General Terms and Conditions
City and County of Honolulu
February 1, 2015

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Chapter 1 – Preamble

1.1 The General Terms and Conditions of the City and County of Honolulu, incorporated by reference in the solicitation document and the awarded contract, referred to as the "GTC" or "General Conditions," represent the City's policy and requirements relating to contracts as authorized by Hawaii Revised Statutes (HRS), Chapter 103D, and its promulgated rules under Hawaii Administrative Rules (HAR), Title 3, Department of Accounting and General Services (collectively referred to as the "Procurement Code"). References to HAR provisions in the GTCs are included for convenience only and may not be complete. Should any contractual term herein be inconsistent with the Procurement Code, the Procurement Code shall govern. Offerors and contractors should familiarize themselves with the Procurement Code.

1.2 Order of Precedence. The separate parts of the solicitation document, including the plans and specifications, are intended to complement each other. Unless it is apparent that a different order of precedence is intended, the most recent addenda shall govern over all other previously issued addenda and other contract documents; plans shall govern over the City's Standards and Specifications; special provisions shall govern over plans, the City's Standards and Specifications, and the General Conditions. Where the terms of the Final Proposal or offer

submitted by the successful offeror exceed the standards and expectations of the solicitation document, such terms of the Final Proposal or offer shall be the new minimum requirements.

1.3 The General Terms and Conditions (GTC) for the City and County of Honolulu (City) apply to all goods and services, construction, and professional services contracts entered into with the City or any other contract which incorporates the GTCs by reference. Unless indicated otherwise, each section of the GTCs apply to all contracts. Sections or chapters which, however, indicate that they apply only to goods and services/professional services contracts or construction contracts, apply only to such referenced type of contract. The GTCs in its entirety apply to Design-Build Contracts with sections applicable to professional services applied to the design portion of the contract and sections applicable to construction services applied to the construction portion of the contract.

Chapter 2 – General Provisions

2.1 Definitions.

Terms as used in this solicitation document and the Contract, unless the context requires otherwise, shall have the following meaning:

"Addendum/Addenda" means a written document issued by the Contracting Officer during the solicitation period involving changes to the solicitation documents which shall be considered and made a part of the solicitation documents and resulting contract.

“Amendment” shall have the same meaning as “contract modification” or ”modification” as hereafter defined.

"Best value" means the most advantageous offer determined by evaluating and comparing all relevant criteria in addition to price so that the offer meeting the overall combination that best serves the City is selected. These criteria may include, in addition to others, the total cost of ownership, performance history of the offeror, quality of goods, services, or construction, delivery, and proposed technical performance. [HAR 3-122-1]

“Bid” means the executed document submitted by a bidder in response to an invitation for bids, or a multi-step bidding procedure. [HAR 3-120-2]

"Bidder" means any individual, partnership, firm, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, a bid for the good, service, or construction contemplated. [HAR 3-120-2]

"Bid sample" means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid. [HAR 3-122-1]

"Change order" means an amendment or modification of the Contract signed by the Contracting Officer or his/her authorized designee, directing the Contractor to make changes with or without the consent of the Contractor. [HRS 103D-104] [HAR 3-125-2]

"Chief procurement officer" means the chief procurement officer of the City as provided in section 103D-203, HRS, or the officer's designee. [HAR 3-120-2]

"City" means the City and County of Honolulu, State of Hawaii.

"Construction" means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term includes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property. [HRS 103D-104]

"Contract" means all documents covering the goods, services, construction or professional services being procured for which award is made to the Contractor, including the furnishing of labor, materials and equipment in connection therewith. It may include the following documents, as applicable, and any amendments or addenda thereto: the solicitation documents, offer, RFP Final Proposal (see definition herein), these general conditions and any supplements to the general conditions, change orders, bonds and plans, and the contract agreement, whether attached to or incorporated by reference.

"Contract modification" or "Modification" means any written alteration within the scope of the contract to specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of the Contract executed by both parties to the Contract. [HRS 103D-104] [HAR 3-125-3]

"Contracting Officer" means:

(1) For improvement district projects, the City Council Chair or any official of the City so designated by the City Council Chair;

(2) For the Honolulu Authority Rapid Transit, the Executive Director and CEO of the Honolulu Authority Rapid Transit or the Executive Director and CEO delegated designee;

(3) For the Board of Water Supply, the Manager and Chief Engineer of the Board of Water Supply or the Manager and Chief Engineer's delegated designee; and

(4) For all other projects, the Director of the Department of Budget and Fiscal Services of the City and County of Honolulu, or the Director's delegated Designee.

"Contractor" means any individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of the work under the terms of the Contract with the City, and acting directly or through its agents or employees. [HAR 3-120-2]

"Cost analysis" means the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed. [HAR 3-120-2]

"Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements which have been actually incurred or which are expected to be incurred by the contractor in performing the contract. [HAR 3-120-2]

"Days" means consecutive calendar days unless otherwise specified. [HAR 3-120-2]

“Direct cost” means any cost which can be identified specifically with a particular final cost objective. A direct cost shall be allocated only to its specific cost objective. To be allowable, a direct cost must be incurred in accordance with the terms of the contract. [HAR 3-123-4]

“Director” means the Director of Budget and Fiscal Services of the City.

"Discussion" means an exchange of information to promote understanding of a City’s agency's requirements and offeror's proposal and to facilitate arriving at a contract that will be the best value to the City. Discussions are not permissible in competitive sealed bidding, except to the extent permissible in the first phase of multi-step sealed bidding to determine the acceptability of technical offers. [HAR 3-122-1]

“Design and plans” means any and all designs, plans, construction drawings, specifications, cost estimates, work schedules, proposals, studies, reports and other items.

"Designee" means a person authorized by the Director of Budget and Fiscal Services or the Officer-in-Charge to act on the Director’s or Officer-in-Charge’s behalf with delegated authority.

"Final Proposal" means the final mutually-agreed terms of the proposal submitted by the awarded Offeror in response to the City’s RFP or the Best and Final Offer accepted by the City in accordance with HAR §3-122-53 and 3-122-54.

"Goods" means all property, including but not limited to equipment, equipment leases, materials, supplies, printing, insurance, and processes, including computer systems and software, excluding land or a permanent interest in land, leases of real property, and office rentals. [HRS 103D-104]

"Guarantee" or "Warranty" means a written agreement or assurance of the quality of or the length of use to be expected from equipment, material, device, or system offered, or work performed.

“HAR” means the Hawaii Administrative Rules of the State of Hawaii, as amended.

"Hazardous materials" mean and include any and all radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, hazardous wastes, toxic substances, and any and all other substances or materials defined as "hazardous materials," "extremely hazardous materials," "hazardous wastes" or "toxic substances" under or for the purposes of hazardous materials laws.

