

Request for Proposals
Job No. 20-03
SCADA SYSTEM MAINTENANCE AND
PROFESSIONAL CONSULTATION SERVICES



Sealed Offers
Will be received up to 12:00 p.m. noon (HST) on
Monday, June 22, 2020

Delivered to the Department of Water, County of Kaua'i,
4398 Pua Loke Street, Lihu'e, Hawai'i

Direct questions relating to this solicitation to Val Reyna at
vreyna@kauaiwater.org

This solicitation is provided for information purposes. Parties interested in responding to this solicitation shall submit offers using this document provided prior registration for this specific solicitation. Not registering may be grounds for automatic rejection.

Registration for solicitation: www.publicpurchase.com

POSTED via www.kauaiwater.org, www.publicpurchase.com, www.hands.ehawaii.gov , 06/01/20

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SECTION ONE

INTRODUCTION, TERMS AND ACRONYMS, KEY DATES

1.1 INTRODUCTION

The Department of Water, County of Kaua‘i (“DOW”) is requesting proposals from qualified vendors for maintenance services for the JOB NO. 20-03, SCADA SYSTEM MAINTENANCE AND PROFESSIONAL CONSULTATION SERVICES, (hereinafter referred to as “PROJECT”) to provide professional support and maintenance services for the Pua Loke Baseyard SCADA System Central Computer Stations and Network Equipment, Remote SCADA Sites located at various points island wide, and SCADA System Technical Support. This RFP is intended to solicit proposals from qualified contractors to support, maintain, furnish and install SCADA related hardware and software in order to maintain system integrity. Further, furnishing and installing materials shall be performed so as not to interfere with continued uninterrupted service to customers. Where service interruptions are inevitable, attempts shall be made to minimize SCADA system disruptions by use of manual operations or temporary operational modifications.

1.2 CANCELLATION

This RFP may be cancelled and any or all proposals rejected in whole or in part, without liability to the DOW when it is determined to be in the best interest of the DOW.

1.3 RFP SCHEDULE AND SIGNIFICANT DATES

The schedule represents the DOW’s best estimate of the schedule that will be followed. All times indicated are Hawai‘i Standard Time (HST). If a component of this schedule, such as “Proposal Due date/time” is delayed, the rest of the schedule will likely be shifted by the same number of days. Any change to the RFP Schedule and Significant Dates shall be reflected in and issued in an addendum. The approximate schedule is as follows:

Release of Request for Proposals	June 1, 2020
Due date to submit Questions	June 8, 2020
The DOW’s Response to Questions	June 8 – June 12, 2020
Proposals Due date/time	June 22, 2020 at 12:00 PM noon HST
Proposal Evaluations	June 22 – June 26, 2020
Discussion with Priority Listed Offerors	June 29 – July 3, 2020
Best and Final Offer (if necessary)	July 10, 2020
Notice of Award	July 2020
Contract Start Date	July 2020

1.4 QUESTIONS AND ANSWERS PRIOR TO OPENING OF PROPOSALS

All questions shall be submitted by the due date specified in Section 1.3, *RFP Schedule and Significant Dates*, as amended.

The DOW will respond to questions through Addenda to this RFP up to and including the date specified in Section 1.3, *RFP Schedule and Significant Dates*, as amended.

All documentation shall be uploaded at www.publicpurchase.com and opened at the DOW, County of Kaua'i, 4398 Pua Loke Street, Līhu'e, Hawai'i 96766 ("DOW Admin Office").

SECTION TWO

BACKGROUND AND SCOPE OF WORK

2.1 BACKGROUND

The DOW is a water utility whose mission is to provide safe, affordable, sufficient drinking water through wise management of our resources with excellent customer service for the people of Kaua'i.

Purpose: Provide all equipment and maintenance services necessary for maintaining and updating the existing Supervisory Control and Data Acquisition (SCADA) system for the Department of Water facilities.

2.2 SCOPE OF WORK

All Services shall be in accordance with this Request for Proposal (RFP), including its attachments and any addenda.

The Offeror shall perform and be responsible for the following work items:

- A. **PUA LOKE BASEYARD SCADA SYSTEM MAINTENANCE:** The DOW SCADA System was designed by Timberline in 2001. The system is comprised of 96 remote RTU's that provide data to the main servers at the Pua Loke site through wireless and frame relay communications. The Pua Loke complex has two (2) central on-site servers for the SCADA system with virtual servers including; Primary Domain Controller (PDC), Backup Domain Controller (BDC), SCADA Host A (Primary SCADA Host), SCADA Host B (Backup SCADA Host), SQL Server (Historian), and the Terminal Server. The selected contractor shall provide professional support and maintenance services for the Pua Loke Baseyard Central Computer Stations and Network Equipment. The selected contractor will to conduct the following on-site scope of work by one (1) Network Engineer twice a year for ten (10) working days each trip:
1. Inspect all network equipment for proper operation and software upgrade requirements.
 2. Verify historical data collection and report generation for proper operation.
 3. Perform administrative tasks associated with maintaining the various servers.
 4. Perform programming modifications to SCADA system components and software.
 5. Provide a technical report of work completed.
- B. **REMOTE SITE MAINTENANCE:** The system is comprised of 96 remote RTU's that are spread over 85 remote SCADA sites. The remote site scope of work will include services for the remote SCADA sites. The selected contractor will be required to conduct the following remote site scope of work by two (2) Field Service Engineers twice a year for ten (10) working days each trip:
1. Inspect each remote site to verify the integrity of the equipment including: verify radio communication RF output, align antennae, verify correct battery backup

operation, and inspect batteries for signs of performance degradation. Clean inside RTU as needed.

2. Calibrate instruments to return instruments to proper operation and valid routing tables.
3. Verify Frame Relay and Cellular connections and check for efficient operation. Replace modems as necessary.
4. Inspect, troubleshoot, replace, reconfigure, and/or reprogram SCADA remote site RTU components as necessary.
5. Provide a technical report of work completed.

C. **AS NEEDED SYSTEM TECHNICAL SUPPORT:** Provide System Technical Support service as required. The selected contractor will make available as needed, a Network Engineer and/or Field Service Engineer during normal and non-working hours to answer any technical questions regarding the SCADA control equipment and system information and will provide the following:

1. Remote access support services to the DOW to support any system questions and troubleshooting. The selected contractor will implement a secure solution for remote access, which will include VPN, manual connection, or model call back services.
2. Control system software support. The selected contractor will manage the DOWs control systems software upgrades when they are released.
3. Off-site storage of the DOWs control system programs. The selected contractor shall provide the backed-up system programs as needed to the DOW. The selected contractor shall have the system programs available for modifications and changes as needed.

D. **DURATION OF WORK:** All work shall be in accordance with the provisions in this RFP including the Special Provisions attached hereto, on time and on budget. The initial contract period shall be for 3 years (1,095 days) following the Notice to Proceed. The DOW, in agreement with the Offeror, may extend the contract for a period of 12 months at a time, not to exceed 24 months total extension. Each 12 month contract extension shall be for no more than the previous years agreed upon contract price plus a no more than 2% addition to accommodate for inflation purposes, dependent on budgetary approvals for future fiscal years.

2.3 TERM OF CONTRACT

The contract shall be for a multi-term of three (3) years and is intended to begin approximately in July, 2020 and ends on or about July, 2023. See HAR sec. 3-122-149 on multi-term contracts.

The contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds. The contract will be cancelled if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal year succeeding the initial fiscal year. In this event, the contract shall automatically terminate at the end of the fiscal year for which funds have been appropriated. In the event the contract is cancelled because funds are not appropriated or otherwise made available to support the continuation of the contract after the first fiscal year, no breach of contract shall be deemed to have occurred as a result of this termination, which shall be considered as a normal termination of the contract, provided that the contractor shall be reimbursed for its unamortized, reasonably incurred, nonrecurring costs. The Board will

notify the Contractor on a timely basis regarding the availability of funds for the continuation of the contract for each succeeding year.

Unless terminated, the Contractor and the DOW may extend the term of the contract for twenty four (24) additional months or portions thereof (“Option Term”) without the necessity of re-soliciting, upon mutual agreement in writing at least sixty (60) days prior to the expiration of the contract. The contract price paid to the Contractor for the extended period shall remain the same or as described in the offer.

2.4 PROCUREMENT OFFICER

The PROCUREMENT Officer for this contract is:

Val Reyna
Chief, Operations Division
Phone: (808) 245-5434
Email: vreyna@kauaiwater.org

SECTION THREE

PROPOSAL FORMAT AND CONTENT

3.1 OFFEROR'S AUTHORITY TO SUBMIT AN OFFER

The DOW will not participate in determinations regarding an Offeror's authority to sell a product or service. If there is a question or doubt regarding an Offeror's right or ability to obtain and sell a product or service, the Offeror shall resolve that question prior to submitting an offer.

3.2 REQUIRED REVIEW

3.2.1 Before submitting a proposal, each Offeror must thoroughly and carefully examine this RFP, any attachment, addendum, and other relevant document, to ensure Offeror understands the requirements of the RFP. Offeror must also become familiar with state, local, and federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work required.

3.2.2 Should Offeror find defects and questionable or objectionable items in the RFP, Offeror shall notify the DOW in writing prior to the deadline for written questions as stated in the RFP *Schedule and Significant Dates*, as amended. This will allow the issuance of any necessary corrections and/or amendments to the RFP by addendum, and mitigate reliance on a defective solicitation.

3.3 PROPOSAL PREPARATION COSTS

Any and all costs incurred by the Offeror in preparing or submitting a proposal shall be the Offeror's sole responsibility whether or not any award results from this RFP. The DOW shall not reimburse such costs.

3.4 TAX LIABILITY

3.4.1 Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Offerors are advised that they are liable for the Hawai'i GET for sales made on Oahu, and for the islands of Hawai'i, Maui, Molokai, and Kaua'i. If, however, an Offeror is a person exempt by HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

3.4.2 Federal Tax I.D. Number and Hawai'i General Excise Tax License I.D. Offeror shall submit its current Federal Tax I.D. Number and Hawai'i General Excise Tax License I.D. number in the space provided on Offer Form, OF-1, page 28, thereby attesting that the Offeror is doing business in the State and that Offeror will pay such taxes on all sales made to the State.

3.5 PROPERTY OF THE DEPARTMENT

All proposals become the property of the DOW, County of Kaua'i.

3.6 CONFIDENTIAL INFORMATION

- 3.6.1 If an Offeror believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld from disclosure as confidential, then the Offeror shall inform the Officer in Charge in writing and provide justification to support the Offeror's confidentiality claim. Price is not considered confidential and will not be withheld.
- 3.6.2 An Offeror shall request in writing nondisclosure of information such as designated trade secrets or other proprietary data Offeror considers to be confidential. Such requests for nondisclosure shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
- 3.6.3 All such requests for confidentiality and nondisclosure of information shall be subject to HAR §3-122-58 and the Uniform Information Practices Act, Hawai'i Revised Statutes. Any and all portions of the proposal requested to be designated as confidential or not for disclosure shall be readily separable from the remaining portions of the proposal.

3.7 EXCEPTIONS

Should Offeror take any exception to the terms, conditions, specifications, or other requirements listed in the RFP, Offeror shall list such exceptions in this section of the Offeror's proposal. Offeror shall reference the RFP section where exception is taken, a description of the exception taken, and the proposed alternative, if any. The DOW reserves the right to accept or not accept any exceptions; provided that no exceptions to statutory requirements of the DOW's General Terms and Conditions for Goods and Services Contracts, dated August 2010 (hereinafter "General Terms") shall be considered.

3.8 PROPOSAL OBJECTIVES

- 3.8.1 One of the objectives of this RFP is to make proposal preparation easy and efficient, while giving Offerors ample opportunity to highlight their proposals.
- 3.8.2 Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis will be on completeness, clarity, and content.
- 3.8.3 When an Offeror submits a proposal, it shall be considered a complete plan for accomplishing the tasks described in this RFP and any supplemental tasks the Offeror has identified as necessary to successfully complete the obligations outlined in this RFP.
- 3.8.4 The proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP as stated in Section 2.2 SCOPE OF WORK.
- 3.8.5 Offeror shall submit a proposal that includes an overall strategy, timeline and plan for the work proposed as well as expected results and possible shortfalls.

3.9 PROPOSAL FORMS

- 3.9.1 To be considered responsive, the Offeror's proposal shall respond to and include all items specified in this RFP and any subsequent addendum. Any proposal offering any other set of terms and conditions that conflict with the General Terms provided in the RFP or in any subsequent addendum may be rejected without further consideration.
- 3.9.2 Offer Form, Page OF-1. Offer Form, OF-1 is required to be completed using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, in the appropriate space on Offer Form, OF-1. Failure to do so may delay proper execution of the Contract.

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

3.10 PROPOSAL CONTENTS

Proposals must:

- 3.10.1 Include a transmittal letter to confirm that the Offeror shall comply with the requirements, provisions, terms, and conditions specified in this RFP.
- 3.10.2 Include a signed Offer Form OF-1 with the complete name and address of Offeror's firm and the name, mailing address, and telephone number of the person the DOW should contact regarding the Offeror's proposal.
- 3.10.3 If subcontractor(s) will be used, append a statement to the transmittal letter from each subcontractor, signed by an individual authorized to legally bind the subcontractor and stating:
- a. The general scope of work to be performed by the subcontractor;
 - b. The subcontractor's willingness to perform for the indicated scope of work.
- 3.10.4 Provide all of the information requested in this RFP in the order specified.
- 3.10.5 Be organized into sections, following the exact format using all titles, subtitles, and numbering, with tabs separating each section described below. Each section must be addressed individually and pages must be numbered.
- a. Transmittal Letter-Offer Form OF-1
 - b. Experience and Capabilities. The respondent's proposal should be divided into the following distinct sections, as detailed in the following paragraphs:
 - **Executive Summary**
 - **Proposal Section A** – Relevant Maintenance Services Experience
 - **Proposal Section B** – Financial and Staffing Capabilities
 - **Proposal Section C** – Strength of Proposer/References

- **Proposal Section D** – Proposers Methods and Time of Performance
- **Proposal Section E** – Cost Proposal
- **Addenda**

The above sections should be submitted together, with each section clearly labeled and subdivided.

Further description of each required deliverable is outlined in the following subsections:

1. Proposal Section A – RELEVANT MAINTENANCE SERVICES EXPERIENCE

- a. Maintenance Experience: Maintenance services experience with comparable water projects. Describe the Proposer’s experience in maintaining a system of similar size and complexity (80+ sites, 80+ SCADAPack RTUs, 10 data concentrators, redundant HMI servers, virtual servers, terminal server, historian server, redundant domain controller servers, redundant alarm dialer, routers, firewalls, MAS 900 MHz radio system consisting of 80+ radios, 9 frame-relay connections).
- b. Personnel Experience: Experience and depth of the proposed maintenance team that will be responsible for completing the maintenance of the project. Provide a brief description of the Proposer’s experience with programming using the ISaGRAF software application, programming using the TelePACE software application, and programming using the Beijer Cimrex and Information Designer software.
- c. Prior clients: List FIVE (5) clients that may be contacted by the DOW for whom the Proposer has provided maintenance services, preferably SCADA maintenance projects similar to the maintenance services described in this RFP within the last FIFTEEN (15) years. For each project, identify and describe the following:
 - (1) Type of maintenance project,
 - (2) Project cost;
 - (3) Contract beginning and end dates;
 - (4) Level of involvement and the type of maintenance services provided by the Proposer including experience maintaining systems with WIN-911 alarm dialer software, experience maintaining Schneider Electric SCADAPack RTUs, experience maintaining systems utilizing data concentrator PLCs, experience maintaining systems utilizing the Modbus TCP protocol, experience maintaining systems using Frame-Relay lines as the communication path between sites, experience maintaining systems utilizing the Simple Network Management Protocol (SNMP) to gather information from network devices, experience maintaining systems involving Cisco routers and firewalls, and experience maintaining systems with Microwave Data System 900 MHz spread spectrum MAS radio telemetry;
 - (5) Any unique project challenges/complexities and how the proposer addressed/resolved them; and
 - (6) The name, address, telephone number (including cell phone number), fax number, and email address of the project manager or person with similar authority who was employed by the client or entity for whom the Proposer performed these similar maintenance services. By submitting a proposal in response to this RFP, the Proposer will be granting permission for the DOW

to contact any of the references identified in the Proposer's proposal for additional information.

- d. Procurement Experience: Experience with Hawai'i government procurement practices and processes. The extent and depth of the Proposer's working experience with government procurement practices and processes used in Hawai'i, whether by the federal, state, or county governments in Hawai'i.
- e. Liquidated Damages: Identify and describe any contracts or agreements where the proposer incurred liquidated damages for not completing the contract scope of work within the allotted contract time.

