. Waiehu Kou Phase 4</b>		
C1	1	Initial Clearing for Phase 4
C2	36	Retention Basin and Adjourning areas, Lot 99
C3	36	Portion of Lot 100
C4	36	Maintenance of the Service Road 4A
The contractor shall furnish all labor, equipment, cleaning supplies, materials and supervision to satisfactorily provide complete monthly maintenance, inspection and repairs to landscaped areas, irrigation systems, drainage systems and other related work as specified for the Waiehu Kou Subdivisions, Phases 2, 3, & 4 (IFB-17-HHL-004)		



STATE OF HAWAII

**COMPENSATION AND PAYMENT SCHEDULE**

**Project:** Ground Maintenance of Waiehu Kou Subdivision – Phases 2,3, and 4  
**Location:** Waiehu Kou, County of Maui, Hawaii  
**Contractor:** TBD

The State shall pay the CONTRACTOR a sum not to exceed \_\_\_\_\_ AND \_\_\_/100 DOLLARS (\$\_\_\_\_\_) for the satisfactory completion of the work under this contract.

<b>Grounds Maintenance of the Waiehu Kou Subdivision Phases 2, 3, &amp; 4</b>				
<b>Item</b>	<b>Months</b>	<b>Description</b>	<b>Unit Price</b>	<b>Unit Total</b>
<b>A. Waiehu Kou Phase 2</b>				
A1	1	Initial Clearing for Phase 2	\$ _____	\$ _____
A2	36	Retention Basin and open grass swales (approx. 3.20 acres)	\$ _____	\$ _____
A3	36	Commercial Lot No. 112 (approx. 2.20 acres)	\$ _____	\$ _____
A4	36	Phase 2 Park Site	\$ _____	\$ _____
<b>A</b>		<b>SUBTOTAL PHASE 2 (Items A1 – A4)</b>		\$ _____
<b>B. Waiehu Kou Phase 3</b>				
B1	1	Initial Clearing for Phase 3	\$ _____	\$ _____
B2	36	Retention Basin Lot 119 and surrounding area (approx. 2.0 acres)	\$ _____	\$ _____
B3	36	Retention Basin Lot 120 (approx. 8.0 acres)	\$ _____	\$ _____
B4	36	Retention Basin Lot 121 (approx. 4.0 acres)	\$ _____	\$ _____
B5	36	Maintenance of the Service Road 3A	\$ _____	\$ _____
<b>B</b>		<b>SUBTOTAL PHASE 3 (Items B1 – B5)</b>		\$ _____
<b>C. Waiehu Kou Phase 4</b>				
C1	1	Initial Clearing for Phase 4	\$ _____	\$ _____
C2	36	Retention Basin and Adjoining areas, Lot 99	\$ _____	\$ _____
C3	36	Portion of Lot 100	\$ _____	\$ _____
C4	36	Maintenance of the Service Road 4A	\$ _____	\$ _____
<b>C</b>		<b>SUBTOTAL PHASE 4 (Items C1 – C4)</b>		\$ _____
<b>D</b>		ALLOWANCE: (See SC-06)		\$ <b>100,000.00</b>
		<b>TOTAL SUM BID (A+B+C+D)</b>		\$ _____



STATE OF HAWAII

**TIME OF PERFORMANCE**

**Project:** Ground Maintenance of Waiehu Kou Subdivision – All Phases  
**Location:** Waiehu Kou, County of Maui, Hawaii  
**Contractor:** TBD

1. The Time of Performance for this Contract shall be thirty-six (36) months from the date specified in the Notice to Proceed, unless extended by delays excused by the STATE as documented in writing. The Notice to Proceed shall be issued by the STATE separately to the CONTRACTOR.
2. Unless terminated, the contract shall be extended for not more than one (1) additional twenty-four-month period or parts thereof, without the necessity of re-bidding upon mutual agreement in writing at least sixty (60) days prior to expiration, provided that the contract price for the extended period shall remain the same or lower than the initial bid price or as adjusted in accordance with the price adjustment provisions below and/or by State initiated contract modifications.

SAMPLE



STATE OF HAWAII

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development (“DHRD”).\*

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

(Signature)
Jobie M. K. Masagatani
(Print Name)
Chairman, Hawaiian Homes Commission
(Print Title)

(Date)

\* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
(2) There is no employee-employer relationship; and
(3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

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

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

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

(Date)



STATE OF HAWAII

SPECIAL CONDITIONS

**Project:** Ground Maintenance of Waiehu Kou Subdivision – Phases 2, 3, and 4  
**Location:** Waiehu Kou, County of Maui, Hawaii  
**Contractor:** TBD

**SC-01 INTERCHANGEABLE TERMS**

The following terms are one and the same:

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

**SC-02 INSURANCE COVERAGE**

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

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

<u>Coverage</u>	<u>Limit</u>
<b>General Liability Insurance</b> (occurrence form)	Bodily Injury and Property Damage (combined single limit): <u>\$1,000,000</u> per occurrence and <u>\$2,000,000</u> aggregate  Personal Injury: <u>\$1,000,000</u> per occurrence and <u>\$2,000,000</u> aggregate
<b>Automobile Insurance</b> (covering all owned, non-owned and hired automobiles)	Bodily Injury: <u>\$1,000,000</u> per person and <u>\$1,000,000</u> per occurrence.  Property Damage: <u>\$1,000,000</u> per accident or combined single limit of <u>\$2,000,000</u> .
<b>Workers Compensation</b> (statutory limit is required by laws of the State of Hawaii)	Insurance to include Employer’s Liability. Both such coverages shall apply to all employees of the CONTRACTOR and, in case any subcontractor fails to provide adequate similar protection for all his employees, to all employees of subcontractors.
<b>Builder’s Risk covering the CONTRACTOR and all subcontractors</b>	100% Replacement Value
<b>Fire and extended coverage</b>	100% Replacement Value