"Hazardous materials laws" mean and include all federal, state or local laws, ordinances, rules, regulations or codes, now or hereafter in effect, relating to environmental conditions, human health or industrial hygiene, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. section 9601, et seq., the Resource Conservation and Recovery Act, 42, U.S.C. section 6901, et seq., the Hazardous Materials Transportation Act, 42 U.S.C. section 1801, et seq., the Clean Water Act, 33 U.S.C. section 1251 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. section 2601 - 2629, the Safe Drinking Water Act, 42, U.S.C. sections 300f - 300j, HRS Chapter 128D, Environmental Response Law, HRS Chapter 342B, Air Pollution Control, HRS Chapter 342D, Water Pollution, HRS Chapter 342H, Solid Waste Pollution, HRS Chapter 342J, Hazardous Waste, HRS Chapter 342L, Underground Storage Tanks, Chapter 342P, Asbestos, and any similar state or local laws or ordinances and the regulations now in effect or hereafter adopted, published or promulgated thereto.

“Head of the purchasing agency” means the head of any agency with delegated procurement authority.

"HRS" means the Hawaii Revised Statutes of the State of Hawaii, as amended.

"Improvement district project" means a project constructed pursuant to Chapter 14, Revised Ordinances of Honolulu (ROH), entitled "Public Works Infrastructure Requirements Including Fees and Services."

“Indirect cost” means any cost that is identified with no specific final cost objective or with more than one final cost objective. Indirect costs are those remaining to be allocated to the several final cost objectives after direct costs have been determined and charged directly to the contract or other work as appropriate. [HAR 3-123-4]

“Informal Bid” means a quotation made under small purchase procedures, pursuant to HRS Chapter 103D-305 or a quotation made under emergency purchase procedures, pursuant to HRS Chapter 103D-307.

"Invitation for bids” or “request for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids under the competitive sealed bidding source selection method. [HAR 3-120-2]

"Notice to Offerors" means the publication or the notice of a solicitation for offers.

"Notice to proceed" or “NTP” means the document issued to the Contractor designating the official commencement date of the performance under the Contract.

"Offer" means the bid, proposal, or quotation. [HAR 3-120-2]

"Offeror" means 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 goods, service, or construction contemplated. [HAR 3-120-2]

"Officer-in-Charge" means the department head of the agency with delegated authority to coordinate the procurement of goods, services, or construction for the City or the Officer-in-Charge's delegated designee.

"Opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals. [HAR 3-122-1]

“Overhead” means a cost or expense (such as for administration, insurance, rent, and utility charges) that (1) relates to an operation or the Contractor’s business as a whole, (2) does not become an integral part of a good or service (unlike material or direct labor), and (3) cannot be applied or traced to any specific unit of output. Overheads are indirect costs.

“Plans” (or “Drawings”) mean the contract drawings and any City-approved revisions to drawings, in graphic or pictorial form, which show the design, location, character, dimensions and details of the work to be done and which shall be part of the Contract documents.

“Price analysis” means the evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed. [HAR 3-120-2]

“Price data” means factual information concerning prices, including profit, for goods, services, or construction substantially similar to those being procured. In this definition, “prices” refers to

offered or proposed selling prices, historical selling prices, and current selling prices of such items. This definition refers to data relevant to both the general contractor and subcontract prices. [HAR-3-120-2]

"Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any good, service, or construction. The term also includes all functions that pertain to the obtaining of any good, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. [HRS 103D-104]

"Procurement officer" means any person authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority. [HRS 103D-104]

"Professional services" means those services within the scope of the practice of architecture, landscape architecture, professional engineering, and surveying, real property appraisal, law, medicine, accounting, dentistry, or any other practice defined as professional pursuant to Sections 415A-2, HRS, or the professional and scientific occupation series contained in the United States office of personnel management's Qualifications Standard Handbook [HRS 103D-104]

"Project" means work to be performed as set forth in the Contract, including furnishing all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of work contemplated under the Contract.

"Proposal" means the executed document submitted by an Offeror in response to a Request for Proposals.

"Purchasing agency" means the agency requesting the project for the using agency.

"Purchasing Division" means the Division of Purchasing, Department of Budget and Fiscal Services, with delegated authority to solicit bids and proposals and award contracts.

"Quotation" means a statement of price, terms of sale, and description of goods, services, or construction offered by a prospective seller to a prospective purchaser, usually for purchases pursuant to section 103D-305, HRS. [HAR 3-122-1]

"Qualified List Method" means the method of source selection for professional services under HRS 103D-304.

"Request for Proposals" or "RFP" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals under the competitive sealed proposal source selection method.

"Responsible Offeror" means a person who has the capability in all respects to perform fully the Contract requirements, and the integrity and reliability which will assure good faith performance. [HRS103D-104]

"Responsive Bidder or Offeror" means a person who has submitted an offer which conforms in all material respects to the IFB or RFP. [HAR 3-120-2]

"ROH" means the Revised Ordinances of Honolulu 1990, as amended.

"Solicitation" means an invitation for bids, request for proposals, or a request for quotation issued by the City for the purpose of soliciting bids or proposals to perform under City contract. [HAR 3-120-2]

"Specifications" mean any description of the physical or functional characteristics, or of the nature of a good, service, or construction item. The term includes descriptions or any requirement for inspecting, testing, or preparing a good, service, or construction item for delivery. [HRS 103D-104]

"State" means the State of Hawaii.

"Standard commercial product" means a product or material, in the normal course of business, is customarily maintained in stock or readily available by a manufacturer, distributor, or dealer for the marketing of the product. [HAR 3-122-1]

"Subcontractor" means any person who enters into an agreement with the Contractor to perform a portion of the work for the Contractor. [HAR 3-120-2]

“Using Agency” means the department(s) of the City and County of Honolulu who is(are) the end-user(s) of the project procured by the Purchasing Division.

"Value engineering" means an analysis of the requirements for the systems, equipment, and supplies of the single contract for the purpose of achieving a net savings by providing less costly items than those specified without impairing any essential functions and characteristics as service life, reliability, substitutability, economy of operations, ease of maintenance, and necessary standing functions.

“Work” means the furnishing by the Contractor of all labor, services, material, equipment, and other incidentals necessary for the satisfactory performance of the contract.

"Working day" means any day on the calendar, exclusive of State holidays, Saturdays, and Sundays. Unless another meaning is intended, "working days" shall mean consecutive working days.

2.2 References.

(a) When reference is made to known Standards and Specifications, the most recently adopted and published edition of such standards and specifications on the date of the notice to offerors is contemplated, unless otherwise specified.

(b) Abbreviations. The following abbreviations shall refer to the technical society, organization, body, code, rules, or standards, listed opposite each abbreviation:

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ADAAG	Americans with Disabilities Act Accessibility Guidelines
AISC	American Institute of Steel Construction
AITC	American Institute of Timber Construction

ANSI	American National Standard Institute
ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
AWS	American Welding Society
CFR	Code of Federal Regulations
FAR	Federal Acquisition Regulation
FHWA	Federal Highway Administration, U.S. Department of Transportation
FS	Federal Specifications
FTA	Federal Transit Administration
G06	General Order No. 6 of the Public Utilities Commission, Rules for Overhead Electric Line Construction
GRJP	General Rules for Joint Use of Poles
HAR	Hawaii Administrative Rules
HRS	Hawaii Revised Statutes
IBC	International Building Code
IES	Illuminating Engineering Society
IFB	Invitation for Bids
ITO	Instructions to Offerors
NEC	National Electrical Code
RFB	Request for Bids
RFP	Request for Proposal
UBC	Uniform Building Code (obsolete)
UL	Underwriters' Laboratories, Inc.
UPC	Uniform Plumbing Code
WCLA	West Coast Lumberman's Association

(c) City and County of Honolulu Standards and Specifications. The following are commonly referred to standards and specifications of the City and County of Honolulu which are online at the City's Library, Municipal Reference Center Section of the Customer Services Department webpage.