2. Proposal Section B - FINANCIAL and STAFFING CAPABILITIES

- a. Financial capability and resources: The financial capability and resources available to the Proposer to provide and fully complete the maintenance services described in this RFP. A critical part of this evaluation will be a review of the Proposer's financial statements of the past three (3) years, the description of the Proposer's past and present projects and other work, and the financial references required to be submitted under this RFP.
- b. Staffing capabilities: The qualifications and the extent and depth of the experience of the personnel that will be assigned by the Proposer to perform the maintenance services described in this RFP. A critical part of this evaluation will be the Proposer's listing of the team to be assigned by the Proposer to perform the maintenance services including (1) the background information, business experience, and resumes covering the Proposer's personnel and (2) the description of the duties and responsibilities for each of such personnel assigned to perform the maintenance services for this project described in this RFP. The Proposer should highlight key personnel and their qualifications including those who will be conducting day-to-day business with the DOW for software related work, hardware related work, networking related work, and field service related work for this project. The Proposer should at least provide the following with respect to the Proposer's assigned personnel: names, addresses, telephone, cell, and fax numbers, email addresses, a description of their relevant backgrounds, a copy of their resumes, and a description of the responsibilities and duties each will be assuming or performing in relation to this project. Substitution of key team members will require prior approval of the DOW.
- c. Organizational chart. Attach an organizational chart of the Proposer, including, without limitation, a narrative overview of the Proposer's organization, a description of the lines of authority (both generally and for this project), and the background, business experience, and resumes of the Proposer's principal owners and chief and senior executives.

3. Proposal Section C - STRENGTH OF PROPOSER / REFERENCES

- a. Prior contracts with the DOW, or any other State of Hawai'i entities. Identify and describe any contracts or agreements with the DOW, or any other State of Hawai'i entities under which the Proposer provided maintenance services similar to that described in this RFP, including, without limitation:

- (1) The parties to the contract or agreement,
- (2) The type and value of the project involved,
- (3) The Proposer's role in or the type of services provided by the Proposer under the contract or agreement for each project,
- (4) The start and termination dates,
- (5) Project milestones achieved by the project and the Proposer,
- (6) If the prior contract or agreement was terminated,
- (7) The reasons why the contract or agreement was terminated,
- (8) Circumstances surrounding or affecting the Proposer's performance under the prior contract or agreement,
- (9) The Proposer's role or contribution to the termination of the prior contract or agreement, and
- (10) The names, addresses, telephone numbers (including cell phone numbers), fax numbers, and email addresses of the contacts for the DOW, and any State of Hawai'i entities under such prior contracts or agreements.

- b. Complaints filed against Proposer. Describe any formal complaint filed against the Proposer's entity or company with the State of Hawai'i Department of Commerce and Consumer Affairs, the State of Hawai'i Department of Labor and Industrial Relations or with any other state or federal agency. Failure to properly make this disclosure regarding the existence of such complaints may result in the rejection of all or any part of the Proposer's proposal or termination of any contract or agreement entered into pursuant to this RFP process. Provide the following information for each of these complaints:

- (1) Names, addresses, telephone, cell, fax numbers, and email addresses,
- (2) A description of the extent and nature of the complaint filed against the Proposer.

4. Proposal Section D - PROPOSERS METHODS AND TIME FOR PERFORMANCE

- a. Describe methods and time for performance: Describe in detail how the Proposer plans to provide the maintenance services described in this RFP, including, without limitation, the concept, approach, and methods that the Proposer plans to use in providing the maintenance services described in this RFP on time and within budget. Provide preliminary overall project schedule showing maintenance duration through project completion. Provide details with regards to any possible delays during the project and contingencies for these delays. The methods, time for performance and level of assistance the Proposer requests of DOW will be considered in the evaluation.
- b. Schedule: Anticipated performance schedule shall show critical paths and be in Gant chart format.

5. Proposal Section E - COST PROPOSAL

- a. Cost Proposal: Evaluate the Proposal, which includes unit pricing and lump sum line items shall be the total lump sum cost to Pua Loke Baseyard SCADA System maintenance, Remote Site maintenance, and as needed System Technical Support.

- b. Formula for calculating points

$$Total\ Score = \left[\frac{lowest\ proposer's\ total\ lump\ sum\ offer}{proposer's\ total\ lump\ sum\ offer} \right] \times 25\ Pt.\ Maximum\ Score$$

Note that the Comparative values which include items such as Hawai'i Products, Apprentice programs, and any other comparative value requirements will be used as the total lump sum offer in the calculation above.

3.11 RECEIPT AND REGISTER OF PROPOSALS

Proposals will be received at www.publicpurchase.com and receipt verified by DOW on or after the date and time specified in Section 1.3, *RFP Schedule and Significant Dates*, as amended. The register of proposals and proposals of the Offeror(s) shall be open to public inspection upon posting of award pursuant to section 103D-701, Hawai'i Revised Statutes ("HRS").

3.12 BEST AND FINAL OFFER (BAFO)

If the DOW determines a BAFO is necessary, it shall request one from the priority listed Offerors, in accordance with Hawai'i Administrative Rules ("HAR") §3-122-54. The Offeror shall submit its BAFO and any BAFO received after the deadline or not received shall not be considered; if no notice of withdrawal or BAFO is received, the immediate previous offer will be construed as the best and final offer.

3.13 MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF OFFERS

3.13.1 The Offeror may modify or withdraw a proposal before the proposal due date and time.

3.13.2 Any change, addition, deletion of attachment(s) or data entry of an Offer may be made prior to the deadline for submittal of offers.

3.14 MISTAKES IN PROPOSALS

3.14.1 Mistakes shall not be corrected after award of contract.

3.14.2 When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer should request the Offeror to confirm the proposal. If the Offeror alleges mistake, the proposal may be corrected or withdrawn pursuant to this section.

3.14.3 Once discussions are commenced or after BAFOs are requested, any priority-listed Offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

- 3.14.4 If discussions are not held, or if the BAFOs upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.
- 3.14.5 If discussions are not held, or if the BAFOs upon which award will be made have been received, an Offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or the Offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

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

SECTION FOUR

EVALUATION CRITERIA

Evaluation criteria and the associated points are listed below. The award will be made to the responsible Offeror whose proposal is determined to be the most advantageous to the DOW based on the evaluation criteria listed in this section.

The total number of points used to score this contract is 100.

The following selection criteria will be used as the basis for the evaluation of proposals.

An evaluation panel shall review and evaluate all proposals timely received. The criteria to be used to evaluate each proposal shall consist of the following five categories, as shown in the following table. The maximum points available to any proposer will be 100 points.

Relevant Maintenance Services Experience	35 Points
Financial and Staffing Capabilities	25 Points
Strength of Proposer / References	20 Points
Proposers Methods and Time for Performance	5 Points
Cost Proposal	15 Points
Total Proposal Points	100 Points

For each category, Selection Committee members will use a scale of 0 to 5, with 0 being the lowest score and 5 being the highest score. The assignments will be based on the following evaluations:

<u>Score</u>	<u>Explanation</u>
0	Response was not addressed or was completely inadequate.
1	Response was incomplete, unclear, or minimally adequate.
2	Response was adequate but below expectations.
3	Response was adequate and met expectations.
4	Response was adequate and more than met expectations.
5	Response was excellent and far exceeded expectations.

For the categories, there are a number of subcategories. The weighting and scoring of the subcategories are as outlined in the attached **Proposals Scoring Sheet**. For categories that have subcategories, the “Weighting of Subcategories” is expressed as a percentage of the total points for the category that will be allocated to each subcategory. Multiplying the total Available Points for a category by the “Weight of Subcategories” percentage results in the “Available Points” allocated to each subcategory.

The proposer with the lowest acceptable **Cost Proposal** will be awarded 15 points. All other proposers will receive prorated cost points based on the ratio of their Cost Proposal to the acceptable low Cost Proposal.

The evaluation of the **Cost Proposal** shall be performed considering any applicable procurement preferences as provided in HAR 3-124 (Hawai'i Products, Software Development, Qualified Community Rehabilitation Programs).

On the **Proposals Scoring Sheet**, the "Scored Points" will be the product of the "Available Points" and the "Score" divided by 5 in order to normalize the total "Scored Points" to a maximum of 100. The sum of the "Scored Points" for each category will result in the total score for the category. The sum of the four category scores will result in the "Proposal Total Score."

Proposals Scoring Sheet				
	Weighting of Subcategories	Available Points	Score (Scale of 0 to 5)	Scored Points
Relevant Maintenance Service Experience				
Part A – Maintenance Experience	28.5%	10.0		-
Part B – Personnel Experience	21.5%	7.5		-
Part C – Prior Clients	21.5%	7.5		-
Part D – Procurement Experience	14.25%	5.0		-
Part E – Liquidated Damages	14.25%	5.0		-
Category Total		35.0		-
Financial and Staffing Capabilities				
Part A – Financial Capabilities and Resources	40%	10.0		-
Part B – Staffing Capabilities	40%	10.0		-
Part C – Organizational Chart	20%	5.0		-
Category Total		25.0		-
Strength of Proposer / References				
Part A – Prior Contracts with KDOW, or any other State of Hawaii Entities	75%	15.0		-
Part B – Complaints Filed Against Proposer	25%	5.0		-
Category Total		20.0		-
Proposers Methods and Time for Performance				
Part A – Describe Methods and Time for Performance	75%	3.75		-
Part B – Schedule	25%	1.0		-
Category Total		5.0		-
Cost Proposal				
Part A – Cost Proposal	100%	15.0		-
Category Total		15.0		-
Proposal Total Score		100.0		-

SECTION FIVE

CONTRACTOR SELECTION AND CONTRACT AWARD

5.1 EVALUATION OF PROPOSALS

An evaluation committee of at least three (3) qualified DOW employees selected by the Chief of Water Operations, shall evaluate proposals. The evaluation will be based solely on the evaluation criteria set out in Section Four of this RFP.

5.2 DISCUSSION WITH PRIORITY LISTED OFFERORS

The DOW may invite priority listed Offerors to discuss their proposals to ensure a thorough, mutual understanding. The DOW, in its sole discretion, shall schedule the time and location for these discussions, generally within the timeframe indicated in *RFP Schedule and Significant Dates*. The DOW may also conduct discussions with priority listed Offerors to clarify issues regarding the proposals before requesting Best and Final Offers, if necessary.

Prior to holding any discussion, a priority list shall be generated consisting of offers determined to be acceptable or potentially acceptable, in accordance with HAR 3-122-53. However, proposals may be accepted without such discussions.

If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may limit the priority list to the three highest ranked responsive, responsible Offerors.

5.3 AWARD OF CONTRACT

Method of Award. Award will be made to the responsible Offeror whose proposal is determined to be the most advantageous to the DOW based on the evaluation criteria set forth in the RFP.

5.4 RESPONSIBILITY OF OFFERORS

Offeror is advised that in order to be awarded a contract under this solicitation, Offeror will be required, to be compliant with all laws governing entities doing business in the State including the following chapters and pursuant to HRS §103D-310(c):

1. Chapter 237, General Excise Tax Law;
2. Chapter 383, Hawaii Employment Security Law;
3. Chapter 386, Worker's Compensation Law;
4. Chapter 392, Temporary Disability Insurance;
5. Chapter 393, Prepaid Health Care Act; and
6. §103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

The DOW will verify compliance on Hawai'i Compliance Express ("HCE").

Hawai'i Compliance Express. The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service; Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

Vendors/contractors/service providers should register with HCE prior to submitting an offer at <https://vendors.ehawaii.gov>. The annual registration fee is \$12.00 and the ‘Certificate of Vendor Compliance’ is accepted for the execution of contract and final payment.

Timely Registration on HCE. Vendors/contractors/service providers are advised to register on HCE soon as possible. If a vendor/contractor/service provider is not compliant on HCE at the time of award, an Offeror will not receive the award.

5.5 PROPOSAL AS PART OF THE CONTRACT

This RFP and all or part of the successful proposal may be incorporated into the contract.

5.6 PUBLIC EXAMINATION OF PROPOSALS

Except as provided herein, the proposals shall be made available for public inspection upon posting of award pursuant to HRS §103D-701.

If a person is denied access to a State procurement record, the person may appeal the denial to the State of Hawai‘i, Office of Information Practices (“OIP”) in accordance with HRS §92F-42(12). OIP may be reached at: Tel: 808-586-1400; Fax: 808-586-1412; E-mail: oiip@hawaii.gov. Please refer to <http://oiip.hawaii.gov/> for more information.

5.7 DEBRIEFING

Pursuant to HAR §3-122-60, a non-selected Offeror may request a debriefing to understand the basis for award.

A written request for debriefing shall be made within three (3) working days after the posting of the award of the contract. The Procurement Officer shall hold the debriefing within seven (7) working days to the extent practicable from the receipt date of written request.

Any protest by the requestor following a debriefing, shall be filed within five (5) working days, as specified in HRS§103D-303(h).

5.8 PROTEST PROCEDURES

Pursuant to HRS §103D-701 and HAR §3-126-3, an actual or prospective Offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. Any protest shall be submitted in writing to the Procurement Officer:

Val Reyna, Attn: Christine Erorita, 4398 Pua Loke Street, Līhu‘e, HI 96766

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers; provided further, that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of an award or, if requested, within five (5) working days after the debriefing was completed.

The notice of award, if any, resulting from this solicitation shall be posted at <http://www.kauaiwater.org> and www.publicpurchase.com .

5.9 APPROVALS

Any agreement arising out of this offer is be subject to the approval of the Office of the County Attorney, as to form and legality, and to all further approvals, as required by statute, regulation, rule, order, or other directive.

5.10 CONTRACT EXECUTION

Successful Offeror receiving the award shall enter into a formal written contract in the form as in the General Terms and Conditions.

No work is to be undertaken by the Contractor prior to the effective date of the contract. The DOW is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official starting date.

If the Option Term is mutually agreed upon, the Contractor shall be required to execute an amendment to the contract for the additional extension period. Any work performed pursuant to the Option Term is subject to the same written notice to proceed requirements as stated above.

5.11 INSURANCE

Contractor shall procure and maintain, on primary basis and at its sole expense, at all times during the life of the Contract insurance coverages, limits, including endorsements as described in Exhibit A, incorporated herein, against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work by the Contractor or the Contractor's agents, representatives, employees, or subcontractors. The requirements contained herein, as well as the County's review or acceptance of insurance maintained by the Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the Contractor. To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions, and coverage(s) of Insurance Service Office (ISO) policies, forms, and endorsements.

5.12 REQUIREMENTS FOR PERFORMANCE BONDS (If a performance bond will be required, the OF-1 shall reflect the submittal of the bond and bond forms shall be attached to the solicitation.)

Not Applicable.

5.13 CONTRACT INVALIDATION

If any provision of this contract is found to be invalid, such invalidation will not be construed to invalidate the entire contract.

5.14 STANDARD CONTRACT

The DOW will proceed to negotiate price with the selected Offeror and negotiate a contract after selection. Should the DOW and the selected Proposer fail to come to terms, the DOW reserves all its rights to terminate negotiations and proceed to commence negotiations with the next most qualified Offeror.

5.15 EXPENSES OF PREPARING RESPONSES TO THIS RFP

The DOW accepts no responsibility for any expenses incurred by the Offeror to respond to this RFP. Such expenses are to be borne exclusively by the Offeror.

5.16 LETTER OF INTENT

Not Applicable

5.17 SUBMITTAL INSTRUCTIONS

One (1) electronic copy (in Adobe PDF) must be submitted via www.publicpurchase.com **no later than 12:00 pm noon (HST) on: Monday, June 22, 2020.**

Proposals must be clearly identified with the Offeror's name and the RFP number and title. **Late proposals will not be considered.**

5.18 QUESTIONS

All questions regarding this RFP should be addressed in writing to: cerorita@kauaiwater.org.

All questions are due in writing by 12:00 p.m. (HST) on June 8, 2020, to allow sufficient time for distribution to all interested parties.

5.19 ACKNOWLEDGEMENT OF ADDENDA

Questions regarding this RFP that are submitted to the DOW via email by the deadline will be answered and distributed to all interested parties as an Addendum. Addenda may also be issued in response to changes in the RFP. Addenda must be acknowledged in a cover letter with the Implementation Proposal. Failure to properly acknowledge any Addendum may result in a declaration of non-responsiveness by the DOW.

SECTION SIX

SPECIAL PROVISIONS

6.1 OFFER GUARANTY

A proposal security deposit is NOT required for this RFP.

6.2 INTELLECTUAL PROPERTY RIGHTS

The DOW reserves the right to unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the work product, and to transfer the intellectual property to third parties for County purposes.

6.3 PREFERENCES

a. HAWAI'I PRODUCTS PREFERENCE

In accordance with HRS §103D-1002, the Hawai'i products preference is applicable to this solicitation. Hawai'i Products [are/may be] available for those items noted on the offer form. The Hawai'i products list is available on the SPO webpage at <http://hawaii.gov/spo>. Offeror submitting a Hawai'i Product (HP) shall identify the HP on the solicitation offer page(s). Any person desiring a Hawai'i product preference shall have the product(s) certified and qualified if not currently on the Hawai'i products list, prior to the deadline for receipt of offer(s) specified in the procurement notice and solicitation. The responsibility for certification and qualification shall rest upon the person requesting the preference.

Persons desiring to qualify their product(s) not currently on the Hawai'i product list shall complete form SPO-038, *Certification for Hawaii Product Preference* and submit to the Procurement Officer issuing the solicitation (IFB or RFP), and provide all additional information required by the Procurement Officer. For each product, one form shall be completed and submitted (i.e. 3 products should have 3 separate forms completed). Form SPO-038 is available on the SPO webpage at <http://hawaii.gov/spo> under the 'Toolbox' menu; click on 'SPO Forms.'

When a solicitation contains both HP and non-HP, then for the purpose of selecting the lowest bid or purchase price only, the price offered for a HP item shall be decreased by subtracting 10% for the class I or 15% for the class II HP items offered, respectively. The lowest total offer, taking the preference into consideration, shall be awarded the contract unless the offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the price offered, exclusive of the preferences.