STATE OF HAWAII  
**SPECIAL CONDITIONS**

**Malicious Mischief** 100% Replacement Value  
**Flood Insurance**, if applicable Maximum Coverage available

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

**SC-03 COMPLETION SCHEDULE**

The Time of Performance for this Contract shall be thirty-six (36) months from the date specified in the Notice to Proceed, unless extended by delays excused by the STATE as documented in writing. The Notice to Proceed shall be issued by the STATE separately



STATE OF HAWAII  
**SPECIAL CONDITIONS**

to the CONTRACTOR.

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

**SC-04 PROCESS THROUGH DHHL**

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

**SC-05 ALLOWANCES**

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

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

**SC-06 CONTRACTOR'S LICENSING**

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

**SC-07 SOIL AND DUST CONTROL**

The CONTRACTOR shall institute an erosion control program and dust control program to minimize soil erosion and wind erosion and airborne fugitive dust nuisance, respectively for the entire duration of this project.



STATE OF HAWAII

**SPECIAL CONDITIONS**

**SC-08 GENERAL CONDITIONS**

In the event of conflicts and/or discrepancies, the DHHL Construction General Conditions shall govern over Form AG-008, 103D General Conditions (eff. 10/17/13)

**SC-09 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS**

Contractors are hereby notified of the applicability of Section 11-355, HRS, which states that campaign contributions from specified State or County government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body.

**SC-10 STATE GENERAL EXCISE TAX**

This project is not exempt from the State of Hawaii General Excise Tax. The CONTRACTOR's prices shall include the General Excise Tax for all work.

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

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

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

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

<u>Class</u>	<u>Hourly Rate</u>
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**STATE OF HAWAII**  
**SPECIAL CONDITIONS**

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

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

At the release of this IFB, only the current wages of State employees performing similar work are known. Should their wages increase during any period of the contract, including supplements, the Contractor may request for increase in contract price if the current wages paid for similar positions are lower than wages paid to State employees. The increase requested must result in increase in wages to the Contractor's employees performing the work, herein including any increase in cost for benefits required by law that are automatically increase as a result of increase wages, such as federal old age benefits, workers' compensation, temporary disability insurance, unemployment insurance, and prepaid public health insurance.

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

1. At the time of a request, Contractor must provide documentation to show that he is in compliance with Section 103.55, HRS, i.e., its employees are being paid no less than the known wage of the State position listed herein. Documentation shall include the employees' payroll records and a statement that the employees are being utilized for this contract.
2. At the time of bidding, the Contractor must have specified on the appropriate Bid Offer Form page, the percentage of the unit bid price that represents labor costs. If the Contractor fails to specify the percentage, the Contractor's request for increase will not be considered.
3. Request for increase must be made in writing to DHHL on a timely basis.
  - a. Request for increase for the initial contract period must be made as soon as practicable after the State wage agreements are made public. Approved request will be retroactive to the date of increase for the State employee.
  - b. Request for increase for a supplemental period of the contract must be made prior to the start of the supplement. Contractor should call the Project Manager named on the cover of this Invitation for Bids to obtain the current wage information.
4. Contract price adjustment shall be considered:
  - a. Only upon request by the Contractor accompanied by proof satisfactory to the State that its employees have been paid comparable wages to State employees; and
  - b. Only if there is a wage increase to public employees performing comparable work; and
  - c. Only for the contract period in which the price adjustment request is submitted (current contract period only).



**STATE OF HAWAII**  
**SPECIAL CONDITIONS**

Example:

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

Extension period: March 7, 2004 to March 6, 2005

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

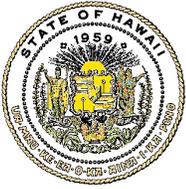
5. Price adjustment based on the actual dollar increase per hour per State employee shall be calculated as follows:
  - a. Bid Price/Hr/ Officer (A)                   =(A) for example = \$15/hr
  - b. Current Hourly Wage Rate (B)           =(B) for example = \$11/hr
  - c. New Hourly Wage Rate paid  
to State Employees (C)                   =(C) for example = \$11.50/hr
  - d. Hourly Wage Increase to  
State employees (D)                       =(D) for example = \$0.50/hr
  - e. Adjusted Bid Price/Hr/Officer (E)   =(A) + (D), or 15.00 + \$0.50 = \$15.50/hr
  
6. In addition to the actual dollar amount of wage increase, Contractor may apply for the percentage (5) 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 had determined that the applicable fringe benefits for wage related price adjustment shall be limited to: 1) Federal Old Age Benefits, 2) Workers 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



STATE OF HAWAII  
SPECIAL CONDITIONS

$$$.50 \times .16 = $.08$$

c. Adjusted Bid Price/Hr/Officer + Fringe Benefits = (E) + (F), or  
 $\$15.50 + \$.08 = \$15.08$

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.

# 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.