(1) Standard Details for Public Works Construction, September 1984, commonly referred to as standard details;

(2) Standard Specifications for Public Works Construction, September 1986, commonly referred to as standard specifications;

(3) Parks Standard Details for Parks and Recreation Construction, May 1990; and

(4) Water System Standards 2002 (and approved amended materials list); Water System External Corrosion Control Standards, Volume 3, 1991, of the Board of Water Supply, commonly referred to as water system standards.

(5) Design Standards of the Department of Wastewater Management, Volume 1, July 1993.

(6) Design Standards of the Division of Wastewater Management, Volume 2, July 1984

2.3 Certification of Funds.

(a) No contract awarded shall be binding or of any force and effect unless the Director 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.

(b) If a contract is a multi-term contract, the Director 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 the term of the multi-year contract; provided, however, 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. Payment and performance obligations for succeeding fiscal periods shall be subject to availability and appropriation of funds.

(c) In any contract involving not only City 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 City 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 paragraph shall be liberally construed so as not to hinder or impede the City in contracting for any project involving financial aid from the federal government.

2.4 Execution of Contract.

This contract shall not be considered binding upon the City until the contract has been fully and properly executed by all the parties thereto.

2.5 Independent Contractor.

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 City retains the general right of inspection by a designated representative in order to judge, whether in the City's opinion, such work is being performed by

the Contractor in accordance with the terms of this agreement. The contractor shall not be deemed to be an agent, servant, representative or employee of the City. The contract shall not be construed to create a partnership or joint venture between the City and the Contractor.

2.6 Compliance with Contract Terms.

The work shall be completed in conformity with the Contract, including the specifications the General Terms and Conditions and other provisions forming a part of the Contract. In the event the Contractor fails to so perform, the chief procurement officer, in addition to any other recourse, reserves the right to suspend the Contractor from bidding on any or all contracts of the City, State of Hawaii, or other counties of the State, pursuant to Chapter 3-126, HAR.

2.7 Taxes.

Unless otherwise specified in the Special Provisions or other section of the solicitation document or contract, the offeror or Contractor shall include and be responsible for paying all taxes which shall be applicable to the goods, services or construction or the furnishing or sale thereof. Contractor shall not pass through any increases in taxes to the City.

2.8 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 items or assemblies 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 others, except as hereinafter specified, and the details, capacities and ratings must conform in every respect to the said 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 a part of the principal unit or assembly and shall be included in the selling price thereof.

2.9 Quality of Goods and Services.

Unless otherwise specified, any goods required by the bid solicitation or contract shall be new and the best quality of its kind, fit for its intended purpose, and shall be goods of recognized manufacturers, unless otherwise specified in the Special Provisions, Specifications, or other section of the contract.

Unless otherwise specified, any services required by the bid solicitation or contract shall be of the best quality of its kind and be performed in a good and workpersonlike manner by a person who has the knowledge, training, or experience necessary for the successful practice of a trade or occupation and performed in a proficient manner.

2.10 Indemnity.

The contractor shall perform the work as an independent contractor and shall indemnify and hold harmless the City, its departments, and all of their officers, employees or agents, from any and all deaths, injuries, losses and damages to persons or property, and any and all claims, demands, suits, action and liability therefor including reasonable attorney fees and cost of defense, caused by error, omissions or negligence in the performance of the contract by the contractor or the contractor's subcontractors, agents and employees and this requirement shall survive the termination of contract.

2.11 Infringement Indemnification.

If the Contractor uses or licenses any design, device, material, process, technology or any other intellectual property ("Intellectual Property") covered by patent, copyright, trademark or other intellectual property protection, the right for such use shall be procured by the Contractor from the appropriate owner. The Contractor shall indemnify and hold the City and all its officers, agents, servants and employees harmless against all claims arising from the use of any claims for infringement by reason of the use of any such Intellectual Property in connection with providing services under this Contract.

2.12 Subcontracting.

Except as provided for in the final Proposal or Bid as accepted by the City, the Contractor shall not sublet or replace its subcontractors any of the work to be performed without written permission from the Director. The subcontracting shall not, under any circumstances, relieve the Contractor of the Contractor's obligation and liability under the contract with the City. All persons engaged in performing the work covered by the contract shall be considered as agents of the Contractor, and shall be subject to the provisions thereof.

2.13 Assignment of Money Due or Payable.

No assignment of money due or to become due to a Contractor on any City contract shall be made without prior written consent of the Director. Such consent shall be given and such an assignment shall be accepted only if the assignment meets the following requirements:

(1) The assignment must be money due or to become due on a formal contract. A formal contract is a contract in writing which has been approved as to form and legality by the Corporation Counsel, and certified as to availability of funds by the Director of Budget and Fiscal Services. A formal contract does not include a Purchase Order or letter contract.

(2) The assignment must be the entire amount due or to become due on the contract and the amount due or to become due must be not less than one thousand dollars ($1,000).

2.14 Statutory or Ordinance Requirements.

The Contractor shall at all times observe, perform, 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. 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 Officer in Charge in writing.

2.15 Sexual Harassment Policy for Employer Having a Contract with the City.

(a) All City Contractors must comply with Revised Ordinances of Honolulu Section 1-18.4 (City Ordinance 93-84) on sexual harassment. All Contractors shall have and enforce a policy prohibiting sexual harassment. The Contractor's sexual harassment policy must set forth the same or greater protection than those contained or required by the ordinance. The ordinance is applicable to the employer's business and includes the following:

(1) Prohibitions against an officer's or employee's sexual harassment of the following:

(A) Another officer or employee of the employer;

(B) An individual under consideration for employment with the employer; or

(C) An individual doing business with the employer;

(2) A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under subdivision (1);

(3) A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;

(4) A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;

(5) Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;

(6) Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;

(7) A provision requiring the use of the "reasonable person of the same gender standard," to determine if sexual harassment has occurred. Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the same gender as the alleged victim. If the alleged victim is a woman, the "reasonable person of the same gender standard" shall be equivalent to and may be called the "reasonable woman standard;"

(8) Disciplinary actions which may be imposed on an officer or employee who committed a prohibited act; and

(9) For an employer with at least five (5) employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

(b) The policy required under this section shall be in effect for at least the duration of the employer's contract with the City.

(c) The action of the bidder or proposer in submitting its bid, proposal or signing of the contract shall constitute its pledge and acceptance of the provisions for the sexual harassment policy as required by Revised Ordinances of Honolulu Section 1-18.4 (City Ordinance 93-84).

(d) The Revised Ordinances of Honolulu Section 1-18.4 (City Ordinance 93-84) is on file and available for viewing in the Purchasing Division. Bidders or Contractors may also request to inspect a copy from the Office of the City Clerk, Room 203, City Hall, 530 S. King Street, Honolulu.

2.16 Energy Star Qualified Products.

Pursuant to and in accordance with the terms set forth in Revised Ordinances of Honolulu Section 2-35.2, the Contractor shall provide products that earn the ENERGY STAR and meet the energy specifications for energy efficiency, with exceptions allowed only as permitted under ROH Section 2-35.2. The vendor is encouraged to visit energystar.gov for complete product specifications and updated lists of qualifying products.