Change in Availability of Hawai'i product. In the event of any change that materially alters the Offeror's ability to supply Hawai'i products, the Offeror shall notify the procurement officer in writing no later than five (5) working days from when the Offeror knows of the change and the parties shall enter into discussions for the purposes of revising the contract or terminating the contract for convenience.

6.4 CERTIFICATION OF OFFEROR CONCERNING WAGES, HOURS AND WORKING CONDITIONS OF EMPLOYEES SUPPLYING SERVICES *(include as applicable)*

All Offerors for service contracts shall comply with section 103-55, HRS, which provides as follows:

Wages, hours, and working conditions of employees of CONTRACTOR supplying services: Before any prospective Offeror is entitled to submit any offer for the performance of any contract to supply services in excess of \$25,000 to any governmental agency, Offeror shall certify that the services to be performed will be performed under the following conditions:

Wages: The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.

Compliance with labor laws: All applicable laws of the Federal and State governments relating to workers compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

No contract to perform services for any governmental contracting agency in excess of \$25,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of the contract to perform services shall result in cancellation of the contract.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of \$25,000 to enforce this section.

This section shall apply to all contracts to perform services in excess of \$25,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (15) of section 76-16, paragraphs (7), (8), and (9) of section 46-33, and paragraphs (7), (8), and (12) of section 76-77, Hawai'i Revised Statutes, (HRS).
- (5) Contracts for professional services.
- (6) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- (7) Contracts with nonprofit institutions.

NOTICE OF INTENT TO PROPOSE

(NOT APPLICABLE)

DATE

Manager and Chief Engineer
Department of Water
County of Kaua'i
4398 Pua Loke Street
Līhu'e, HI 96766

Dear Sir:

In accordance with the Provisions of Section 103D-310, Hawai'i Revised Statutes, you are hereby notified that it is the intent of the undersigned to offer an RFP for _____, for which proposals will be due on _____ as required.

I am informed that this Notice of Intent to Propose must be received by the Manager no later than 4:30 p.m. on _____.

VERY TRULY YOURS,

SIGNATURE

PRINT OR TYPE NAME & TITLE OF SIGNER

Hawai'i State Specialty License
Type and Classification:

NAME OF FIRM

Contractors License No.:

ADDRESS

Hawai'i State Business
License No.:

CITY, STATE & ZIP CODE

TELEPHONE NO.

COST PROPOSAL

Section E

JOB NO. 20-03

SCADA SYSTEM MAINTENANCE AND PROFESSIONAL CONSULTATION SERVICES
LĪHU‘E, KAUA‘I, HAWAI‘I

Item No.	Qty.	Unit	Description	Unit Price	Extended Price
PUA LOKE BASEYARD SCADA SYSTEM MAINTENANCE					
1	1	LS	One (1) Network Engineer for two (2) trips, ten (10) working days per trip.	\$ _____	\$ _____
2	1	LS	Replacement parts and materials.	\$ _____	\$ _____
Subtotal					\$ _____
REMOTE SITE MAINTENANCE					
3	1	LS	Two (2) Field Service Engineers for two (2) trips, ten (10) working days per trip.	\$ _____	\$ _____
4	1	LS	Replacement parts and materials.	\$ _____	\$ _____
Subtotal					\$ _____
AS NEEDED SYSTEM TECHNICAL SUPPORT					
5	1	LS	One (1) Network or Field Service Engineer for 14 straight time hours	\$ _____	\$ _____
6	1	LS	One (1) Network or Field Service Engineer for 12 overtime hours	\$ _____	\$ _____
Subtotal					\$ _____
Project Total (TOTAL SUM)					\$ _____



OF-1

RFP Job No. 20-03
SCADA System Maintenance and Professional Consultation Services
Department of Water, County of Kaua'i

Department of Water
Attn: Val Reyna
4398 Pua Loke Street
Līhu'e, HI 96766

Dear Officer in Charge:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions, by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawai'i Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Offeror is:

Sole Proprietor Partnership *Corporation Joint Venture
 Other _____

*State of incorporation: _____

Hawai'i General Excise Tax License I.D. No. _____

Federal Tax I.D. No. _____

Payment address (other than street address below): _____
City, State, Zip Code: _____

Business address (street address): _____
City, State, Zip Code: _____

Respectfully submitted:

Date: _____ (x) _____

Authorized (Original) Signature

Telephone No.: _____

Fax No.: _____

Name and Title (Please Type or Print)

E-mail Address: _____

** _____
Exact Legal Name of Company (Offeror)

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



EXHIBIT A
INSURANCE REQUIREMENTS
BOARD OF WATER SUPPLY, COUNTY OF KAUA'I

Contractor shall procure and maintain, on primary basis and at its sole expense, at all times during the life of the contract insurance coverages, limits, including endorsements described herein against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Contractor or the Contractor's agents, representatives, employees or subcontractors. The requirements contained herein, as well as the Department of Water, County of Kaua'i's (hereinafter "DOW") review or acceptance of insurance maintained by the Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the Contractor.

To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions and coverage(s) of Insurance Service Office (ISO) policies, forms, and endorsements.

A. General Conditions

Waiver of Subrogation. Contractor shall agree by entering into a contract with the Board of Water Supply, County of Kaua'i (hereinafter "Board") to provide a Waiver of Subrogation for the Commercial General Liability, Automobile Liability, and Workers Compensation policies. When required by the insurer, or should a policy condition not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, the Contractor shall agree to notify the insurer and request the policy be endorsed with a Waiver of Subrogation in favor of the Board. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis.

Additional Insured. Contractor shall agree to endorse the **BOARD OF WATER SUPPLY, COUNTY OF KAUA'I as an Additional Insured** with a CG026 Additional Insured – Designated Person or Organization endorsement, a copy of the applicable policy language, or similar endorsement to all required insurance policy(ies), except for Workers Compensation and Professional Liability.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the DOW. At the option of the DOW, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Board; or the Contractor shall provide a financial guarantee (audited financial statement) satisfactory to the Department guaranteeing payment of losses and related investigations, claim administration and defense expenses.

When a self-insured retention (SIR) or deductible exceeds \$50,000, the Department reserves the right, but not the obligation, to review and request a copy of the Contractor's most recent annual report or audited financial statement.

Contractor's Responsibility. The Contractor is responsible for paying any portion of any loss not covered because of the operation of any deductible, co-insurance clause or self-insured retention applicable to the insurance required herein. If the Board is damaged by the failure of the Contractor to maintain insurance as required in this paragraph, then the Contractor shall bear all reasonable costs properly attributable to that failure.

Primary and Non-contributory. All policies required of the Contractor will be endorsed as primary and any insurance or self-insurance program maintained by the Board shall be non-contributory.

Certificate of Insurance. Concurrent with the execution of the contract, Contractor shall provide the Department a certificate of insurance completed by a duly authorized representative of their insurer certifying that the liability coverage(s) is written on an occurrence form. Immediately upon becoming aware that its insurance will be cancelled, non-renewed, or materially changed, Contractor will notify Department by providing written notice.

The Certificate Holder address shall read:

Board of Water Supply, County of Kaua'i
4398 Pua Loke Street, Lihue, HI 96766
Attention: Val Reyna
Contract No.: TBD
Project Title: Job No. 20-03 SCADA System Maintenance and Professional
Consultation Services

Concurrent with the execution the contract the Contractor shall furnish the Department with original certificates and endorsements effecting required coverage(s). The Department reserves the right to require complete copies of all required insurance policies, including the policy declarations and endorsements affecting the coverage at any time.

Failure to secure and maintain the required insurance shall be considered as a material breach of the contract. Should the Board be forced to expend funds that would have been covered under the specified insurance, Contractor shall reimburse the Board for such funds. In the event the Board determines, in its sole and absolute discretion, that it is necessary to purchase the coverages herein required of the Contractor, and which the Contractor has failed to secure, the Contractor shall reimburse the Board for the expenditure of such funds.

Right to Revise or Reject. Department reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work or specifications affecting the applicability of coverage. Additionally, the Department reserves the right, but not the

obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due to its poor financial condition or failure to operate legally.

B. Minimum Insurance Coverage Requirements

Unless otherwise approved by the Manager and Chief Engineer, the policy or policies of insurance maintained by the Contractor shall provide the following minimum limit(s) and coverage(s) as specified herein and be placed with an insurance carrier authorized to do business in the State of Hawai‘i and rated A-VII by A.M. Best:

Commercial General Liability. The Contractor shall procure and maintain Commercial General Liability, with dedicated required limits, as set forth herein, written on occurrence form providing:

Designated premises basis OR Per Project basis

The coverages shall include the following:

- Premises Operations
- Independent Contractors
- Products and Completed Operations
- Broad Form Property Damage including completed operations
- Blanket Contractual Liability
- Personal Injury
- Employees named as Additional Insured
- Severability of Interest
- Explosion, Collapse and Underground Property Damage

The minimum limits of liability may be satisfied by providing either:

<p>Bodily Injury and Property Damage Combined Single Limit:</p> <ul style="list-style-type: none"> • \$2,000,000 per occurrence • \$2,000,000 annual aggregate 	<p>OR</p>	<p>Personal Injury:</p> <ul style="list-style-type: none"> • \$1,000,000 per occurrence • \$2,000,000 annual aggregate <p style="text-align: center;">AND</p> <p>Products and Completed Operations:</p> <ul style="list-style-type: none"> • \$1,000,000 per occurrence • \$2,000,000 annual aggregate
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Contractor must provide evidence the Board is an Additional Insured for Products/Completed Operations coverage for both ongoing operations and after

substantial completion of the work. This coverage may be provided by the ISO form CG 2010 (11 85) or an equivalent policy form. Coverage provided by a non-equivalent CGL form shall be specifically endorsed providing both the course of construction and products/completed operations. ISO CG 2010 (04 13) and ISO form CG 2037 (04 13) or an equivalent form is required from the Contractor. The Contractor and subcontractor(s), if any, shall provide evidence to the Department on an annual basis the products/completed operation coverage is in effect for two (2) years after substantial completion of the project.

Business Automobile Liability. The Contractor shall procure and maintain Business Automobile Liability written on occurrence form for all Owned, Non-owned, and Hired automobiles. If the Contractor does not own automobiles, Contractor shall agree to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Automobile Liability. Coverage shall be for automobile contractual liability, uninsured and underinsured motorist coverage, basic no-fault, and personal injury protection, as required by Hawaii law with the following limits:

Bodily Injury

\$1,000,000 per person
\$1,000,000 per occurrence

Property Damage

\$1,000,000 per accident

Workers' Compensation and Employer's Liability. The Contractor shall procure and maintain at all times during the term of the contract the following insurance liability coverage: Workers' Compensation, Temporary Disability Insurance (TDI), and similar insurance that is required by the State of Hawaii or federal laws. Self-insurance is permitted subject to submission of a copy of the appropriate governmental authorization and qualification by the Contractor and subcontractor(s).

The minimum limits of liability to be maintained are as follows:

Coverage A: State of Hawaii Workers' Compensation Law:

Statutory Limits

Coverage B: Employer's Liability:

Bodily Injury from each accident	\$1,000,000
Bodily Injury from disease	\$1,000,000
Bodily Injury from disease aggregate	\$1,000,000

Builder's Risk. The Contractor shall procure and maintain an Inland Marine Builder's Risk policy providing coverage to protect the interests of the Board, Contractor, sub-contractors, architects, and engineers, including property in transit and property on or off-premises, which shall become part of the building, or Project. Coverage shall be written on an **All Risk, Replacement Cost, and Completed Value Form** basis in an amount at least equal to 100% of the projected completed value of the Project as well as subsequent modifications of that sum, unless an agreed amount is otherwise stated between the Department and the Contractor. The policy shall insure all work, labor, and materials furnished by the Contractor and the Contractor's subcontractors against loss occasioned by fire, lightning, windstorm, theft, vandalism, malicious mischief, flood, earthquake, and collapse.

The amount of coverage for the perils of flood and earthquake may be subject to a sub-limit. The sub-limit shall provide coverage of at least 25% of the full replacement cost.

The policy shall also include coverage for debris removal and reasonable compensation for architect's and engineer's services and expenses required as a result of an insured loss. The Contractor shall endorse the policy with a manuscript endorsement eliminating the automatic termination of coverage in the event the building is occupied in whole or in part, or put to its intended use, or partially accepted by the Department. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the Board's interest in the building ceases, or the building is accepted or insured by the Board.

The Contractor shall name the Board of Water Supply, County of Kaua'i as a loss payee on the Builder's Risk policy.

Installation Floater. The Contractor shall procure and maintain an Installation Floater policy providing coverage to protect the interests of the Board, Contractor, sub-contractor(s), architects, and engineers, including property in transit and property on or off-premises, which shall become part of the project.

Coverage shall be written on an All Risk, Replacement Cost, and Completed Value Form basis in an amount at least equal to 100% of the projected completed value of the Project as well as subsequent modifications of that sum, unless an agreed amount is otherwise stated between the Department and the Contractor. The policy shall insure all work, labor, and materials furnished by the Contractor and the Contractor's subcontractors against loss occasioned by fire, lightning, windstorm, theft, vandalism, malicious mischief, flood, earthquake, and collapse.

The amount of coverage for the perils of flood and earthquake may be subject to a sub-limit. The sub-limit shall provide coverage of at least 25% of the full replacement cost.

The policy shall also include coverage for debris removal and reasonable compensation for architect's and engineer's services and expenses required as a result of an insured loss. The Contractor shall endorse the policy with a manuscript endorsement eliminating

the automatic termination of coverage in the event the building is occupied in whole or in part, or put to its intended use, or partially accepted by the Department. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the Board's interest in the building ceases, or the building is accepted or insured by the Board.

The Contractor shall name the Board of Water Supply, County of Kauai as a loss payee on the Installation Floater policy.

Professional Liability (Errors and Omissions). The Contractor and its subcontractors shall procure and maintain Professional Liability Insurance (Errors and Omissions Insurance) that covers all such activities under the contract. Such insurance shall have these minimum limits and coverage(s):

\$1,000,000 per occurrence
\$2,000,000 annual aggregate

For policies written on a "Claims-Made" basis, Contractor warrants the retroactive date equals or precedes the effective date of the contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced; or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of the contract, Contractor shall agree to purchase Supplement Extended Reporting Period (SERP) with a minimum reporting period not less than two (2) years. The requirement to purchase a SERP shall not relieve Contractor of the obligation to provide replacement coverage.

Pollution Legal Liability. The Contractor shall procure and maintain Pollution Liability or similar Environmental Impairment Liability at a minimum limit not less than:

\$1,000,000 per occurrence
\$2,000,000 annual aggregate

The policy shall provide coverage for damages against, but not limited to, third-party liability, clean-up, corrective action including assessment, remediation and defense costs.

Contractor's Pollution Liability. Contractor shall procure and maintain pollution liability insurance when the Scope of Work involves removal, abatement, encapsulation or other treatment, disposal or remediation of asbestos or other hazardous materials or an exposure to pollutants or impairment of the environment. The policy shall provide coverage for third party liability, clean-up, and corrective action including assessment remediation and defense costs. The policy may be written on either an occurrence form or claims made. The minimum limits of liability shall be:

\$1,000,000 per occurrence
\$2,000,000 annual aggregate

Crime Insurance or Commercial Fidelity Bond. Contractor shall procure and maintain Commercial Crime Insurance or Fidelity Bond providing Employee Dishonesty on a blanket basis covering all of the Contractor’s employees with a minimum amount of insurance at least equal to the amount of the contract. The policy shall be endorsed to cover “Third-Party Liability” including a third-party beneficiary clause in favor of the Board. The policy shall include a minimum twelve (12) month “Discovery Period” when written on a Loss Sustained basis.

Property. The Tenant or Lessee, shall agree to maintain property insurance including flood and windstorm written on a replacement cost basis in an amount not less than 100% of the replacement cost of the building(s) and contents, including betterments and improvements made by the Tenant or Lessee, located on the premises. Contractor shall agree to be fully responsible for any deductible or self-insured retention, and to provide this coverage on primary basis.

Umbrella or Excess Liability. Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy with \$1,000,000 per occurrence and \$2,000,000 aggregate. If Contractor is using its Umbrella or Excess Liability Insurance policy to satisfy the minimum requirements, Contractor shall agree to endorse the Board of Water Supply, County of Kaua’i as “Additional Insured” on the Umbrella or Excess Liability policy, or shall confirm in writing that its Umbrella or Excess Liability policy “follows form.”

DEPARTMENT OF WATER
COUNTY OF KAUAI

GENERAL TERMS AND CONDITIONS
FOR GOODS AND SERVICES

September 1, 1995

REVISED August 25, 2010

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SECTION 1 - DEFINITIONS OF TERMS

Terms as used in these General Terms and Conditions, unless the context requires otherwise, shall have the following meaning:

1.1 BID

Bid means any offer submitted in competitive sealed bidding or in the second phase of multi-step bidding.

1.2 BID OR PROPOSAL FORM

The prescribed form or format which an offeror uses to submit his offer.

1.3 BID OR PROPOSAL GUARANTY OR SECURITY

The security when required, furnished by an offeror with his offer to ensure that the offeror will enter into the contract with the Department and execute the required contract and payment bonds covering the work contemplated, if his offer is accepted.

1.4 CHANGE ORDER

Change order means a written order signed by the Manager, directing the contractor to make changes which the changes clause of the contract authorizes the Manager to order without the consent of the contractor.

1.5 CONTRACT

Contract means the combination of the solicitation, including the instructions to offerors, the specifications or scope of work, the special provisions, and the general terms and conditions; the offer and any best and final offers; and any amendments to the solicitation or to the contract; and any terms implied by law.

1.6 CONTRACT BOND

The approved form of security furnished by the contractor and his surety or sureties or by the contractor alone, to ensure completion and satisfactory performance of the contract in accordance with the terms of the contract and to guarantee full payment of all claims for labor, materials and supplies furnished, used or incorporated in the work.

1.7 CONTRACT MODIFICATION

Contract modification means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

1.8 CONTRACTOR

An individual, partnership, firm, corporation, joint venture or other legal entity undertaking the execution of work under the terms of the contract with the Department, and acting directly or through his, their or its agents, employees or sub-contractors.

1.9 DAYS

Days mean calendar days unless otherwise specified.

1.10 HEAD OF THE PURCHASING AGENCY

The head of any agency with delegated procurement authority by law or from a chief procurement officer of this County to enter into and administer contracts.

1.11 OFFER

An offer means a bid or proposal as defined in sections 1.1 and 1.15, in response to any solicitation.

1.12 OFFEROR

Any individual, partnership, firm, corporation, joint venture or other legal entity, submitting directly or through a duly authorized representative or agent, an offer for the work or services contemplated in response to a solicitation as defined in 1.17.

1.13 PROCUREMENT OFFICER

Procurement officer means the person with procurement delegation duly authorized to enter into and administer contracts and make written determinations with respect to the contract. The term includes an authorized representative acting within the limits of authority. The delegated authority is received from the chief procurement officer directly or through the head of a purchasing agency or designee to the procurement officer.

1.14 PRIORITY-LISTED OFFERORS

Priority-listed offerors are the three or more responsive and responsible offerors who have submitted the highest rank proposals.

1.15 PROPOSAL

A proposal means any offer submitted in response to any solicitation, except a bid as defined in section 1.1.

1.16 PURCHASING AGENCY

Purchasing agency means any governmental body which is authorized by law or rules, or by way of delegation to enter into contracts for procurement of goods, services, or construction.

1.17 SOLICITATION

Solicitation means an invitation for bids ("IFB"), used in the competitive sealed bidding process or a request for proposals ("RFP"), used in the competitive sealed proposal process for the purpose of soliciting bids or proposals to perform a Department contract.

1.18 SPECIAL PROVISIONS

The terms and conditions pertaining to the specific solicitation in which they are contained; including but not limited to terms and conditions describing the preparation of solicitations, evaluation of offers, determination of award, plus those applicable to performance by the contractor.

Additions or revisions to the General Terms and Conditions, which shall be considered a part of the General Terms and Conditions, setting forth conditions or requirements applicable to the particular project or contract under consideration shall be included in the special provisions. Should any special provisions conflict with these general terms and conditions, said Special Provisions shall govern.

1.19 SPECIFICATIONS

A description of what the purchasing agency requires and, consequently, what an offeror must offer to be considered for award.

1.20 COUNTY

County means the County of Kauai.

1.21 SURETY

The individual, firm, partnership or corporation other than the contractor, which executes a bond with and for the contractor to ensure the contractor's acceptable performance of the contract.

1.22 WORK

The furnishing by the contractor of all labor, services, materials, equipment, and other incidentals necessary for the satisfactory performance of the contract.

1.23 DEPARTMENT

Department means the Department of Water, County of Kauai

1.24 MANAGER

Manager means the Manager and Chief Engineer of the Department of Water, County of Kauai, head of the purchasing agency and procurement officer.

SECTION 2 - OFFER REQUIREMENTS AND CONDITIONS

2.1 COMPETENCY OF OFFEROR

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

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

2.2 SOLICITATION FORMS

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

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

2.3 EXAMINATION OF GENERAL TERMS AND CONDITIONS, SPECIFICATIONS, SITE OF WORK, ETC.

The offeror shall carefully examine the site of the contemplated work, the solicitation, general terms and conditions, specifications, special provisions, amendments, required contract and bond forms, etc. before submitting offers. The submission of an offer shall be considered as a warranty that the offeror has made such careful examination and is satisfied with the conditions to be encountered in performing the work and with the requirements of the solicitation, general terms and conditions, specifications, special provisions, amendments, required contract and bond forms.

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

2.4 ADDENDA AND INTERPRETATIONS THIS SECTION MAY BE AMENDED BY THE SPECIAL PROVISIONS.

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

2.5 PREPARATION OF OFFER THIS SECTION MAY BE AMENDED BY THE SPECIAL PROVISIONS.

Proposals submitted in response to request for proposals (RFP) shall be in the format prescribed by the RFP.

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

Where the (IFB) involves the furnishing and delivery of goods, the price shall include the cost of delivery to the specified destination, at which point acceptance

of said goods will be made by authorized personnel. Should special requirements involving additional costs to the vendor be necessary, the requirements will be stated in the special provisions and offers for the costs therefor shall be governed by the special provisions.

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

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

All prices shall include applicable federal, state and local taxes. Any illegible or otherwise unrecognizable price offer shall cause automatic rejection of the offer.

Offers submitted in response to an IFB or RFP shall be **signed in ink** in the space provided on the bid or proposal page by (1) the owner of a sole proprietorship, (2) one or more members of a partnership, (3) one or more members or officers of each firm representing a joint venture, (4) one or more officers of a corporation, or (5) an agent of the offeror duly authorized to submit offers on the offerors behalf.

2.6 USE OF FACSIMILES

(A) Copies of documents transmitted by vendors via facsimile machine shall be limited to the offer; and modifications or withdrawal of offers, pursuant to subsection (B) and (C).

(B) Modifications or withdrawal of an offer may be by facsimile machine pursuant to Section 2.9.

(C) An offer transmitted via facsimile machine shall be acceptable only when specifically allowed in the invitation for bids or request for proposals; provided: the facsimile offer is received in hand at the designated office by the time and date set for receipt of offers; the facsimile offer contains: the identification number of the invitation for bids or request for proposals; the item; the quantity; the price for the offer; all pages of the bid or proposal requiring an original signature; and a signed statement that the offeror agrees to all the terms, conditions, and provisions of the invitation for bids or request for proposals; and the complete original offer with the bond, if required, is received within two working days from the time and date set for receipt of offers.

2.7 OFFER GUARANTY

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

When required by the special provisions, an acceptable bid or proposal security deposit shall be in an amount equal to **at least five percent** of the amount offered and shall be limited to: a bond in a form satisfactory to the Department underwritten by a company licensed to issue bonds in this State; legal tender; or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. Certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, official check, or certified check may be utilized only to a maximum of \$100,000, provided however, if the required security or bond amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions, may be submitted.

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

2.8 CERTIFICATION OF OFFEROR CONCERNING WAGES, HOURS AND WORKING CONDITIONS OF EMPLOYEES SUPPLYING SERVICES

All offerors for service contracts shall comply with section 103-55, Hawaii Revised Statutes, which provides as follows:

Wages, hours, and working conditions of employees of contractors supplying services. Before any prospective offeror is entitled to submit any offer for the performance of any contract to supply services in excess of \$5,000 to any governmental agency, the offeror shall certify that the services to be performed will be performed under the following conditions:

Wages. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.

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

No contract to perform services for any governmental contracting agency in excess of \$5,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of the contract to perform services shall result in cancellation of the contract.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of \$5,000 to enforce this section.

This section shall apply to all contracts to perform services in excess of \$5,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (15) of section 76-16, HRS, paragraphs (7), (8), and (9) of section 46-33, and paragraphs (7), (8), and (12) of section 76-77, Hawaii Revised Statutes, (HRS).
- (5) Contracts for professional services.
- (6) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- (7) Contracts with nonprofit institutions.

2.9 PRE-OPENING MODIFICATION OR WITHDRAWAL OF OFFERS

Offers may be modified or withdrawn prior to the deadline for submittal of offers by the following documents:

Modification of offers: a written notice accompanying the actual modification received in the office designated in the solicitation, stating that a modification to the offer is submitted; or a written notice accompanying the actual modification by facsimile machine pursuant to Section 3-122-9 HAR sent to the office designated in the solicitation, provided bidder submits the actual written notice and modification within two working days.

Withdrawal of offers: a written notice received in the office designated in the solicitation; or a notice by facsimile machine pursuant to section 3-122-9, to the office designated in the solicitation.

2.10 RECEIPT, OPENING, AND RECORDING OF BIDS

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

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

The name(s) and address(es) of the required witnesses shall also be recorded at the opening.

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

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

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

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

Bids shall be unconditionally accepted without alteration or correction, except as allowed in sections 2.12 and 2.13.

2.11 RECEIPT AND REGISTRATION OF PROPOSALS

Proposals and modifications shall be time-stamped upon receipt and held in a secure place by the procurement officer until the established due date. Proposals shall not be opened publicly, but shall be opened in the presence of two or more procurement officials. Proposals and modifications shall be shown only to Department personnel having legitimate interest in them.

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

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

Proposals of the offeror(s) shall be open to public inspection upon posting of award pursuant to section 103D-701, HRS..

2.12 LATE OFFERS, LATE WITHDRAWALS, AND LATE MODIFICATIONS

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

2.13 MISTAKES IN BIDS

(A) A bidder may correct a mistake in a bid discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in section 2.9.

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

(C) When, after bid opening but before award, the manager knows or has reason to conclude that a mistake has been made, including obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids is submitted, such officer should request the bidder to confirm the bid. If the bidder alleges mistake, the bid may be corrected or withdrawn by the bidder if the conditions under paragraphs (D) and (E) of this section are met and if the mistake is a minor informality which is a matter of form rather than substance evident from the bid document, or an insignificant mistake that can be waived by the manager or corrected by the bidder without prejudice to other bidders depending on which is in the best interest of the governmental jurisdiction soliciting the bid; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. Examples include the failure of a bidder to: return the number of signed bids required by the IFB to sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound; or to acknowledge receipt of an amendment to the IFB (if such acknowledgement is required by the IFB) but only if it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or the amendment involved had a negligible effect on price, quantity, quality, or delivery.

(D) If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of such mistakes include: typographical errors; errors in extending unit prices; transposition errors; and arithmetical errors. In the event of a discrepancy between unit bid prices and extensions, the unit price shall govern. In case of error in addition, the sum of the total amount offered for each item added shall govern.

(E) A bidder may be permitted to withdraw a low bid if a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

(F) A bidder may not correct a mistake in a bid discovered after award of the contract except where the chief procurement officer or the head of the purchasing agency makes a written determination that it would be unreasonable not to allow the mistake to be corrected.

(G) When a bid is corrected or withdrawn, or correction or withdrawal is denied, under (C) or (D), the manager or the head of a purchasing agency shall prepare a written determination showing that the relief was granted or denied in accordance with subchapter 5, chapter 3-122-31, HAR, except that the procurement officer shall prepare the determination required under paragraph (1) of subsection (C).

2.14 MISTAKES IN PROPOSALS

(A) Mistakes shall not be corrected after award of contract.

(B) When the procurement officer knows or has reason to conclude before award that a mistake has been made, the procurement officer should request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn pursuant to this section.

(C) Once discussions are commenced or after best and final offers are requested, any priority-listed offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

(D) If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.

(E) If discussions are not held, or if the best and final offers upon which award will be made have been received, an offeror alleging a material mistake of fact which makes a proposal nonresponsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct

offer is not; or the offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

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

2.15 OFFER INSPECTION

Offers to competitive sealed bids may be inspected only as provided for in Section 2.10, above, and after award of contract. During the evaluation and award recommendation period, offers will not be available for inspection. For the competitive sealed proposals, except for confidential portions, the proposals shall be made available for public inspection upon posting of award pursuant to Section 103D-701, HRS.

2.16 DISQUALIFICATION OF OFFERORS

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

2.17 CANCELLATION OF SOLICITATIONS AND REJECTION OF OFFERS

The solicitation may be cancelled or the offers may be rejected in whole or in part, when in the best interest of the purchasing agency, as provided in Sections 3-122-95 through 3-122-97, HAR.

2.18 STANDARDS OF CONDUCT THIS SECTION MAY BE AMENDED BY THE SPECIAL PROVISIONS.

Section 84-15, HRS, provides as follows:

(A) A state agency shall not enter into any contract to procure or dispose of goods or services, or for construction, with a legislator, an employee, or a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$10,000 unless:

- (1) The contract is awarded by competitive sealed bidding pursuant to section 103D-302;
- (2) The contract is awarded by competitive sealed proposal pursuant to section 103D-303; or
- (3) The agency posts a notice of its intent to award the contract and files a copy of the notice with the [state] ethics commission at least ten days before the contract is awarded.

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

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

2.19 IRREGULAR OFFERS THIS SECTION MAY BE AMENDED BY THE SPECIAL PROVISIONS.

Offers will be considered irregular and shall be rejected for the following reasons including but not limited to the following: if the required offer guaranty received separately from the offer is not identifiable as guaranty for a specific offer, or is received after the date and time set for the opening; if the required offer guaranty is not in accordance with Section 2.7 of these general terms and conditions; if the offeror or surety fails to sign the surety bond submitted as offer guaranty; if the offeror fails to use the surety bond form furnished by the Department or identical wording contained in the said form when submitting a surety bond as proposal guaranty; if the offer shows any non-compliance with applicable law or contains any unauthorized additions or deletions, conditioned, incomplete, or irregular or is in anyway making the proposal incomplete, indefinite, or ambiguous as to its meaning; or unbalanced offers in which the price for any item is obviously out of proportion to the prices for other items.

2.20 CONFIDENTIALITY OF MATERIAL

Pursuant to AG-008, as revised, Section 24(b), Confidentiality of Material, the offeror shall designate in writing to the Procurement Officer those portions of its un-priced offer or any subsequent submittal that are trade secrets or other proprietary data that the offeror desires to remain confidential, subject to §3-122-30, HAR, in the case of an IFB. The offeror shall state in its written communication to the Procurement Officer, the reason(s) for designating the material as confidential, for example, trade secrets. The offeror shall submit the material designated as confidential in such manner that the material is readily separable from the offer in order to facilitate inspection of the non-confidential portion of the offer.

Price is not confidential and will not be withheld. In addition, in the case of an IFB, makes and models, catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of opening regardless of any designation to the contrary.

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

SECTION 3 - EVALUATION, AWARD AND EXECUTION OF CONTRACT

3.1 EVALUATION

A. HAWAII EXCISE AND USE TAXES

Section 103-53.5, HRS, provides as follows:

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

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

B. PREFERENCE FOR HAWAII PRODUCTS

Subchapter 1, Chapter 3-124, HAR, provides as follows:

Hawaii products. In any expenditure of public funds, a purchasing agency shall review all purchase specifications in a bid or proposal for purchase from the Hawaii products list where such products are available,

provided that the products: Meet the minimum specifications and the selling price f.o.b. jobsite; unloaded including applicable general excise tax and use tax does not exceed the lowest delivered price in Hawaii f.o.b. jobsite; unloaded including applicable general excise tax and use tax of a similar non-Hawaii product by more than: **three percent**, where Class I Hawaii products are involved; **five percent** where class II Hawaii products are involved; or **ten percent** where Class III Hawaii products are involved.

Where offers contain both Hawaii and non-Hawaii products, then for the purpose of selecting the lowest offer or purchase price only, the price offered for a non-Hawaii product item shall be increased by adding thereto three per cent, five per cent or ten per cent where similar Class I, Class II or Class III Hawaii product items have been offered by another party pursuant to the preferences stated above. The lowest total offer, taking into consideration the above preferences, shall be awarded the contract unless the solicitation provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the price offered, exclusive of such preferences.

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

C. PRINTING PREFERENCE

Subchapter 2, Chapter 3-124, HAR, provides that:

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

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

D. RECIPROCAL PREFERENCE

Subchapter 3, Chapter 3-124, HAR, provides that:

To ensure fair and open competition for Hawaii businesses engaged in contracting with other states, the chief procurement officer may impose a reciprocal preference against bidders from those states which apply preferences. **The amount of the reciprocal preference shall be equal to the amount by which the non-resident preference exceeds any preference applied by this State.**

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

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

E. RECYCLED PRODUCTS PREFERENCE

Subchapter 4, Chapter 3-124, HAR, provides that:

Solicitations issued by a governmental agency pursuant to section 103D-

302 and HRS 103D-303, HRS, and consistent with section 3-124-21 and 3-122-462 HAR, shall contain a notice stating that a price preference will be given to recycled products. This price preference will be at least **five percent** of the bid price, and will be used for bid evaluation, as specified in Section 3-124-25, HAR.

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

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

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

F. SOFTWARE DEVELOPMENT BUSINESSES PREFERENCE

Subchapter 5, Chapter 3-124, HAR, provides that:

The preference shall apply to all bids or offers issued by a purchasing agency when so stated in the solicitation.

Bids issued by a governmental agency pursuant to section 103D-301, HRS, shall contain a notice stating that a price preference will be given to Hawaii software development businesses. This price preference will be ten per cent of the bid price, and will be used for bid evaluation.