2.17 Contractors that Received Bid Preferences in the Award of Contract.

Contractors that received bid preferences in the award of contract must furnish the goods, services, or construction as offered and comply with the applicable requirements of the Hawaii Revised Statutes.

2.18 Copyright.

The City shall have ownership of the work product that is produced by the Contractor in the performance of work under contract with the City, including an unrestricted, royalty-free, nonexclusive and irrevocable license to reproduce, publish, translate or otherwise use and to authorize others to publish and use all materials obtained or produced in connection with the work hereunder, which may be copyrighted by the City.

2.19 Confidentiality with the News Media and Public.

When dealing with the news media or the public, the contractor is expected to be circumspect and to treat all matters falling within the scope of the contract with the utmost confidentiality. The contractor shall consult with and/or obtain the consent of the officer-in-charge prior to having conversations with or giving public interviews to the news media or any other members of the public.

2.20 Personal Information Protection.

(a) Definition. The terms as used in this section have the following meaning: "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted: (1) Social Security number; (2) Driver's License number or Hawaii Identification Card number; or (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information. "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

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

(b) Confidentiality of Material.
(1) All material given to or made available to the Contractor by the City by virtue of this Contract, which consists of personal information, shall be safeguarded by the Contractor and shall not be disclosed without the prior written approval of the City.
(2) Contractor agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
(3) Contractor agrees to implement appropriate technological safeguards that are acceptable to the City to reduce the risk of unauthorized access to the personal information.
(4) Contractor shall report to the City in a prompt and complete manner any security breaches involving personal information.
(5) Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor because of a use or disclosure of personal information by Contractor in violation of the requirements of this paragraph.

(6) Contractor shall complete and retain a log of all disclosures made of personal information received from the City, or personal information created or received by the Contractor on behalf of the City.

(c) Security Awareness Training and Confidential Agreements.

(1) Contractor certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.

(2) Contractor certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

(A) The personal information collected, used, or maintained by the Contractor will be treated as confidential;

(B) Access to the personal information will be allowed only as necessary to perform the Contract; and

(C) Use of the personal information will be restricted to uses consistent with the services to this Contract.

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

(1) Provide an opportunity for the Contractor to cure the breach or end the violation; or

(2) Immediately terminate this Contract.

In either instance, the Contractor and the City shall follow Chapter 487N, HRS, with respect to notification of a security breach of personal information.

(e) Records Retention.

(1) Upon any termination of this Contract, the Contractor shall pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the City.

(2) The Contractor and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the Contractor on behalf of the City, and any cost or pricing data, for three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall not be disclosed without the prior written approval of the City. After the three (3) year retention period has ended, the files, books, and records that contain personal information shall be destroyed pursuant to Chapter 487R, HRS.

2.21 Audit and Inspection of Records.

Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Contract. Contractor will permit the City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other

data related to all other matters covered by this Contract. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Contract or until after final audit has been resolved, whichever is later. The City acknowledges that the documents and records presented for inspection may be Contractor's confidential information.

2.22 Governing Law and Venue.

The provisions of the Contract shall be interpreted in accordance with the laws of the State of Hawaii as those laws are construed and amended from time to time. All disputes arising out of or relating to this contract shall be subject to the jurisdiction and venue of the state and federal courts in Honolulu, Hawaii.

2.23 Contract Performance and Payment Bonds.

(a) Performance and payment bonds shall be required as provided by the contract provisions or when the contract is for construction and the price of the contract is $50,000 or more. Each bond shall be in an amount as required by the contract provisions or, when the contract is for construction, equal to one hundred percent of the amount of the contract price. The performance and payment bonds shall be delivered by the Contractor to the City at the same time the contract is executed. If the Contractor fails to deliver the required performance and payment bonds, the Contractor's award shall be canceled, the Contractor shall be subject to a claim for all resulting damages, its bid security enforced, and the Contracting Officer may award the contract to the next lowest bidder. [HAR 3-122-224]

(b) Acceptable contract performance and payment bonds. Contractors shall be required to provide, at no cost to the City, contract performance and payment bonds. Acceptable contract performance and payment bonds shall be limited to:

(1) Surety bond in the form attached to the invitation for bids underwritten by a company licensed to issue bonds in this State;

(2) Legal tender; or

(3) A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's, or official check drawn by, or a certified check accepted by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, and payable at sight or unconditionally assigned to the Director of The Department of Budget and Fiscal Services, City and County of Honolulu. These instruments may be utilized only to a maximum of $100,000. If the required security amount totals over $100,000, more than one instrument not exceeding $100,000 each and issued by different financial institutions shall be accepted. [HAR 3-122-222]

(c) Bond forms. The Contractor shall execute the surety performance and payment bond forms provided with award of the contract. Failure to utilize the City's surety bid bond form shall not relieve the bidder or contractor from liability or responsibility if it is discovered that the form utilized is not in compliance with the HAR.

(d) Contracts with Federal funds. In addition to the requirements of this section, whenever a contract is partially or fully funded with Federal funds, the amount of the bonds shall

be the amount required by the Federal agency, and the surety companies shall be those listed in the latest issue of the U. S. Treasury Circular 570.

2.24 Campaign Contributions by State and County Contractors Prohibited.

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

2.25 Contract Prices.

Unless otherwise specified, offer and contract prices shall be based on delivery f.o.b. place of destination and shall include all freight, handling, delivery, and related charges.

2.26 Insurance.

(a) Unless otherwise specified in contract documents, these insurance requirements shall apply to all contracts, except for construction contracts valued in excess of $2,000,000 and all design-build construction contracts.

(1) The Contractor shall procure or cause to be procured and maintain (as provided herein), at no cost to the City, during the life of this contract and any extensions thereof, the kinds and amounts of insurance listed below to cover the operations under the contract, and any and all other insurance that may be required under the laws, ordinances or regulations of any governmental authority. The contractor shall either include all tiers of subcontractors, if any, under the policies required under paragraphs (B) through (D), to the extent permitted by law, or shall require all subcontractors to maintain coverages described in paragraphs (A) through (D).

(A) Workers Compensation and Employers Liability Insurance. Contractor shall maintain workers compensation and employers liability insurance. Workers compensation coverage shall be in accordance with State statutes. Employers liability coverage shall provide limits of not less than $100,000 each accident for bodily injury by accident or $100,000 each employee, $500,000 aggregate, for bodily injury by disease. The policy shall include a waiver of subrogation in favor of the City.

(B) Commercial General Liability Insurance. Contractor shall maintain commercial general liability (CGL) with limits of not less than $1,000,000 each occurrence, and general aggregate. CGL insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The City shall be included as an additional insured under the CGL for the full limits carried by the

contractor even if such limits exceed the requirements. The policy(ies) shall contain a waiver of subrogation in favor of the City.

(C) Business Automobile Liability Insurance. If the Contractor intends to use a motor vehicle in the performance of the work under the contract, the contractor shall maintain business auto liability insurance with limits of not less than $1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used by contractor in the performance of this contract. The City shall be included as an additional insured, and if necessary, the policy shall be endorsed to provide contractual liability coverage.