Bidders requesting a preference shall submit a completed certification form, as required by section 3-124-33, with each bid. Previous certifications shall not apply unless allowed by the bid.

Any bidder who fails to indicate that it is a Hawaii software development business will be presumed to be a non-Hawaii software development business and the bidder's proposal will be increased by ten percent for purposes of evaluation.

Where a bid or purchase contains both Hawaii software development businesses and non-Hawaii software development businesses, than for the purpose of determining the lowest evaluated bid, the original bid price for the non-Hawaii software development businesses shall be increased by ten per cent.

The responsible bidder submitting the lowest evaluated bid(s), taking into consideration all applicable preferences shall be awarded the contract, provided the product being offered meets the minimum bid specifications.

The contract amount of any contract awarded shall be the original bid price offered, exclusive of any preferences.

G. LOW TIE BIDS

Subchapter 5, Chapter 3-122, HAR, provides that:

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

In the discretion of the procurement officer, award shall be made in any permissible manner that will resolve tie bids, including but not limited to:

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

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

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

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

3.2 ACCEPTANCE OF OFFER

(A) Acceptance of offer, if any, will be made within sixty calendar days after the opening of offers, and the prices quoted by the offeror shall remain firm for the **sixty-day period**. Unless otherwise provided, each individual item or group of items will be awarded to the responsive and responsible offeror whose offer complies with all the solicitation requirements. In determining the responsive and responsible offeror, offers will be evaluated not only on the amounts thereof, but on all factors relating to the satisfactory performance of the contract. Products must be of a quality and nature that will meet the needs and purposes of the intended use and must conform to all requirements prescribed in the specifications. The offeror must have the ability to perform as called for in the contract terms. **The Department shall be the sole judge of product or vendor capability. The successful vendor will be notified by letter that the offer has been accepted and that the vendor is being awarded the contract.**

(B) If the offer is rejected or if the vendor to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, the purchasing agency may, at their discretion, award the contract to the next lowest or remaining responsible offeror or may publish another call for offers; provided in the case of only one remaining responsible offeror, the procurement officer may negotiate with such bidder to reduce the scope of work, if available funds are exceeded, and to award the contract at a price which reflects the reduction in the scope of work.

(C) The procurement officer further reserves the right to cancel the contract award at any time prior to execution of said contract by all parties, without any liability to the awardee and to any other offeror.

3.3 EXECUTION OF CONTRACT THIS SECTION MAY BE AMENDED BY THE SPECIAL PROVISIONS.

Concurrently with its execution of this Contract, Contractor shall submit to the Officer-in-Charge:

- A tax clearance pursuant to Haw. Rev. Stat., as amended §103-53;
- A Certificate of Compliance pursuant to H.A.R. §3-122-112; and
- A Certificate of Good Standing pursuant to H.A.R. §3-122-112.

As a condition of final payment on this Contract, Contractor shall submit to the Officer-in-Charge:

- A tax clearance pursuant to Haw. Rev. Stat., as amended §103-53;
- A Certificate of Compliance pursuant to H.A.R. §3-122-112.

All clearances and certificates submitted pursuant to this paragraph 13 must be valid when the Contract is executed by all parties hereto and when final payment is made.

Any agreement arising out of this solicitation may be subject to the approval of the County Attorney as to form, and is subject to all further approvals required by statute, regulation, rule, order or other directive.

(A) This section shall not apply to any contract in which the total amount payable to the contractor cannot be accurately estimated at the time the contract is to be awarded.

(B) In cases where the contract award amounts to \$10,000 or more the Department shall forward a formal contract to the successful offeror for execution. (Refer to Exhibit A for agreement form.) The contract shall be signed by the successful vendor and returned, together with a satisfactory contract bond if required, and other supporting documents, within ten days after receipt by the vendor or within such further time as the procurement officer may allow.

(C) No such contract shall be considered binding upon the Department until the contract has been fully and properly executed by all the parties thereto and the Manager or his designee has, in accordance with section 103D-309, HRS, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby, the Manager or his designee shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is

sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract;

(D) In any contract involving not only state or county (including department) funds but supplemental funds from the federal government, this section shall be applicable only to that portion of the contract price as is payable out of state or county (including department) funds. As to the portion of the contract price as is expressed in the contract to be payable out of federal funds, the contract shall be construed to be an agreement to pay the portion to the contractor, only out of federal funds to be received from the federal government. This subsection shall be liberally construed so as not to hinder or impede the Department in contracting for any project involving financial aid from the federal government.

(E) If the successful offeror is other than a sole proprietorship, it shall submit satisfactory evidence, e.g. certificate or corporate resolution, power of attorney or other such evidence of authority of the signers' authority to execute on the contract date the contract on behalf of the successful bidder. If such document has been submitted to the purchasing agency on a previous occasion, the successful offeror may submit a copy of this document, provided there has been no amendment, modification or rescission of the document previously submitted, and provided further, that no such copy shall be acceptable unless the date of the document previously submitted is dated within one year of the contract date. If there has been a modification, amendment or rescission of the evidence of authority previously submitted, then the superseding document shall be attached to the contract.

3.4 CONTRACT BOND

(A) The requirement for contract performance and payment bonds, if any, shall be stated in the Special Provisions of the solicitation.

(B) When required by the Special Provisions, a performance bond and a payment bond shall be delivered by the contractor to the Department at the same time the executed contract is delivered. Each amount of the performance and payment bonds shall not exceed **fifty percent** of the amount of the contract price; provided, for contracts where contract price cannot be determined at the time of award, the amounts of the bonds shall be as stated in the solicitation.

(C) The acceptable performance and payment bonds are the same as the acceptable bid or proposal security deposit specified in section 2.7. (Refer to Exhibits C, D, E, F, G, and H for the forms to be submitted.) If a surety bond is submitted for either the performance or payment bond, in addition to the form prescribed, a power of attorney for the surety's attorney-in-fact executing the bond shall be provided.

3.5 FAILURE TO EXECUTE CONTRACT THIS SECTION MAY BE AMENDED BY THE SPECIAL PROVISIONS.

If the offeror to whom a contract is awarded shall fail or neglect to enter into the contract and to furnish satisfactory security as required by Section 3.4 within ten days after such award or within such further time as the procurement officer may allow, the purchasing agency shall pay the amount of offeror's proposal guaranty, as required under Section 2.7, into the Department Treasury as a realization of the Department. The procurement officer may thereupon award the contract to the next lowest responsible offeror or may call for new offers, whichever method he may deem is in the best interest of the Department.

3.6 RETURN OF OFFER GUARANTIES

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

3.7 SUBMISSION OF INSURANCE CERTIFICATION

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

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

SECTION 4 - PERFORMANCE OF CONTRACT

4.1 CONTRACT ADMINISTRATION

It is expressly understood and agreed that the contractor is an independent contractor, with the authority to control and direct the performance and details of the work and services herein contemplated; however, the Department retains the general right of inspection by a designated representative in order to judge, whether in the Department's opinion, such work is being performed by the contractor in accordance with the terms of this agreement.

4.2 COMPLIANCE WITH CONTRACT TERMS, ETC.

The work shall be completed in conformity with the specifications and each and every requirement of the general terms and conditions and other provisions forming a part of the contract. In the event the contractor fails to so perform, the procurement officer or head of the purchasing agency, in addition to any other recourse, reserves the right to suspend the contractor from bidding on any or all Department contracts pursuant to Chapter 3-126, HAR.

4.3 CHANGE ORDERS AND MODIFICATIONS

The contractor will not undertake to perform the portion of the work affected by the changes until a change order or modification has been approved and issued. (Refer to Exhibit I for Contract Change Order form and Exhibit J for the Change Modification form.)

4.4 DELIVERY EXTENSIONS

In the case of contracts for the purchase of goods, the delivery date or the maximum number of days for delivery will be specified by the Department in its solicitation requirements, and all goods must be delivered within the time specified. However, the Contractor will not be held responsible for delay due to fire, flood, riot, labor disturbances, war, shortage of transportation, act of God or other reason beyond his control, provided that he notifies the Department of such delay and the reason therefor as soon as practicable after its occurrence and requests extension prior to the specified date of delivery. Requests for extension of time shall be accompanied by documents such as the Contractor's purchase order, manufacturer's acknowledgement, shipping manifest, and any other documents substantiating that the causes for delay were beyond the control of the Contractor. The Department shall be the sole judge of whether such delay is truly beyond the control of the Contractor and whether extension will be granted. The Department reserves the right to terminate the contract or to assess liquidated damages, if provided for in the contract, for delays not covered by specific authorized extension.

4.5 CONTRACT PROVISIONS TO CONSIDER TRAFFIC

The Contractor in performance of work called for in this contract shall schedule all work and related activities to minimize adverse impact on traffic congestion during peak traffic hours as required by Section 103-15, HRS. The statutory provision reads as follows:

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

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

SECTION 5 - LEGAL RELATIONS AND RESPONSIBILITY

5.1 LAWS TO BE OBSERVED

The contractor shall at all times observe and comply with all federal, state and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the performance of the work, the manufacture and sale of materials and equipment required under the contract, and the conduct of the work. The contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto.

The contractor shall protect and indemnify the Department and all its officers, agents and employees against any claim or liability arising from or based on the violation of any such laws, ordinances, rules and regulations, orders and decrees, whether such violation is committed by the contractor or his subcontractor or the employee or either or both. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the contractor shall forthwith report the same to the procurement officer in writing.

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

5.2 PATENTED ARTICLE

The contractor will be required to, and shall hold the Department and its duly authorized representatives harmless against all demands, claims, actions, suits or liabilities arising from the use of any patented article, patented process or patented appliance used in connection with the contract. Any royalties due or becoming due for the use of any patented article or process shall be paid by the contractor and shall be deemed to be included within the proposal amount and contract price.

5.3 SUBCONTRACTING AND ASSIGNING

The contractor shall not subcontract any of the work to be performed under his contract with the Department, nor shall he assign the contract to any other person or firm without written permission from the procurement officer, and no subcontract or assignment made without such permission will be recognized. No subcontract shall, under any circumstances, relieve the contractor of his obligation and liability under his contract with the Department, and all persons engaged in performing the work covered by the contract shall be considered employees of the contractor.

5.4 ASSIGNMENT OF ANTITRUST CLAIMS

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

5.5 RESPONSIBILITY FOR DAMAGE CLAIMS

The contractor shall indemnify, hold harmless and defend the Department and its officers, employees, agents, and representatives from all suits, actions, claims, damages, and judgements of any character that may be brought against the Department by whomsoever, on account of any injuries or damages sustained by any person and property, due to the negligent acts or omissions by the contractor, or any of his officers, employees, subcontractors, assignees, or representatives, in the performance of the contract. In the event the Department and the contractor are found to be joint tortfeasors with respect to any such injuries or damages, the contractor's obligations to indemnify the Department under this section shall extend only to the contractor's pro rata share of negligence as determined in accordance with section 663-12, Hawaii Revised Statutes.

5.6 PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions of the contract or in exercising any power or authority granted to them by the contract, there shall be no liability upon the procurement officer or his authorized representatives, either personally or as officials of the Department, it being understood that in such matters, they act solely as agents and representatives of the Department.

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

6.1 GENERAL

(A) This section of the general terms and conditions apply to goods and services contracts.

(B) If the clauses set forth in these general terms and conditions are plainly inappropriate for use in the proposed contract, then the procurement officer of the head of a purchasing agency shall make a written determination describing the

circumstances requiring a material variation, provided that notice of any variation shall be stated in the invitation for bids or request for proposals.

(C) Any material variation from these clauses shall be described in the solicitation documents in substantially the following form:

"General Terms and Conditions Section No. _____, entitled _____, is not a part of the general terms and conditions of this contract and has been replaced by Special Provisions Clause No. _____, entitled _____."

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

6.2 CONTRACT CHANGE ORDERS

(A) A change order (Exhibit L) is a written order signed by the procurement officer, directing the Contractor to make changes which the "change clause" of the contract authorizes the procurement officer to order without the consent of the Contractor.

(1) Change clause. By written order, at any time, without notice to any surety, the procurement officer may, unilaterally, order of the contractor: Changes in the work within the scope of the contract; and changes in the time of performance of the contract that do not alter the scope of the contract work.

(B) Adjustments of price or performance time. If any such change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this section shall be determined in accordance with the price adjustment Section 6.8. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the procurement officer promptly and duly makes such provisional adjustments in payment or time for the direct costs of the work as the Department deems reasonable. The right of the Contractor to dispute the contract price or time or both shall not be waived by its performing the work, provided however, that it follows the notice requirements for disputes and claims established by the contract or these rules.

(C) Time period for claim. Within **ten days** after receipt of a written change order under subsection (A), unless such period is extended by the procurement officer in writing, the contractor shall respond with a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.

(D) Claim barred after final payment. No claim by the Contractor for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this contract.

(E) Claims not barred. In the absence of such a change order, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim as permitted under the contract or for breach of contract.

6.3 CONTRACT MODIFICATIONS

(A) Contract modification. By a written order (Exhibit M), at any time, and without notice to any surety, the procurement officer, subject to mutual agreement of the parties to the contract and all appropriate adjustments, may make modifications within the general scope of this contract to include any one or more of the following:

- (1) Drawings, designs, or specifications, for the goods to be furnished;
- (2) Method of shipment of packing;
- (3) Place of delivery;
- (4) Description of services to be performed;
- (5) Time of performance (i.e., hours of day, days of the week, etc.)
- (6) Place of performance of the services; or

(7) Other provisions of the contract accomplished by mutual action of the parties to the contract.

(B) 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 the 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.

(C) Claim barred after final payment. No claim by the Contractor for an adjustment hereunder shall be allowed if written agreement of modification is not made prior to final payment under this contract.

(D) Claims not barred. In the absence of a contract modification, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim under the contract or for a breach of contract.

6.4 AUTHORIZATION FOR A STOP WORK ORDER

(A) Section 6.5 applies to any fixed-price contract under which work stoppage may be required for reasons such as advancements in the state of the art, production modifications, engineering changes, or realignment of programs.

(B) Stop work orders shall not exceed sixty consecutive days and shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the contractor for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the contractor for minimizing costs.

(C) As soon as feasible after a stop work order is issued: (1) The contract will be terminated; or (2) The stop work order will be canceled or extended in writing beyond the period specified in the order.

(D) In any event, some such action must be taken before the specified stop work period expires. If an extension of the stop work order is necessary, it must be evidenced by a supplemental agreement. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.

6.5 STOP WORK ORDERS

(A) Order to stop work. The procurement officer, may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding sixty days after the order is delivered to the contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this subsection. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the procurement officer shall either: (1) Cancel the stop work order; or (2) Terminate the work covered by such order as provided in the "termination for default clause" or the "termination for convenience clause" of this contract.

(B) Cancellation or expiration of the order. If a stop work order issued under this section is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if: (1) The stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and (2) The contractor asserts a claim for such an adjustment within thirty days after the end of the period of work stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

(C) Termination of stopped work. If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowable by adjustment or otherwise.

(D) Adjustment of price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of this contract.

6.6 VARIATIONS IN QUANTITIES FOR DEFINITE QUANTITY CONTRACTS

Variation in quantity. Upon the agreement of the parties, the quantity of goods or services or both specified in this contract may be increased by a maximum of **ten percent** provided: the unit prices will remain the same except for any price adjustments otherwise applicable; and the procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

6.7 VARIATIONS IN QUANTITIES FOR INDEFINITE QUANTITY CONTRACTS

No clause is provided here because in indefinite quantity contracts the flexibility as to the Department's obligation to order and the contractor's obligation to deliver should be designed to meet using agency needs.

However, the contracts Special Provisions should provide for: the minimum quantity, if any, the Department is obligated to order and the contractor to provide; whether there is a quantity the Department expects to order and how this quantity relates to any minimum and maximum quantities that may be ordered under the contract; any maximum quantity the Department may order and the contractor must provide; and whether the Department is obligated to order its actual requirements under the contract, or in the case of a multiple award that the Department will order its actual requirements from the contractors under the multiple award subject to any minimum or maximum quantity stated.

6.8 PRICE ADJUSTMENT

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

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

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

6.9 NOVATION OR CHANGE OF NAME THIS SECTION MAY BE AMENDED BY THE SPECIAL PROVISIONS.

(A) No assignment. No Department contract is transferable, or otherwise assignable, without the written consent of the chief procurement officer or the head of a purchasing agency provided, that a contractor may assign monies receivable under a contract after due notice to the Department.

(B) Recognition of a successor in interest; novation. When in the best interest of the Department, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that: the transferee assumes all of the transferor's obligations; the transferor waives all rights under the contract as against the Department; and unless the transferor guarantees performance of the contract by the transferee, the transferee shall furnish all required bonds.

(C) Change of name. When a contractor requests to change the name in which it holds a contract with the Department, the procurement officer responsible for the contract shall, upon receipt of a document indicating such change of name (for example an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect such a change of name. The

agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.

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

(E) Actions affecting more than one purchasing agency. Notwithstanding the provisions of subsections (A) through (C), when a contractor holds contracts with more than one purchasing agency of the Department, the novation or change of name agreements herein authorized shall be processed only through the office of the chief procurement officer.

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

(A) Notice of Claim. If any action or omission on the part of the procurement officer or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the contractor for additional compensation, damages, or an extension of time for completion, the contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- 1) The contractor shall have given written notice to the procurement officer or designee of such officer:
 - (a) Prior to the commencement of the work involved, if at that time the contractor knows of the occurrence of such action or omission; or
 - (b) Within **thirty 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 work; or
 - (c) Within such further time as may be allowed by the procurement officer in writing.
- (2) This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The procurement officer or designee of such officer, upon receipt of such notice may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the chief procurement officer or designee of such officer;
- (3) The notice required by subparagraph (1) describes as clearly as practicable at the time the reasons why the contractor believes that additional compensation, damages, or an extension of time may be remedies to which the contractor is entitled; and
- (4) The contractor maintains and, upon request, makes available to the procurement officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

(B) Limitation of clause. Nothing herein contained, shall excuse the contractor from compliance with any rules of law precluding any Department officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

(C) Adjustments of price. Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of the contract.

6.11 TERMINATION FOR DEFAULT

(A) Termination for default. If the contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the procurement officer may notify the contractor in writing of the delay or non-performance, and if not cured in **ten days** or any longer time specified in writing by the procurement officer, such officer may terminate the contractor's right to proceed with the contract or such part of the

contract as to which there has been delay or other breach of contract. In the event of termination in whole or in part, the procurement officer may procure similar goods or services in a manner and upon terms deemed appropriate by the procurement officer. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

(B) Contractor's duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the contractor shall take timely and necessary action to protect and preserve property in the possession of the contractor in which the Department has an interest.

(C) Compensation. Payment for completed goods delivered and accepted by the Department shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the contractor and procurement officer; if the parties fail to agree, the procurement officer shall set an amount subject to the contractor's rights under Chapter 3-126, HAR. The Department may withhold from amounts due the contractor such sums as the procurement officer deems to be necessary to protect the Department against loss because of outstanding liens or claims of former lien holders and to reimburse the Department for the excess costs incurred in procuring similar goods and services.

(D) Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms, including any failure by the contractor to make progress in the prosecution of the work hereunder which endangers such performance, if the contractor has notified the procurement officer within **fifteen days** after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather; or for delay due to reasons beyond the contractor's control. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the contractor shall not be deemed to be in default, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the contract requirements.

(E) Upon request of the contractor, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the Department under the clause entitled in fixed-price contracts, "Termination for Convenience" and in cost-reimbursement contract, "Termination". As used in this section, the term "subcontractor" means subcontractor at any tier.

(F) Additional rights and remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

6.12 LIQUIDATED DAMAGES

(A) The following is for goods or services contracts when it is difficult to determine with reasonable accuracy the amount of damage to the Department due to delays caused by late contractor performance or nonperformance.

(1) Liquidated damages. When the Contractor is given notice of delay or nonperformance as specified in subsection 6.11(A) termination for default clause of this contract and fails to cure in the time it is agreed specified, the Contractor shall pay to the Department the dollar amount specified in the liquidated damages provision of the Special Provisions, if any, per calendar day from date set for cure until either the Department reasonably obtains similar goods or services if the Contractor is terminated for default, or until the Contractor provides the supplies or services if the Contractor is not terminated for default. To the extent that the Contractor's delay or nonperformance is excused under subsection 6.11(D), excuse for nonperformance of delayed performance of the termination for default clause of this contract, liquidated damages shall not be due the Department. The Contractor remains liable for damages caused other than by delay.

(B) If the contract will not have a termination for default clause and the liquidated damages are to be assessed for reasons other than delay, the procurement

officer or the head of a purchasing agency may approve the use of any appropriate liquidated damages clause.

6.13 TERMINATION FOR CONVENIENCE

(A) Termination for convenience. The procurement officer may, when the interests of the Department so require, terminate this contract in whole or in part, for the convenience of the Department. The procurement officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

(B) Contractor's obligations. The contractor shall incur no further obligations in connection with the terminated work and on the dates set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the Department's approval. The procurement officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the Department. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(C) Right to goods. The procurement officer may require the contractor to transfer title and deliver to the Department in the manner and to the extent directed by the procurement officer: any completed goods; and the partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights, hereinafter called "manufacturing material," as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

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

(D) Compensation:

- (1) The contractor shall submit a termination claim specifying the amounts due based on the termination for convenience together with cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the procurement officer may pay the contractor, if at all, an amount set in accordance with subparagraph (3) below.
- (2) The procurement officer and the contractor may agree to settlement provided the contractor has filed a termination claim supported by cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the Department, the proceeds of any sales of goods and manufacturing materials under subparagraph (3)(c), below, and the contract price of the work not terminated.
- (3) Absent complete agreement under paragraph (2), the procurement officer shall pay the contractor the following amounts, provided payments agreed to under paragraph (2) shall not duplicate payments under this paragraph for the following:
 - (a) Contract prices for goods or services accepted under the contract;
 - (b) Costs incurred in preparation and performing the terminated portion of the work plus a five percent markup on actual direct costs on such portion of the work, such markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted good or services; provided, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(c) Subject to the prior approval of the procurement office the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subsection (B) of this clause. Subcontractors shall be entitled to a markup of no more than ten percent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with subparagraph (3)(b).

(d) The total sum to be paid the Contractor under this subparagraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of goods and manufacturing materials under subsection (D)(2), and the contract price of work not terminated.

(4) Cost claimed, agreed to, or established under paragraphs (D)(2) and (D)(3) shall be in accordance with Chapter 3-123, HAR.

6.14 TERMINATION FOR COST-REIMBURSEMENT CONTRACTS

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

6.15 COMPLAINTS AND PROTESTS

Chapter 3-126, HAR, provides that:

(A) Complainants should seek resolution of their complaints initially with the procurement officer or the office that issued the solicitation. Such complaints should be made in writing.

(B) Protests shall be made in writing to the chief procurement officer or the head of a purchasing agency, and shall be filed in duplicative within five working days after the protestor knows or should have known of the facts giving rise therein. A protest is considered filed when received by the chief procurement office or the head of a purchasing agency. Protests filed after the five day period shall not be considered.

(C) Protestors may file a protest on any phase of solicitation or award including but not limited to specifications preparation, bid solicitation, award, or disclosure of information marked confidential in the bid or offer.

(D) To expedite handling of protests, the envelope should be labeled "Protest" and either served personally or sent by registered or certified mail, return receipt requested, to the chief procurement officer or head of a purchasing agency. The written protest shall include as a minimum the following:

- (1) The name and address of the protestor;
- (2) Appropriate identification of the procurement, and, if a contract has been awarded, its number;
- (3) A statement of reasons for the protest; and
- (4) Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.

(E) The notice of protest shall be deemed communicated and filed within forty-eight hours from the time of mailing, if mailed as provided in this section or communicated and filed when received personally by the chief procurement officer or the head of the purchasing agency.

6.16 DISPUTES THIS SECTION MAY BE AMENDED BY THE SPECIAL PROVISIONS.

(A) All controversies between the Department and the contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the procurement officer in writing, within ninety calendar days after a written request by the contractor for a final decision concerning the controversy; provided that if the procurement officer does not issue a written decision within ninety calendar days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

(B) The procurement officer shall immediately furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

(C) Any such decision shall be final and conclusive, unless fraudulent, or the contractor brings an action seeking judicial review of the decision in the circuit court of the State within the six months from the date of receipt of the decision.

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

6.17 REMEDIES

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

SECTION 7 - PAYMENT

7.1 METHOD OF PAYMENT

The method of payment under the contract shall be as set forth in the Special Provisions. Further, payment to the Contractor shall be made in accordance contract provision at the contracted price(s). Invoices shall be payable upon certification by authorized Department personnel that the contractor has satisfactorily performed the work required herein.

7.2 FINAL PAYMENT THIS SECTION MAY BE AMENDED BY THE SPECIAL PROVISIONS.

In accordance with section 103-53, HRS, final payment under any contract shall not be made until the Contractor has filed with the purchasing agency a tax clearance from the State Director of Taxation and the Internal Revenue Service that all tax returns due have been filed, and all taxes, interest, and penalties levied against the contractor or accrued under title 14 that are administered by the department of taxation and under the Internal Revenue Code have been paid and a Certificate of Compliance, pursuant to Section 3-122-112, H.A.R.

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

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

7.3 PROMPT PAYMENT BY CONTRACTOR TO SUBCONTRACTORS

(A) Any money, other than retainage, paid to a contractor shall be dispersed to subcontractors within ten 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

(B) Upon final payment to the Contractor, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

EXHIBIT A

SURETY [BID] [PROPOSAL] BOND
(11/17/98)

Bond No. _____

KNOW TO ALL BY THESE PRESENTS:

That we,

(full name or legal title of offeror)

as Offeror, hereinafter called Principal, and

(name of bonding company)

as Surety, hereinafter called Surety, a corporation authorized to transact business as a Surety in the State of Hawai'i, are held and firmly bound unto the Department of Water, County of Kauai, as Owner, hereinafter called the Owner, in the penal sum of _____

(required amount of bid security)

Dollars (\$ _____), lawful money of the United States of America, for the payment of which sum well and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS:

The Principal has submitted an offer for _____

(project by number and brief description)

NOW, THEREFORE:

The condition of this obligation is such that if the Department of Water, County of Kaua'i, shall reject said offer, or in the alternate, accept the offer of the Principal and the Principal shall enter into a Contract with the Department of Water, County of Kaua'i, in accordance with the terms of such offer, and give such bond or bonds as may be specified in the solicitation or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof as specified in the solicitation then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed this _____ day of _____, 20 ____.

(Seal)

Name of Principal (Offeror)

Signature

Title

(Seal)

Name of Surety

Signature

Title

EXHIBIT B

PERFORMANCE BOND (SURETY)

(6/21/07)

KNOW TO ALL BY THESE PRESENTS:

That

(full legal name and street address of Contractor)
as Contractor, hereinafter called the Principal, and

(name and street address of bonding company)
as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a Surety in the State of Hawai'i, are held and firmly bound unto the Department of Water, County of Kauai, its successors and assigns, hereinafter called Obligee, in the amount of _____

Dollars (\$ _____), to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has signed a Contract with Obligee on _____, for the following project _____

hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that:

If the Principal shall promptly and faithfully perform, and fully complete the Contract in strict accordance with the terms of the Contract as said Contract may be modified or amended from time-to-time; then this obligation shall be void; otherwise to remain in full force and effect.

Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

In the event of Default by the Principal, of the obligations under the Contract, then after written Notice of Default from the Obligee to the Surety and the Principal and subject to the limitation of the penal sum of this bond, Surety shall remedy the Default, or take over the work to be performed under the Contract and complete such work, or pay moneys to the Obligee in satisfaction of the surety's performance obligation on this bond.

Signed this _____ day of _____, 20____.

(Seal)

Name of Principal (Contractor)

* _____
Signature

Title

(Seal)

Name of Surety

* _____
Signature

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

EXHIBIT C

PERFORMANCE BOND

(11/17/98)

KNOW TO ALL BY THESE PRESENTS:

That we,

(full legal name and street address of Contractor)
as Contractor, hereinafter called Contractor, is held and firmly bound unto the Department of Water, County of Kauai, its successors and assigns, as Obligee, hereinafter called Obligee, in the amount of

(dollar amount of contract)
DOLLARS (\$ _____), lawful money of the United States of America, for the payment of which to the said Obligee, well and truly to be made, Contractor binds itself, its heirs, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

- Legal tender;
- Share Certificate unconditionally assigned to or made payable at sight to

Description _____
- Certificate of Deposit, No. _____, dated _____
issued by _____
drawn on _____
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Cashier's Check No. _____, dated _____,
issued by _____, drawn on _____
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Teller's Check No. _____, dated _____,
issued by _____, drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Treasurer's Check No. _____, dated _____,
issued by _____, drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Official Check No. _____, dated _____,
issued by _____, drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Certified Check No. _____, dated _____, accepted by
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned _____;

WHEREAS:

The Contractor has by written agreement dated _____ entered into a Contract with Obligees for the following Project:

hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW, THEREFORE,

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, and shall deliver the Project to the Obligees, or to its successors or assigns, fully completed as in the Contract specified and free from all liens and claims and without further cost, expense or charge to the Obligees, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing of the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligees, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond or in accordance with the terms thereof.

The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed this _____ day of _____, 20____.

(Seal)

Name of Contractor

*

Signature

Title

***ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC**

EXHIBIT D

LABOR AND MATERIAL PAYMENT BOND (SURETY)

(6/21/07)

KNOW TO ALL BY THESE PRESENTS:

That

(full legal name and street address of Contractor)

as Contractor, hereinafter called Principal, and

(name and street address of bonding company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a Surety in the State of Hawaii, are held and firmly bound unto the Department of Water, County of Kauai, its successors and assigns, hereinafter called Obligee, in the amount of _____ Dollars (\$ _____), to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has signed a Contract with Obligee on _____ for the following project: _____

_____, hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor and materials supplied to the Principal for use in the performance of the Contract, then this obligation shall be void; otherwise to remain in full force and effect.

1. Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

2. A "Claimant" shall be defined herein as any person who has furnished labor or materials to the Principal for the work provided in the Contract.

Every Claimant who has not been paid amounts due for labor and materials furnished for work provided in the Contract may institute an action against the Principal and its Surety on this bond at the time and in the manner prescribed in Section 103D-324, Hawaii Revised Statutes, and have the rights and claims adjudicated in the action, and judgment rendered thereon; subject to the Obligee's priority on this bond. If the full amount of the liability of the Surety on this bond is insufficient to pay the full amount of the claims, then after paying the full amount due the Obligee, the remainder shall be distributed pro rata among the claimants.

Signed and sealed this _____ day of _____, _____.

(Seal)

Name of Principal (Contractor)

*

Signature

Title

(Seal)

Name of Surety

*

Signature

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

EXHIBIT E

LABOR AND MATERIAL PAYMENT BOND

(11/17/98)

KNOW TO ALL BY THESE PRESENTS:

That we,

(full legal name and street address of Contractor)

as Contractor, hereinafter called Contractor, is held and firmly bound unto the Department of Water, County of Kauai, its successors and assigns, as Obligee, hereinafter called Obligee, in the amount of

(dollar amount of contract)

DOLLARS (\$ _____), lawful money of the United States of America, for the payment of which to the said Obligee, well and truly to be made, Contractor binds itself, its heirs, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

- Legal tender;
- Share Certificate unconditionally assigned to or made payable at sight to _____
Description _____
- Certificate of Deposit, No. _____, dated _____, issued by _____ drawn on _____ a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Cashier's Check No. _____, dated _____, issued by _____, drawn on _____ a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Teller's Check No. _____, dated _____, issued by _____, drawn on _____ a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Treasurer's Check No. _____, dated _____, issued by _____, drawn on _____ a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Official Check No. _____, dated _____, issued by _____, drawn on _____ a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Certified Check No. _____, dated _____, accepted by _____ a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned _____;

WHEREAS:

The Contractor has by written agreement dated _____ entered into a Contract with Oblige for the following Project:

hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW, THEREFORE,

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, free from all liens and claims and without further cost, expense or charge to the Oblige, its officers, agents, successors, or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, and shall promptly pay all persons supplying labor and materials for the performance of the Contract, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, is any, shall be forfeited to the Oblige, its successor or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

AND IT IS HEREBY STIPULATED AND AGREED that this bond shall inure to the benefit of any and all persons entitled to file claims for labor performed or materials furnished in said work so as to give any and all such persons a right of action as contemplated by Sections 103D-324(d) and 103D-324(e), Hawaii Revised Statutes.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment of mechanics' liens which may be filed of record against the Project, whether or not claim for the amount of such lien be presented under and against this bond.

Signed this _____ day of _____, 20____.

(Seal)

Name of Contractor

*_____
Signature

Title

***ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC**

EXHIBIT F

COMBINATION PERFORMANCE AND PAYMENT BOND
(6/21/07)

KNOW TO ALL BY THESE PRESENTS:

That we,

(full legal name and street address of Contractor)

as Contractor, hereinafter called the Principal, and

(name and street address of bonding company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a Surety in the State of Hawai'i, are held and firmly bound unto the Department of Water, County of Kauai, its successors and assigns, as Obligee, hereinafter called Obligee, in the amount of _____

(twice the dollar amount of contract)

DOLLARS (\$ _____), being _____

DOLLARS as performance bond and _____

DOLLARS as payment bond, each in the amount of one hundred percent of the contract price as required by 103D-324, Hw. Rev. Stat.), lawful money of the United States of America, for the payment of which to the said Obligee, well and truly to be made, Contractor and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS:

The Principal has by written agreement dated _____ signed a Contract with Obligee for the following Project:

hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW, THEREFORE,

The condition of this obligation is such that, if the Principal shall promptly and faithfully perform, the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, and shall deliver the Project to the Obligee, or to its successors or assigns, fully completed as in the Contract specified and free from all liens and claims and without further cost, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Principal or its agents or servants or the improper performance of the Contract by the Principal or its agents or servants or from any other cause, and shall promptly pay all persons supplying labor and materials for the performance of the Contract, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that no change, extension, alteration, deduction or addition, permitted by the Contract, in or to the terms of the Contract, or the plans or specifications pertaining thereto, shall in any way affect the obligation of the Surety on this bond; and the Surety does hereby waive notice of any such change, extension, alteration, deduction or addition in or to the terms of the Contract, or the plans or specifications pertaining thereto, or in or to the said Project.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

AND IT IS HEREBY STIPULATED AND AGREED that this bond shall inure to the benefit of any and all persons entitled to file claims for labor performed or materials furnished in said work so as to give any and all such persons a right of action as contemplated by Sections 103D-324(d) and 103D-324(e), Hawai'i Revised Statutes.