(D) Professional Liability Insurance. If the Contractor is required to provide professional services to the City under this contract, the Contractor shall maintain professional liability insurance with limits of not less than $1,000,000 per claim/annual aggregate, covering the contractor, the contractor's employees or agents for liability arising out of errors, omissions, or negligence in the performance of professional services under the contract. Such insurance shall remain in full force and effect continuously for a period of 1 year following substantial completion of the work, or such other period as specified in the contract documents.

(E) Property Insurance. Contractor shall purchase and maintain in force property insurance on the work at the site, in an amount equal to the full replacement cost of the work, or the initial contract sum (including any subsequent modifications thereto), whichever is greater, and shall cover all risks of loss or damage to property including materials and equipment to be incorporated into the work. Such property insurance shall be maintained in effect as required in the Contract documents. This insurance shall name as insured the City, the Contractor, and all subcontractors in the work.

(2) The insurance specified above shall:

(A) Provide that such insurance is primary coverage with respect to all insureds; and that any insurance (or self-insurance) carried by the City shall be excess and non-contributing;

(B) Contain a Cross Liability endorsement providing that the insurance applies separately to each insured, applicable to policies specified in (B) and (C) above;

(C) Not be terminated, canceled, or not renewed without THIRTY (30) DAYS prior written notice to the Contractor (except for non-payment of premium); and Contractor shall notify City within seven (7) calendar days of such cancellation;

(D) Be written on an "Occurrence" form of policy, unless otherwise specifically approved by the City.

(E) Be provided by insurers authorized to do business in the State of Hawaii, and with a current Best's rating of not less than A-VII, or otherwise as approved by the City;

(3) Certificate of Insurance:

(A) The contractor will provide and thereafter maintain current and renewal certificates of insurance, prepared by a duly authorized agent, or if requested, copies of the policies, evidencing the insurance in effect at all times during the term of this contract as required herein to the City.

(B) Certificates shall clearly identify the project by name and/or contract number.

(C) Certificates shall show the Certificate Holder as the City and County of Honolulu, and be delivered to the Director of Budget and Fiscal Services, 530 South King Street, Honolulu, Hawaii 96813.

(b) Unless otherwise specified in contract documents, these insurance requirements shall apply to construction contracts valued in excess of $2,000,000 and all design-build construction contracts.

(1) Required Coverages. Unless otherwise specified in contract documents, the Contractor shall procure or cause to be procured and maintain (as provided herein), in a company lawfully authorized to do business in Hawaii, at Contractor's sole cost, during the life of this contract and any extensions thereof, or until such time as action against the Contractor or subcontractor for death, injuries, losses and damages is barred by the provisions of Chapter 657, HRS, the following kinds and amounts of insurance to cover the operations under the contract, and all other insurance that may be required under the laws, ordinances or regulations of any governmental authority, except as otherwise set forth in the Special Provisions:

(A) Workers Compensation and Employers Liability Insurance. The Contractor shall maintain workers compensation and employers liability insurance. Workers compensation coverage shall be in accordance with State statutes. Employers liability coverage shall provide limits of not less than $1,000,000 each accident for bodily injury by accident or $1,000,000 each employee, $1,000,000 aggregate, for bodily injury by disease. The policy shall include a waiver of subrogation in favor of the City.

(B) Commercial General Liability Insurance.

(i) Contractor shall maintain commercial general liability (CGL) insurance and if necessary commercial umbrella liability insurance, in any combination, with limits of not less than $1,000,000 per occurrence, and general aggregate, and not less than $2,000,000 products-completed operations aggregate limit. CGL insurance shall be written on the most recent ISO occurrence form CG 00 01(

or a substitute form providing equivalent coverage), and shall cover liability arising from premises, operations, independent contractors, products-completed operations(including defective work product), personal injury and advertising injury, explosion, collapse and underground property damage (XCU) and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The City shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 1185 (or equivalent), and under the commercial excess, if any, to the full limits carried by the Contractor, even if such limits exceed the requirements herein. The City's Design Engineers, Architects and/or Surveyors, and Construction Manager shall be included as additional insureds, using ISO additional insured endorsement CG 20 32 (or equivalent).

(ii) Continuing Completed Operations Liability Insurance: Contractor shall maintain products and completed operations insurance with limits of not less than $1,000,000 each occurrence for at least three (3) years following final acceptance of the work, or for such other period as specified in the Special Provisions. Such continuing insurance shall be written on ISO occurrence form CG 00 01 10 93 (or equivalent form) and shall, at minimum, cover liability arising from products-completed operations, defective work product, and liability assumed under an insured contract. Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit. The City shall be included as an additional insured.

(C) Business Auto Liability Insurance. Contractor shall maintain auto liability (including personal injury protection coverage) insurance with limits of not less than $1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used in the performance of this contract. The City shall be included as an additional insured and-If necessary, the policy shall be endorsed to provide contractual liability coverage.

(D) Umbrella Liability Insurance. For any construction contract valued over $2,000,000 and for all Design-Build Contracts, the Contractor shall provide Umbrella liability insurance with limits of not less than FIVE MILLION ($5,000,000) per occurrence, or such other limits as may be required in the Special Provisions. The Umbrella liability policy shall be excess of Employers Liability, General Liability and Automobile Liability required , including coverages in paragraphs (A), (B) and (C) above, The City shall be included as an additional insured under such policy or

policies to the full limits carried by Contractor, even if such limits exceed the requirements.

(E) Professional Liability Insurance. For Design-Build Contracts, the Design-Build Contractor shall provide professional liability insurance or Contractors Protective Professional Liability insurance, covering the Contractor, any design professionals hired by Contractor, and or any subcontractors, and their respective employees and agents for liability arising out of errors, omissions, or negligence in the performance of professional services provided in connection with this Project.. Limits shall be not less than $5,000,000 per claim, or such other limits as may be required in contract documents. Such insurance shall remain in full force and effect continuously for the period of design and construction of the work, and for an additional three (3) year period following Substantial Completion of Work set forth in the Contract or for such other period as specified in the Special Provisions..

(F) Contractor's Pollution Liability. Contractor will purchase a policy, with limits of not less than $2,000,000, covering third party injury and property damage claims including mold, cleanup costs, as a result of pollution conditions arising from Contractor's operations or completed operations, performed by or on behalf of Contractor. Completed operations coverage will remain in effect for not less than 1 year after Substantial Completion of the Work set forth in this Contract. Coverage will be provided by a carrier acceptable to Owner, name Owner as an additional insured, and be written on an occurrence form, including Gradual and Sudden/Accidental Pollution. If applicable, coverage will apply to liability arising out of transportation and non-owned disposal sites.

Contractor may substitute a Contractors Professional & pollution liability policy in lieu of separate policies described in paragraphs (E) & (F) above.