The above-named Principal and Surety hereby jointly and severally agree with the Obligeo that every person who has furnished labor or material to the Principal for the performance of the Contract who has not been paid in full therefor after ninety days from the completion and final settlement of any contract, may institute an action against the Principal and its sureties, and have their rights and claims adjudicated in the action, and judgment rendered thereon. If the full amount of the liability of the sureties on the bond is insufficient to pay the full amount of the claims, then, after paying the full amount due the Obligeo, the remainder shall be distributed pro rata among the claimants. The Obligeo shall not be liable for the payment of any costs or expenses of any such suit.

The amount of this bond may be reduced in accordance with and subject to Section 3-122-225, Hawai'i Administrative Rules.

Signed this _____ day of _____, _____.

(Seal)

Name of Principal (Contractor)

*

Signature

Title

(Seal)

Name of Surety

*

Signature

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBIT G

PERFORMANCE BOND (SURETY)
FOR SUPPLEMENTAL AGREEMENT
FOR GOODS AND SERVICES

(11/17/98)

KNOW TO ALL BY THESE PRESENTS:

That

(full legal name and street address of Contractor)

as Contractor, hereinafter called Principal, and

(name and street address of bonding company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a Surety in the State of Hawaii, are held and firmly bound unto the Department of Water, County of Kauai, its successors and assigns, hereinafter called Obligee, in the amount of _____ Dollars (\$ _____), to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has entered into a Contract with Obligee dated _____ for _____

_____, and entered into Supplemental Agreement No. _____, dated _____ for the period hereinafter collectively called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW THEREFORE, the condition of this obligation is such that:

If the Principal shall promptly and faithfully perform, and fully complete the Contract in strict accordance with the terms of the Contract as said Contract may be modified or amended from time to time; then this obligation shall be void; otherwise to remain in full force and effect.

Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

In the event of Default by the Principal, of the obligations under the Contract, then after written Notice of Default from the Obligee to the Surety and the Principal, Surety shall either remedy the Default, or take over the work to be performed under the Contract and complete such work, subject, however, to the limitation of the penal sum of this bond.

Signed this _____ day of _____, _____.

(Seal)

Name of Principal (Contractor)

*

Signature

Title

(Seal)

Name of Surety

*

Signature

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBIT H

PERFORMANCE BOND
FOR SUPPLEMENTAL AGREEMENT
FOR GOODS AND SERVICES
(11/17/98)

KNOW TO ALL BY THESE PRESENTS:

That we,

(full legal name and street address of Contractor)

as Contractor, hereinafter called Contractor, is held and firmly bound unto the Department of Water, County of Kauai, its successors and assigns, as Obligee, hereinafter called Obligee, in the amount of

(dollar amount of contract)

DOLLARS (\$ _____), lawful money of the United States of America, for the payment of which to the said Obligee, well and truly to be made, Contractor binds itself, its heirs, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

- Legal tender;
- Share Certificate unconditionally assigned to or made payable at sight to _____
Description _____
- Certificate of Deposit, No. _____, dated _____, issued by _____ drawn on _____ a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Cashier's Check No. _____, dated _____, issued by _____, drawn on _____ a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Teller's Check No. _____, dated _____, issued by _____, drawn on _____, a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Treasurer's Check No. _____, dated _____, issued by _____, drawn on _____, a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Official Check No. _____, dated _____, issued by _____, drawn on _____ a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Certified Check No. _____, dated _____, accepted by _____ a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned _____;

WHEREAS:

The Contractor has by written agreement dated _____ entered into a Contract with Obligee for the following Project:

and entered into Supplemental Agreement No. _____, dated _____ for the period _____; hereinafter collectively called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW, THEREFORE,

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, and shall deliver the Project to the Obligee, or to its successors or assigns, fully completed as in the Contract specified and free from all liens and claims and without further cost, expense or charge to the Obligee, its officers, agents, successors, or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, is any, shall be forfeited to the Obligee, its successor or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed and sealed this _____ day of _____, _____.

(Seal)

Name of Contractor

*

Signature

Title

***ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC**

EXHIBIT I

CONTRACTOR ACKNOWLEDGMENT

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

CONTRACTOR ACKNOWLEDGMENT:

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

On this _____ day of _____, 20____, before me appeared _____ and _____ to me known to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are _____ and _____ of _____ the Contractor named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument in behalf of the Contractor, and acknowledges that he/she/they executed said instrument as the free act and deed of the Contractor.

(Notary Seal)

Notary Public
State of _____
My commission expires: _____

EXHIBIT J

SURETY ACKNOWLEDGMENT

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

SURETY ACKNOWLEDGMENT:

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

On this _____ day of _____, 20_____, before me personally came _____ to me known to be the person described in and, who, being by me, did depose and say that _____ resides in _____; that _____ Is the Attorney-in-Fact of _____ the corporation described in and which executed the attached instrument; that _____ knows corporate seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; and that it was so affixed by order of the Board of Directors of the said corporation; and that _____ signed _____ name thereto by like order.

(Notary Seal)

Notary Public
State of _____
My commission expires: _____

EXHIBIT K

CONTRACT
(2/22/07)

CONTRACT NO. _____

GOODS CONTRACT

THIS AGREEMENT is made by and between the **BOARD OF WATER SUPPLY** of the County of Kauai (hereinafter "Board"), whose mailing address is P.O. Box 1706, Lihue, HI 96766, and

_____ a _____
corporation, whose mailing address is _____
(hereinafter "Contractor").

WHEREAS, competitive bids were publicly solicited by the Department of Water of the County of Kauai (hereinafter "Department") for the _____
under Department Solicitation No. GS-_____ (hereinafter "Solicitation GS-_____"); and

WHEREAS, Contractor submitted the lowest responsive, responsible bid in response to Solicitation GS-_____;

NOW THEREFORE, the Board and the Contractor, in consideration of the mutual promises hereinafter set forth, hereby agree as follows:

1. **Scope of Work.** The Contractor agrees to furnish and deliver, free of any and all liens, claims, and encumbrances whatsoever:



according to and in strict compliance with Solicitation GS-_____, which includes but is not limited to, this contract, the Offer, Scope of Work and Award, Specifications, Special Provisions, and the Department's General Terms and Conditions for Goods and Services, and those other documents attached or referred to therein. All of the preceding documents are collectively referred to as the "Contract Documents." The Contractor understands and agrees that the Contract Documents including, but not limited to, those attached to this contract, those referenced in but not attached to this contract, and those referenced in but not attached to the Contract Documents, are hereby incorporated by reference into this contract. The Contractor acknowledges and admits receipt of all Contract Documents, and acknowledges that it has reviewed, understands, and agrees with all of the terms and conditions in the Contract Documents and those other documents, terms and conditions referenced therein.

2. **Compensation.** Upon Contractor's full and faithful performance of this contract, the Board agrees to pay the Contractor based on the following submitted cost of:

_____ and for the total sum of _____

DOLLARS (\$ _____), federal, state and local taxes included, in lawful money of the United States of America; provided that the Contractor understands and agrees that payment shall be made in the manner and at the times specified in the Contract Documents.

3. **Liquidated Damages.** When the Contractor is given notice of delay or nonperformance as specified in Hawaii Administrative Rules (hereinafter "H.A.R.") §3-125-17(1) and fails to cure in the time specified, the Contractor shall pay to the Board the amount of _____ DOLLARS (\$ _____) per calendar day from date set for cure until either the Board reasonably obtains similar goods or services if the Contractor is terminated for default, or until the Contractor provides the goods or services if the Contractor is not terminated for default. To the extent that the Contractor's delay or nonperformance is excused under H.A.R. §3-125-17(4), liquidated damages shall not be due the Board. The Contractor remains liable for damages caused other than by delay.

4. **Tax Clearances, Certificate of Compliance, and Certificate of Good Standing.** Concurrently with its execution of this Contract, Contractor shall submit to the Officer-in-Charge: 1) a tax clearance pursuant to Haw. Rev. Stat., as amended (hereinafter "H.R.S.") §103-53; 2) a Certificate of Compliance pursuant to H.A.R. §3-122-112; and 3) a Certificate of Good Standing pursuant to H.A.R. §3-122-112. All clearances and certificates submitted pursuant to this paragraph 4 must be valid when the Contract is executed by all parties hereto.

5. **Tax Clearance & Certificate of Compliance for Final Payment.** As required by Haw. Rev. Stat. (hereinafter "H.R.S.") §103-53, the Contractor shall submit to the Officer-in-Charge as a condition of final payment, 1) the tax clearances required by H.R.S. Sec. 103-53, and 2) a Certification of Compliance for Final Payment pursuant to H.A.R. §3-122-112.

All clearances and certificates submitted pursuant to this paragraph 5 must be valid when final payment is made.

6. **"Board" defined.** As used in this contract, "Board" means the Board of Water Supply of the County of Kaua'i and its officers, agents, and employees.

IN WITNESS WHEREOF, the parties hereto have executed this contract on this ____ day of

APPROVED:

Manager and Chief Engineer

APPROVED AS TO FORM
AND LEGALITY:

Deputy County Attorney

BOARD OF WATER SUPPLY:

By _____
Its: Chairperson

_____:

By _____
Its

By _____
Its

STATE OF HAWAII)
) ss.
COUNTY OF KAUAI)

On this _____ day of _____, 20____ before me appeared _____ to me personally known, who being by me was duly sworn, and that said Officer is the Chairperson of the **BOARD OF WATER SUPPLY** of the COUNTY OF KAUAI, and that the foregoing instrument was signed on behalf of said Board with authority of said Board, and that said officer acknowledged the instrument to be the free act and deed of said Board, and that said Board has no corporate seal.

Notary Public, State of Hawaii
Name of Notary: _____
My commission expires: _____

STATE OF HAWAII)
) ss.
_____)

On this _____ day of _____, 20____, before me appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the _____ and _____, respectively; of _____, a _____ corporation; that the seal affixed to the foregoing instrument is the seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and said _____ and _____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public, State of Hawaii
Name of Notary: _____
My commission expires: _____

EXHIBIT L

CONTRACT CHANGE ORDER
(2/22/07)

DEPARTMENT OF WATER
COUNTY OF KAUAI

Project							Order No.	
							Date	
Project No.			Change Requested By:			Contract No.		
To _____, Contractor:								
Estimate of Quantities and Costs:								
Item No.	Item	Quantity	Unit	Contract Unit Price		Agreed Unit Price		\$ Amount (+ or -)
CONTRACT PRICE			CONTRACT CERTIFICATION			CONTRACT TIME		
<input type="checkbox"/> No Change <input type="checkbox"/> Increased by \$ _____ <input type="checkbox"/> Decreased by \$ _____			Amount Certified \$ _____ New Contract Price \$ _____			<input type="checkbox"/> No Change <input type="checkbox"/> Increased by _____ Calendar days <input type="checkbox"/> Decreased by _____ Calendar days		
Submitted by:			Approved:			Accepted:		
Project Engineer		Date	Fiscal Officer		Date	Contractor		
ED&C Division Head		Date	Mgr & Chief Engineer		Date	Signed by		Date
						Title		

EXHIBIT M

CONTRACT MODIFICATION FORM
(2/22/07)

DEPARTMENT OF WATER
COUNTY OF KAUAI
STATE OF HAWAII

MODIFICATION ORDER NO. _____ Date _____
Contractor _____ Contract No. _____
Contract Title _____

A. MODIFICATIONS

The following modifications are to be performed in accordance with all contract stipulations (specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions by mutual action of the parties to the contract.)

B. CONTRACTOR'S QUOTATION

The modifications described in "A" above will be performed at a contract price _____ increase
_____ decrease of \$ _____. Contractor will not undertake to perform the changes in
"A" above until this modification order has been approved and issued.

Contractor's Signature and Date

C. STATEMENT OF CONTRACT FUNDS

Original Contract Price \$ _____
Previous Adjusted Contract Price \$ _____
Amount this Change: Plus _____ Minus _____
New Adjusted Contract Price \$ _____

D. VALIDATION OF CONTRACT MODIFICATION

User Agency Date [Procurement Officer] Date

DISTRIBUTION: Original - Contracting Office c: Contractor

SPECIAL PROVISIONS

1. GENERAL. The furnishing, delivery and installation of the items specified herein shall comply with these "Special Provisions", "Offer", "Scope of Work and Award", and "General Terms and Conditions", all of which documents the Offeror understands and agrees are attached hereto and by reference made a part hereof.

2. DEFINITIONS.

"BOARD" means the Board of Water Supply, Department of Water, County of Kauai.

"CHAIRPERSON" means the Chairperson of the Board of Water Supply

"CHIEF PROCUREMENT OFFICER" means the Director of Finance of the County of Kauai pursuant to Chapter 103D, Haw. Rev. Stat., as amended (hereafter "H.R.S.") or his designee.

"COUNTY" means the County of Kauai.

"MANAGER" means the Manager and the head of the purchasing agency.

"OFFICER-IN-CHARGE" means the Manager of the Department of Water, County of Kauai, or designee. Said Officer-in-Charge is tasked with administering the terms and conditions of the contract generated by this solicitation and is the contact person for any technical questions relating to the items covered. The Officer-in-charge will provide the Manager with recommendations deemed prudent and responsible in the course of administering the contract.

"DEPARTMENT" means the Department of Water, County of Kauai, and the purchasing agency.

3. SUBMISSION OF QUESTIONS, CONCERNS, AND OFFERS. All questions, concerns, and offers relating to this solicitation shall be submitted in writing to:

Manager and Chief Engineer
Department of Water
4398 Pua Loke Street
Lihue, HI 96766

Offers shall be submitted in a sealed envelope furnished by the Offeror. Said envelope shall be clearly marked with the Offeror's name, address, solicitation opening date and number.

4. BID SECURITY DEPOSIT. Bid security protects the Department against the failure or refusal of the low bidder to supply any necessary performance and payment bonds and proceed with performance of the contract. Pursuant to Section 22-27, Haw. Admin. Rules, the Offeror shall submit bid security when required by the Manager.

5. PERFORMANCE AND PAYMENT BONDS. A performance bond indemnifies the Department against loss resulting from the contractor's failure to perform the contract as specified. A payment bond guarantees payment and protection for those furnishing labor and materials to the contractor or its subcontractors for the work under the contract. Pursuant to Section 22-24, Haw. Admin. Rules, the Offeror shall submit performance and payment bonds when required by the Manager.

6. BID SAMPLE, BROCHURES, SPECIFICATIONS AND QUESTIONNAIRES. Bid samples or descriptive literature should not be submitted unless expressly requested and that, regardless of any attempt by a bidder to condition the bid, unsolicited bid samples or descriptive literature which are submitted at the bidders' risk will not be examined or tested, and will not be deemed to vary any of the provisions of the invitation for bids.

However, whenever a questionnaire is attached to the solicitation document, Offerors shall complete and submit such questionnaire with their offers, together with all specifications and brochures.

The Manager reserves the right to request Offerors to provide, at their own expense and within ten (10) calendar days from the date of the request, all specifications and brochures regarding the item or items offered. Failure to comply with the Department's request within the time specified SHALL BE SUFFICIENT CAUSE FOR REJECTION OF THE OFFER.

Whenever the preparation and submission of a questionnaire is required, all specifications and brochures submitted by the Offeror shall be properly annotated identifying all applicable data on the item(s) being

offered and shall fully substantiate the information requested in the questionnaire. In the event the information requested in the questionnaire cannot be substantiated by the manufacturer's specifications and brochures, the manufacturer shall certify in writing that the item(s) will be manufactured in accordance with the solicitation questionnaire and manufacturer's specifications.

Failure to comply with the requirements of the provisions herein **SHALL BE SUFFICIENT CAUSE FOR REJECTION OF THE OFFER.**

7. **BRAND OR TRADE NAME.** Whenever one or more manufacturers' brand or trade name is specified, an Offeror shall base his offer on one of the specified brands. However, other manufacturers' brands may also qualify if found to be equal to or better than those specified. An offer based on an unspecified brand will be subject to evaluation as to its comparable quality. Items in an offer which do not specify a brand shall be evaluated according to its comparable quality with the manufacturer's brand or trade name specified.

The burden of proof as to whether an alternate item is comparable with the item specified shall lie with the Offeror. The Department reserves the right to request all necessary information and/or exact samples of the item(s) being considered for award. The Offeror shall, at its own expense, furnish requested information and/or exact samples within 10 calendar days of the date of any such request. By submitting its offer, the Offeror understands and agrees that the Officer-in-Charge reserves the sole right to determine whether alternate brands are equivalent to and meet indicated standards of quality. By submitting its offer, the Offeror further understands and agrees that the decision of the Officer-in-Charge is final.

8. **STANDARD EQUIPMENT.** Whenever the word "standard" is used in these specifications to describe any item, piece of equipment, or parts assembly, it shall be construed to mean that the item or assembly so described shall be the newest, regular, and current product of the manufacturer thereof. Such product shall be identified by a model or other designation without modification or omission of any of its usual parts or the substitution of other parts, except as hereafter specified, and the details, capacities and ratings must conform in every respect to the manufacturer's catalog or other printed matter describing the items or assemblies. Standard sub-assemblies, accessories, fittings and finishes shall be construed to be those which are regularly furnished as part of the principal unit or assembly and shall be included in the selling price thereof.