(G) Property Insurance. Contractor shall purchase and maintain in force property insurance, being either Builder's Risk insurance or an Installation Floater, for the period of the contract until final acceptance of the work by the City on all construction contracts where the City requires a building, electrical, mechanical or plumbing permit. Such insurance shall provide limits equal to the full replacement cost of the work, or the contract sum including any subsequent modifications thereto, whichever is greater. If the Contractor's property insurance covering the work has any deductible, the Contractor shall be responsible to pay the full amount of such deductible.. Such property insurance shall be maintained in effect as required in the Contract documents. This insurance shall name as insured the City, the Contractor, and all subcontractors in the work. The City shall be included as Loss Payee on all required policies except coverage

specified in subparagraph (iv) below. Partial occupancy or use of the work shall not commence until the insurance company or companies providing insurance as required have consented to such partial occupancy or use. Contractor shall take reasonable steps to obtain consent of the insurer(s) and Contractor and City agree to take no action, other than upon mutual written consent, with respect to occupancy for use of the work that could lead to cancellation, lapse, or reduction of insurance.

(i) Builder's Risk Insurance. On contracts for construction of new buildings or facilities, major renovations or on contracts when builder's risk insurance is required under the contract documents, The Contractor shall purchase and maintain Builders Risk insurance for the duration of the contract. Such insurance shall be written on a "Special Form" all-risk policy form, covering all risks of physical loss or damage, including coverage for collapse, explosion and underground ("XCU") perils, debris removal, and demolition occasioned by enforcement of any applicable legal requirements, and shall include coverage for reasonable compensation for architects' services and other expenses made necessary due to an insured loss. If specified in the Contract documents, coverage shall also be provided, as needed, for earthquake, and flood with minimum limits of not less than 10% of the full amount of the contract. Builder's Risk insurance shall cover loss or damage to covered property, which shall include structures or buildings, and all fixtures, materials, supplies, machinery and equipment to be used in or incidental to the work, scaffolding, falsework, fences and temporary buildings located on the site, portions of the work located away from the site but intended to be used in the site, and portions of the work in transit, and Valuable Papers and Records and all documentation produced or used in connection with the Project (with sublimits of not less than $1,000,000, providing coverage against "Special Form" perils).

(ii) Installation Floater: On the remainder of these contracts where Builder's Risk Insurance is not applicable or specifically required, the Contractor shall purchase and maintain an Installation Floater for the duration of the contract. This Installation Floater shall cover all materials, fixtures, equipment, and supplies provided for the job. Such insurance shall be on an "*all risk*" form in an amount equal to the maximum value of such materials, equipment, or supplies covered on the job site, off-premises at any temporary storage location, or in transit, and shall include coverage for hoisting and rigging. The Installation Floater shall be maintained until final acceptance of the work by the Jurisdiction. If the Contractor's Installation Floater covering the equipment and work

has any deductible, the Contractor shall be responsible to pay the cost associated with the deductible. If Boiler and Machinery Insurance is required by the contract or by law, the Installation Floater may be used to satisfy this requirement to the extent the Installation Floater coverage specifically covers such objects during installation, testing, and until final acceptance by the City.

(iii) Boiler and Machinery Insurance: When required by the contract documents or by law, Boiler and Machinery Insurance shall specifically cover such insured objects during installation, testing, and until final acceptance by the City; this insurance shall include interest of the City, Contractor, subcontractors, and sub-subcontractors in the work, and the City and Contractor shall be named insureds. A Builders Risk Insurance policy or an Installation Floater may be used to satisfy this requirement to the extent the policy specifically covers such objects during installation, testing, and until final acceptance by the City.

(iv) Contractors Equipment. Contractor shall be responsible for any and all loss or damage to Contractor's equipment, tools and other personal property, whether owned, leased, rented, borrowed or used at the Project Site. Contractor agrees to waive and does hereby waive its rights of recovery against Owner, its elected or appoints officials, representatives, employees and agents or its Construction Manager for loss or damage to its tools and equipment.

(2) General Conditions. General conditions applicable to all insurance herein required, unless otherwise specified above:

(A) As used herein, City shall mean the City and County of Honolulu, its elected and appointed officials, employees, agents, volunteers and Construction Manager (if any).

(B) Contractor waives all rights against the City for recovery of damages.

(C) All insurance required herein shall apply as primary insurance with respect to all insureds and that any insurance or self-insurance carried by the City shall be excess and non-contributing.

(D) Except for Professional Liability insurance specified above, all insurance shall be written on an “Occurrence” form of policy, unless otherwise specifically approved by the City.

(E) Be provided by insurers authorized to do business in the State of Hawaii, and with a current Best's rating of not less than A- VII or otherwise as approved by the City.

(F) Subcontractors Insurance. Contractor shall either:

(i) Include all subcontractors as insureds under all insurance set forth in Section (1), above; OR

(ii) Cause each subcontractor employed by Contractor to purchase and maintain in insurance of the types specified above on the same terms set forth above. Contractor shall obtain and maintain evidence of subcontractors' insurance, and if requested by City, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

(G) Cross-Liability Coverage. If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

(H) 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 City 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.

(I) Evidence of Insurance.

(i) Upon execution of the contract by Contractor, Contractor shall furnish City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with insurance requirements set forth in paragraphs (1) above.

(ii) With respect to continuing insurance as required under section (1)(B)(ii) and (1)(D) above, Contractor shall provide certificate(s) of insurance evidencing such coverage at the time of final payment, and thereafter whenever requested by the City.

(iii) If the Contractor has any self-insured retentions (SIR's) or deductibles under any of the required coverages, the Contractor must identify on the certificate of insurance the nature and amount of such self-insured retentions and deductibles and provide satisfactory evidence of financial responsibility for such

obligations. All deductibles and self-insured retentions will be the Contractor's sole responsibility.

(iv) All policies required herein shall be written to provide not less than 30 days Direct written notice to the City as Certificate Holder, prior to the cancellation or material change of any insurance required herein (except for non-payment of premium).

(v) Contractor shall provide certified copies of all insurance policies required above within 10 days of the City's written request for said copies.

(vi) Failure of the City to demand such certificate or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligations to maintain such insurance.

(J) Failure to Maintain Required Insurance

(i) Failure to maintain the required insurance may result in termination of this contract at City's option.

(ii) The City shall have the right, but not the obligation, of prohibiting Contractor or any of its subcontractors from entering the project site until Contractor has provided certificates or other evidence that insurance has been placed in complete compliance with these requirements and such certificates have been approved by the City.

(iii) If the Contractor fails to maintain the insurance as set forth herein, the City shall have the right, but not the obligation, to purchase said insurance at Contractor's expense.

(K) No representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will necessarily be adequate to protect the Contract and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to the City under this contract. Further, City shall be additional insured to the total limit of Contractor's insurance, even though such limits exceed the amounts of insurance required herein.

(L) The City reserves the right to require additional insurance policies, additional or increased limits of coverage in existing policies and additional endorsements, including without limitation, project-specific

liability insurance. Such additional insurance shall be in such amounts, on such policy forms and with such carriers as City may reasonably require.

2.27 Retainage.

The City may retain a portion of the amount due under the contract to the Contractor to ensure the proper performance of the contract; provided, however, that the sum withheld by the City from the Contractor shall not exceed five percent (5%) of the total amount due the Contractor and that after 50% of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided, further, that if progress is not satisfactory, the Contracting Officer may continue to withhold as retainage, sums not exceeding five percent due the Contractor.

The retainage shall not include sums deducted as liquidated damages from moneys due or that may become due the contractor under the contract.

Contractor shall comply with the requirements of retention as set forth in HRS Section 103-32.1.

Chapter 3 – Provisions of Hawaii Administrative Rules

3.1 General. Unless otherwise specified, the contract clauses in this chapter apply to the solicitation and contract awarded. Clauses that are specific for a certain category of goods, services, or construction are not applicable for contracts of another category. For example, specific clauses applicable only to goods and services are not required for construction contracts.

3.2 Change Orders to Goods and Services Contracts. The City may at any time make such modifications in the contract, and the services, designs and plans, or studies prepared by the contractor as the officer-in-charge deems necessary and advisable. Such modifications shall be made by a supplemental agreement in writing or by a written order of the procurement officer; provided that modifications by such a written order shall be limited to modifications in the scope of services and in the designs, plans and studies; and provided further that modifications involving no reduction or increase in compensation of the contractor may be made by written order of the officer-in-charge. Pursuant to HAR 3-125-2, the following shall apply to the purchase of goods and services under this contract:

Changes Clause
(1) Generally. By written order, at any time, and without notice to any surety, the procurement officer may, unilaterally, order of the Contractor: (A) Changes in the work within the scope of the contract; and (B) Changes in the time of performance of the contract that do not alter the scope of the contract work.

(2) Adjustments of Price or Performance Time. If any change order increases or decreases the Contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in

writing accordingly. (A) Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the Price Adjustment clause included pursuant to HAR section 3-125-12. Failure of the parties to agree to an adjustment in contract price shall be resolved in accordance with the price adjustment clause included pursuant to HAR section 3-125-12(1)(E). (B)Failure of the parties to agree to an adjustment in time shall not excuse the Contractor from proceeding with the contract as changed, provided that the procurement officer within fourteen (14) days after the changed work commence, makes the provisional adjustment in time as the procurement officer deemed reasonable. The right of the Contractor to dispute the contract price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the contract.

(3)Time Period for Claim. Except as may be provided otherwise by HRS section 103D-501(b), HRS, the contractor must be file a written claim disputing the contract price or time provided in a change order within ten (10) days after receipt of a written change order, unless such period for filing is extended by the procurement officer in writing. The requirement for filling a timely written claim cannot be waived and shall be a condition precedent to the assertion of a claim.

(4) Claim Barred After Final Payment. No claim by the Contractor for an adjustment hereunder shall be allowed if the claim is not received by the procurement officer prior to final payment under this contract.

(5) Other Claims not Barred. In the absence of a change order, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim under the contract or for breach of contract. [HAR 3-125-2]

3.3 Modifications to Goods and Services Contracts. Pursuant to HAR 3-125-3, the following shall apply to the procurement of goods and services under this contract:

Modifications Clause
(1) Contract modification. By a written order, 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:

(A) Drawings, designs, or specifications, for the goods to be furnished;
(B) Method of shipment or packing;
(C) Place of delivery;
(D) Description of services to be performed;
(E) Time of performance (i.e., hours of the day, days of the week, etc.);
(F) Place of performance of the services; or
(G) Other provisions of the contract accomplished by mutual action of the parties to the contract.

(2) 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.

(3) Claim Barred after Final Payment. No claim by the Contractor for an adjustment hereunder shall be allowed if the claim is not received by the procurement officer prior to final payment under this contract.

(4) Other Claims not Barred. In the absence of such 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. [HAR 3-125-3]

3.4 Change Orders in Construction Contracts. Pursuant to HAR 3-125-4, the following shall apply to the procurement of construction under this contract:

Changes Clause

(1) Change Order. The Officer-in-Charge may at any time, without notice to any surety, in a signed writing designated or indicated to be a change order, may make changes in the work within the scope of the contract as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the Contractor will perform the work as changed, as though it had been part of the original contract. Minor changes in the work may be directed by the Officer-in-Charge at no change in contract price or time.

(2) Adjustments of Price or Time for Performance. If any change order increases or decreases the Contractor's cost of, or the time required for performance of any part of the work under this contract, whether or not changed by the order, an adjustment may be made and the contract modified in writing accordingly.

(A) Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause included pursuant to HAR § 3-125-13, Price Adjustment in Construction Contracts. Failure of the parties to agree to an adjustment in contract price shall be resolved in accordance with the provisions of section 103D-501 (b)(5), HRS. Failure of the parties to agree to an adjustment in contract price shall be resolved in accordance with the price adjustment clause include pursuant to HAR section 3-125-13(1)(E);

(B) Failure of the parties to agree to an adjustment in time shall not excuse a contractor from proceeding with the contract as changed, provided that the procurement officer, within fourteen days after the changed work commences, makes such provisional adjustments in time as the procurement officer deems reasonable.

The right of the Contractor to dispute the contract price or time required for performance 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.
[HAR 3-125-4(2), HAR 3-125-13(1)(E)]

(3) Time Period for Claim. Within thirty days after receipt of a written change order under subsection (a) above, unless such period is extended by the procurement officer in writing, the Contractor shall file a notice of intent to assert a claim for an adjustment. The requirement for filing a timely written notice cannot be waived and shall be a condition precedent to the assertion of a claim. [HAR 3-125-4(3)]

(4) 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. [HAR 3-125-4(4)]

(5) Other Claims not Barred. In the absence of such a change order, nothing in this clause shall restrict the Contractor's right to pursue a claim arising under the contract or for breach of contract. [HAR 3-122-4(5)]

3.5 Stop Work Orders for Goods and Services Contracts. Pursuant to HAR 3-125-6, the following shall apply to the procurement of goods and services under this contract:

(1) 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 (60) days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this section. Upon receipt of 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: (A) Cancel the stop work order; or (B) Terminate the work covered by the order as provided in the "termination for default clause" or the "termination for convenience clause" of this contract.

(2) 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: (A) 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 (B) The Contractor asserts a claim for an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the procurement officer decides that the facts justify such action, any claim asserted may be received and acted upon at any time prior to final payment under this contract.

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

(4) 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. [HAR 3-125-6]

3.6 Suspension of Work for Construction Contracts. Pursuant to HAR 3-125-7, the following shall apply to the procurement of construction under this contract:

(1) Suspension of Work. The Officer-in-Charge may, by written order, suspend the work, either in whole or in part for periods as the Officer-in-Charge may deem necessary for any cause, including but not limited to:

(A) Weather or soil conditions considered unsuitable for prosecution of the work;

(B) Failure on the part of the Contractor to:

(i) Correct conditions unsafe for the general public or for the workers;

(ii) Carry out orders given by the Officer-in-Charge;

(iii) Perform the work in strict compliance with the provisions of the contract; or

(iv) Provide adequate supervision on the jobsite.