9. **DELIVERY.** The number of calendar days for delivery of goods or completion of the contract shall be calculated from the official commencement date. As used in these Special Provisions, "official commencement date" means the date established in the Notice to Proceed as the official contract commencement date.

After the contract is signed by the Chairperson, the Manager or his designee shall issue to the Contractor a written "Notice to Proceed".

Should the Contractor begin work or make delivery and installation before the official commencement date, the Contractor understands and agrees that such work or delivery shall be considered as having been done at his own risk and expense, as a gift of services or goods, and no payment will be owed to him for such premature work or delivery.

The services, materials, or goods shall be performed, completed or delivered on or before the contract completion date specified by the Department in its "Notice to Proceed". Should the completion of the project or delivery of the goods or services be delayed because of any act or omission of the Department, extraordinary weather, fire, or other circumstances beyond the control of the Contractor, the contract completion date may be extended by the Manager. By contracting with the Department, the Contractor understands and agrees that the final decision to extend any contract completion date shall rest with the Manager, and not the Contractor. Should the Contractor wish to extend the contract completion date, the Contractor shall, before the contract completion date or any extension completion date, file a written application with the Manager requesting such an extension of the contract completion date and stating the reasons for its request. The request for extension shall be in writing and include relevant necessary documents including, but not limited to, the Contractor's Purchase Order, Manufacturer's Acknowledgement, Shipping Manifest and any other documents substantiating the causes for such delay. The Contractor understands and agrees that the granting of any extension of the contract completion date shall not be deemed a waiver of the Department's right to terminate the contract for other reasons or additional delays not specified in the specific terms of any contract extension.

The Contractor shall deliver the materials or goods and furnish services at such particular location designated and in the manner specified or ordered by the Manager.

Whenever equipment is specified, the Contractor shall deliver the equipment completely assembled.

10. **ADDITIONAL SERVICES, MATERIALS, GOODS.** During the one-year period beginning from the date of the contract, the Department, subject to the agreement of the Contractor, reserves the right to purchase additional items specified in the solicitation documents at the same unit price and under the same terms and conditions specified herein.
11. **PAYMENTS.** Payments will be authorized by the Manager after completion of performance or delivery and acceptance by the officer-in-charge of all materials, goods, and services stipulated in the contract or purchase order. Payments will be made as soon thereafter as the regular course of business will allow; provided, however, that payments shall be made no later than **thirty (30) calendar days** following receipt of the statement for goods received and services completed. Final payment will not be made, in any event, without the written consent of the surety on the Contractor's bond and a certificate from the State of Hawaii Director of Taxation certifying that all taxes levied or accrued under State statutes against the Contractor with respect to this contract have been paid.

Where applicable, the bidder must comply with State of Hawaii Department of Taxation Publication - 1 (July 1988) requirements, which obligate the Contractor to comply in all respect with publication provisions regarding "Information on Hawaii State Taxes administered by the Department of Taxation". Copies of the foregoing publication are on file and may be inspected and/or obtained at the Department during regular business hours.
12. **TIME EXTENSIONS.** Any contractual time extensions shall be limited to a period of **180 calendar days** or less for each extension and shall be subject to written approval by the Manager.
13. **WARRANTY OF TITLE.** The Contractor shall warrant absolute title and full and clear right to sell or provide the articles, machinery, materials, goods or services to the Department and that there are no liens, claims or encumbrances of any kind on the articles, machinery, materials, goods or services. The Contractor shall hold the Department free, clear, and harmless against any adverse claim of title to the subject articles, machinery, materials, goods or services.
14. **SERVICE WARRANTY.** The Contractor shall service the articles, materials, machinery or goods as indicated in the proposal without charge during the warranty period.
15. **SERVICE FACILITIES.** Unless otherwise noted, the bidder shall have an established place of business in the State of Hawaii with shop facilities for servicing and repairing the equipment offered. In the event a bidder does not have a repair and service facility in the State of Hawaii to service and repair the equipment offered, he shall designate and make confirmed arrangements with a repair shop in the State with facilities to service and repair the equipment offered and denote the name and address of the repair shop in the space provided in the Proposal page or the Questionnaire. The Contractor understands and agrees that by contracting with the Department, the Department reserves the right to inspect the repair and service shop for adequacy and compliance with the terms and conditions of this contract.
16. **FEDERAL EXCISE TAX.** The Offeror understands that for such items which the Department of Water, County of Kauai is exempt from the Federal Excise Tax, pursuant to the U.S. Revenue from Act of 1943, the price bid shall not include such tax.
17. **EVIDENCE OF COLLUSION OR BAD FAITH.** If there is reason to believe that an Offeror's bid may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith, that Offer's bid **SHALL BE REJECTED** and such evidence may be cause for the disqualification of the participants in any future solicitation for any contract with the Department.
18. **LIQUIDATED DAMAGES.** It is mutually understood and agreed by and between the Department and the Contractor that time is of the essence of this contract. In the case of any failure by the Contractor to complete the contract within the time specified, the Contractor agrees that the Department will be damaged thereby, and that the amount of said damages are difficult, if not impossible, to accurately quantify. In light of the foregoing finding, it is hereby agreed that the amount of such damages shall be estimated, agreed upon, liquidated and fixed at the sum of One Hundred Dollars, (\$ 100.00) for each and every calendar day, including Sundays and holidays, that exceeds the contract completion date, and that the Contractor hereby agrees to pay the Department as liquidated damages, and not by way of penalty, such total sum as shall be due for such delay.
19. **RIGHTS AND REMEDIES OF THE DEPARTMENT BECAUSE OF DEFAULT.** In the event services performed or materials or goods furnished by the Contractor in the performance of the contract or purchase order fail to conform to the Specifications therein, the Manager may reject the same. It shall thereupon become the duty of the Contractor to reclaim and remove the materials and goods forthwith, without expense to the Department, and immediately replace all such rejected services, materials or goods which do not conform to specifications. However, should the Contractor fail, neglect, or refuse to do so within the time provided by the Manager, the Department shall thereupon have the right to apply the

provisions for liquidated damages as set forth in Section 6.12 of the General Terms and Conditions for each and every calendar day the Contractor delays in replacing the rejected services, materials or goods. The Department also shall have the right to purchase in the open market the corresponding quantity of any such items, or to perform the corrective services, and to deduct from money due or that may thereafter become due to the Contractor, the difference between the price named in the contract or purchase order and the actual cost thereof to the Department. In case any money due the Contractor is insufficient for said purpose, the Contractor shall pay the difference upon demand by the Manager. The Department may also utilize all other remedies provided by law. The Manager further reserves the right to suspend the Contractor from bidding on any or all Department solicitation for a period of **twelve (12) months**.

20. **CONSTRUCTION OF CONTRACT.** The masculine shall be deemed to embrace and include the feminine and the singular shall be deemed to embrace and include the plural, whenever required in the context of the contract.
21. **INDEPENDENT CONTRACTOR.** The Contractor is deemed to be an independent contractor, and shall not be deemed the agent, servant, representative, or employee of the Department. Under no circumstances will the contract be considered a contract of partnership or joint venture between the Department and the Contractor.
22. **VEHICLE INDUSTRY LICENSING ACT.** Chapter 437, Haw. Rev. Stat., as amended (hereafter "H.R.S.") provides for regulating and licensing of motor vehicle manufacturers and distributors and their branches and representatives, motor vehicle dealers, salespersons, auctions, and auctioneers and any other persons engaged in the business of selling or purchasing motor vehicles in the State. Therefore, whenever applicable, all prospective Offerors who are interested in selling motor vehicles to the Department shall provide proof that they meet and satisfy the license requirement set forth in Chapter 437, H.R.S.
23. **WAGES AND HOURS OF EMPLOYEES ON PUBLIC WORKS.** Chapter 104, H.R.S. provides for minimum wages and conditions for **public works contracts** in excess of \$2,000.00 and involving the use of various classes of laborers and mechanics. Therefore, whenever applicable, all Offerors providing work subject to Chapter 104, H.R.S., shall comply with **all** of the provisions required therein.
24. **STATUTORY OR ORDINANCE REQUIREMENTS.** The applicable provisions of Chapters 103 and 103D, H.R.S., the Kauai County Charter 1984, as amended, and the Kauai County Code 1987, as amended, shall be deemed to be a part of the contract as though fully set forth therein.
25. **CONFLICTING PROVISIONS.** In the event of any actual, potential, express or implied conflict between the Special Provisions and the General Terms and Conditions, the Special Provisions shall prevail and control. The Offeror understands and agrees that in the event of any actual, potential, express or implied conflict between any provision in any contract document and Chapter 103D or Chapter 103, Haw. Rev. Stat., as amended, and their implementing rules, the latter statutory or administrative rule provisions shall control.
26. **AMENDMENTS TO THE GENERAL TERMS AND CONDITIONS FOR GOODS AND SERVICES.** The following sections of the General Terms and Conditions for Goods and Services are hereby amended as follows:
 - a. **SECTION 2.4 ADDENDA AND INTERPRETATIONS:** is hereby deleted and replaced in its entirety as follows:

"Discrepancies, omissions or doubts as to the meaning of any provision in the General Terms and Conditions, Specifications, or Special Provisions shall be communicated in writing to the Manager and must be received by the Department no later than ten (10) calendar days prior to the date fixed for opening of bids. Any interpretation, if made, and any supplemental instructions will be in the form of written addenda to the solicitation, which will be mailed, faxed, or made available for pick-up by all prospective Offerors, prior to the date fixed for the opening of offers. It shall be presumed that any addenda or interpretations so issued have been received by an Offeror and such addenda or interpretations shall become a part of the contract documents."
 - b. **SECTION 2.5 PREPARATION OF OFFER:** is hereby deleted and replaced in its entirety as follows:

"Proposals submitted in response to request for proposals (hereafter "RFP") shall conform to the format prescribed by the RFP.

Bids submitted in response to an invitation for bids (hereafter "IFB") must be prepared in ink or typed on forms furnished by the Department or on an exact copy thereof,

according to the instructions in the forms. For each item, the Offeror shall specify the unit and total price in figures in the columns provided for that purpose and, if required, the total sum of all items being offered.

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

Only one bid in response to an IFB for the same work from an individual, firm, partnership, corporation or joint venture under the same or different name will be accepted.

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

All prices shall include applicable federal, state and local taxes. Any illegible or otherwise unrecognizable price offer shall be cause for automatic rejection of the offer.

Offers submitted in response to an IFB or RFP shall be signed in ink in the space provided on the bid or proposal page by (1) the owner of a sole proprietorship, (2) one or more members of a partnership, (3) one or more members or officers of each firm representing a joint venture, (4) one or more officers of a corporation, or (5) an agent of the Offeror duly authorized to submit offers on the Offerors behalf."

- c. SECTION 2.17 STANDARDS OF CONDUCT: is hereby deleted and replaced in its entirety as follows:

"Sec. 3-1.8 titled 'Contracts', Kauai County Code 1987, as amended, states that:

'(a) A County agency shall not enter into any contract with a councilman or an employee or with a business in which a councilman or an employee has a controlling interest, involving services or property of a value in excess of five hundred dollars (\$500), unless the contract is made after competitive bidding.

(b) A County agency shall not enter into a contract with a person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding six (6) months and who participated while in County office or employment in the matter with which the contract is directly concerned.

(c) This Section shall not apply to a personal contract of employment with the County.'

For purposes of this section 2.17, "Employee" means any nominated, appointed or elected officer or employee of the County including, but not limited to, members of boards, commissions and committees and employees under contract to the County, but excluding Council members.

All offers should be certain that their bids or proposals are not in violation of this law. The submittal form states that by submitting this offer, Offeror certifies that his offer does not pose a conflict with the above referenced County Code of Ethics. Contracts awarded shall be void if there is a violation of said Code."

- d. SECTION 2.18 IRREGULAR OFFERS: is hereby deleted and amended in its entirety as follows:

"Offers will be considered irregular and shall be rejected for the following reasons including, but not limited to:

-the required offer guaranty received separately from the offer is not identifiable as guaranty for a specific offer, or is received after the date and time set for the opening;

-the required offer guaranty does not comply with Section 2.6 of these General Terms and Conditions;

-the Offeror or surety fails to sign the surety bond submitted as offer guaranty;

-the Offeror fails to use the surety bond form furnished by the Department or identical wording contained in the said form when submitting a surety bond as proposal guaranty;

-the offer shows any non-compliance with applicable law or contains any unauthorized additions or deletions, conditioned, incomplete, or irregular or is in anyway making the proposal incomplete, indefinite, or ambiguous as to its meaning; or

-unbalanced offers in which the price for any item is obviously out of proportion to the prices for other items."

e. **SECTION 3.3 EXECUTION OF CONTRACT:** is hereby deleted and replaced in its entirety as follows:

(A) "This section shall not apply to any contract in which the total amount payable to the contractor cannot be accurately estimated at the time the contract is to be awarded.

(B) In cases where the contract award amounts to \$25,000.00 or more the Department shall forward a formal contract to the successful Offeror for execution. (Refer to Exhibit A for agreement form.) The contract shall be signed by the successful vendor and returned, together with a satisfactory contract bond if required, and other supporting documents, **within ten calendar days** after receipt by the vendor or within such further time as the Manager may allow.

(C) No such contract shall be considered binding upon the Department until the contract has been fully and properly executed by all the parties thereto and the Manager or his designee has, in accordance with Sec. 103D-309, H.R.S., endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby the Manager or his designee shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract.

(D) In any contract involving not only state or county (including department) funds but supplemental funds from the federal government, this section shall be applicable only to that portion of the contract price as is payable out of state or county (including department) funds. As to the portion of the contract price as is expressed in the contract to be payable out of federal funds, the contract shall be construed to be an agreement to pay the portion to the contractor only out of federal funds to be received from the federal government. This subsection shall be liberally construed so as not to hinder or impede the Department in contracting for any project involving financial aid from the federal government.

(E) If the successful Offeror is other than a sole proprietorship, it shall submit satisfactory evidence, e.g. certificate or corporate resolution, power of attorney or other such evidence of authority of the signers' authority to execute on the contract date the contract on behalf of the successful bidder. If such document has been submitted to the Department on a previous occasion, the successful Offeror may submit a copy of this document, provided there has been no amendment, modification or rescission of the document previously submitted and, provided further, that no such copy shall be acceptable unless the date of the document previously submitted is dated within one year of the contract date. If there has been a modification, amendment or rescission of the evidence of authority previously submitted, then the superseding document shall be attached to the contract."

f. **SECTION 3.5 FAILURE TO EXECUTE CONTRACT:** is hereby deleted and replaced in its entirety as follows:

"If the Offeror to whom a contract is awarded shall fail or neglect to enter into the contract and to furnish satisfactory security as required by Section 3.4 within **ten business days** after such award or within such time as the officer-in-charge may in writing allow, if applicable, the Offeror shall forfeit his bid bond or security pursuant to Section 2.7 of the General Terms and Conditions. The Manager may then proceed to award the contract to

the next lowest responsible Offeror or may call for new offers, whichever method is deemed to be in the best interests of the Department."

- g. SECTION 6.9 NOVATION OR CHANGE OF NAME: is hereby deleted and replaced in its entirety as follows:

"(A) No assignment. No interest in any Department contract shall be transferred or otherwise assigned without the prior written consent of the Manager and a tax clearance from the State of Hawaii Director of Taxation stating that all delinquent taxes levied or accrued under State of Hawaii statutes have been paid.

(B) Recognition of a successor in interest; novation. When in the best interest of the Department, a successor in interest may be recognized in an assignment agreement in which the transferor, the transferee and the Department shall agree that: the transferee assumes all of the transferor's obligations; the transferor remains liable for all obligations under the contract but waives all rights under the contract as against the Department; and the transferor shall continue to furnish, and the transferee shall also furnish, all required bonds.

(C) Change of name. When a contractor requests to change the name in which it holds a contract with the Department, the procurement officer responsible for the contract shall upon receipt of a document indicating such change of name (for example an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.

(D) Reports. All change of name or novation agreements effected hereunder other than by the Manager shall be reported to the Manager within **thirty calendar days** of the date that the agreement becomes effective.

- h. SECTION 6.16 DISPUTES: is hereby deleted and replaced in its entirety as follows:

"(A) All controversies between the Department and the contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the Manager in writing, within ninety calendar days after a written request by the contractor for a final decision concerning the controversy; provided that if the Manager does not issue a written decision within ninety calendar days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

(B) The Manager shall immediately furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

(C) Any such decision shall be final and conclusive, unless fraudulent, or the contractor brings an action seeking judicial review of the decision in the circuit court of the State within the **six months** from the date of receipt of the decision.

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

- i. SECTION 7.2 FINAL PAYMENT: is hereby deleted and replaced in its entirety as follows:

"In accordance with Sec. 103-53, H.R.S., final payment under any contract shall not be made until the Contractor has filed with the officer-in-charge a tax clearance from the State Director of Taxation that all delinquent taxes levied or accrued under State statutes have been paid."

27. TAX CLEARANCES. Pursuant to Section 103-53, HRS, as amended, the bidder shall submit tax clearances from the director of taxation and the internal Revenue Service together with the offer if the bid amount is more than \$25,000. Failure to comply with this provision is sufficient grounds for disqualifying the Bidder.