(C) Whenever a redesign that may affect the work is deemed necessary by the Officer-in-Charge;

(D) Unacceptable noise or dust arising from the construction even if it does not violate any law or regulation; or

(E) The convenience of the City. [HAR 3-125-7]

(2) Partial and Total Suspension. Suspension of work on some but not all items of work shall be considered a "partial suspension." Suspension of work on all items shall be considered "total suspension." The period of suspension shall be computed from the date set out in the written order for work to cease until the date of the order for work to resume. [HAR 3-125-7]

(3) Reimbursement to Contractor. In the event that the Contractor is ordered by the Officer-in-Charge in writing as provided herein to suspend all or part of the work under the contract in accordance with subsections (C), (D), or (E) of the “suspension of work” paragraph, the Contractor may be reimbursed for actual money expended towards the project during the period of suspension. No allowance will be made for anticipated profits. [HAR 3-125-7]

(4) Cost Adjustment. If the performance of all or part of the work is suspended for reasons beyond the control of the Contractor, an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such suspension, and the contract modified in writing accordingly. However, no adjustment under this section shall be made for any suspension:

(A) To the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or

(B) For which an adjustment is provided for or excluded under any other provision of the contract. [HAR 3-125-7]

(5) Claims for Adjustment. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the provisions on changes and claims for adjustment. Claims for compensation shall be filed in writing with the Officer-in-Charge within thirty days after the date of the order to resume work or the claims will not be considered. Together with the claim, the Contractor shall submit substantiating documents covering the entire amount shown on the claim. The Officer-in-Charge shall take the claim under consideration and may make such investigations as are deemed necessary and shall be the sole judge as to the equitability of the claim and the Officer-in-Charge's decision shall be final. [HAR 3-125-7]

(6) No Adjustment. No provision of this section shall entitle the Contractor to any adjustments for delays due to failure of surety, for suspensions made at the request of the Contractor, for any delay required under the contract, for suspensions, either partial or whole, made by the Officer-in-Charge under the provisions in subsection (B) of the "suspension of work" paragraph. [HAR 3-125-7]

3.7 Variations in Definite Quantities for Definite Quantity Goods and Services Contracts. Pursuant to HAR 3-125-8, the following shall apply to the procurement of goods and services under this contract:

Variation in quantity. Upon the agreement of the parties, the quantity of goods or services or both specified in the contract may be increased by a maximum of ten percent provided the (1) unit prices will remain the same except for any price adjustments otherwise applicable and (2) the Officer-in Charge 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. [HAR 3-125-8]

3.8 Variations in Estimated Quantities for Construction Contracts. Pursuant to HAR 3-125-10, the following shall apply to the procurement of construction under this contract:

(1) Variations Requiring Adjustments. Where the quantity of a pay item in the contract is an estimated quantity and where the actual quantity of such pay item varies more than fifteen percent above or below the estimated quantity stated in the contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent or below eighty-five percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Officer-in-Charge shall, upon receipt of a timely written request for an extension of time, prior to final payment of the contract, ascertain the facts and make such adjustment for

extending the completion date as in the judgment of the Officer-in-Charge the findings justify.

(2) Any adjustment in the contract price shall be in accordance with the price adjustment provisions of the contact. [HAR 3-125-10]

3.9 Differing Site Conditions for Construction Projects. Pursuant to HAR 3-125-11, the following shall apply to the procurement of construction under this contract:

Differing Site Conditions – Contractor's responsibility. Unless otherwise agreed and expressly provided for in the contract, the Contractor accepts the risk of differing site conditions and the Contractor accepts the conditions at the construction site as they eventually may be found to exist and warrants and represents that the Contract can and will be performed under such conditions, and that all materials, equipment, labor, and other facilities required because of any unforeseen surface or subsurface conditions (physical or otherwise) shall be wholly at the contactor's own cost and expense, anything in this Contract to the contrary notwithstanding. [HAR 3-125-11(2)]

3.10 Price Adjustment for Goods and Services Contracts. Pursuant to HAR 3-125-12, the following shall apply to the procurement of goods and services under this contract:

Price Adjustment Clause
(1) Price adjustment methods. Any adjustment in contract price pursuant to a clause in this 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;

(B) By unit prices specified in the contract or subsequently agreed upon before commencement of the pertinent performance;

(C) By the costs attributable to the event or situations under such clauses, with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon before commencement of the pertinent performance ;

(D) In such other manner as the parties may mutually agree before commencement of the pertinent performance; or

(E) In the absence of agreement between the parties, the provisions of section 103D-501(b)(5), HRS, shall apply.

(2) Submission of Cost or Pricing Data. The contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 103D-312, HRS. The submission of any cost or pricing data shall be made subject to the provisions of HAR subchapter 15, chapter 3-122. A fully executed change order or other

document permitting billing for the adjustment in price under any method listed in paragraph (1)(A) through (1)(D) shall be issued within ten days after agreement on the method of adjustment. Refer to Exhibit H for certification of cost or pricing data.

3.11 Price Adjustment in Construction Contracts. Pursuant to HAR 3-125-13, the following shall apply to the procurement of construction under this contract:

Price Adjustment Clause

(1) Price Adjustment Methods. Any adjustment in contract price pursuant to a clause in this 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;

(B) By unit prices specified in the contract or subsequently agreed upon before commencement of the pertinent performance;

(C) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon before commencement of the pertinent performance;

(D) In any other manner as the parties may mutually agree upon before commencement of the pertinent performance; or

(E) In the absence of agreement between the parties the provisions of section 103D-501(b)(5), HRS, shall apply.

(2) Submission of Cost or Pricing Data. The contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 103D-312, HRS. The submission of any cost or pricing data shall be made subject to the provisions of subchapter 15, chapter 3-122. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in paragraphs (1) (A) through (1) (D) shall be issued within ten days after agreement on the method of adjustment. Refer to Exhibit H for certification of cost or pricing data.

(3) Determining Adjustments in Price. In determining the adjustment in price to the government resulting from a change, the allowances for all overhead, extended overhead resulting from adjustments to contract time (including home office and branch office overhead) and profit combined shall not exceed the percentages set forth below:

(A) For the contractor, for any work performed by its own forces, twenty percent (20%) of the cost;

(B) For each subcontractor involved, for any work performed by its own forces, twenty percent (20%) of the cost;

(C) For the contractor or any subcontractor, for work performed by their subcontractors, ten percent (10%) of the amount due the performing subcontractor.

Not more than three line item percentages for fee and overhead, not to exceed the maximum percentages shown above, will be allowed regardless of the number of tier subcontractors.

(4)The government in determining an adjustment in price using any of the methods listed in subparagraphs (1)(A) through (1)(D) above may not mandate that the contractor submit its proposal for a price adjustment at a specified percentage that it unilaterally considers to be acceptable.

(5) Paragraphs (3) and (4) shall not be construed to impair the right of a contractor and government from mutually agreeing to a price adjustment under any method listed in subparagraphs (1)(A) through (1)(D) above.

3.12 Novation or Change of Name. Pursuant to HAR 3-125-14, the following shall apply to this contract:

(1) No Assignment. No City 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 City.

(2) Recognition of a Successor in Interest; Assignment. When in the best interest of the City, a successor in interest may be recognized in an assignment agreement in which the transferor, the transferee and the City shall agree that:

(A) The transferee assumes all of the transferor's obligations;

(B) the transferor remains liable for all obligations under the contract as against the City; and

(C) The transferor shall continue to furnish, and the transferee shall also furnish, all required bonds.

(3) Change of Name. When a contractor requests to change the name in which it holds a contract with the City, 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 specifically indicate that no other terms and conditions of the contract are thereby changed.

3.13 Claims Based on a Procurement Officer's Actions or Omissions for Goods and Services Contracts. Pursuant to HAR 3-125-15, the following shall apply to the procurement of goods and services under this contract:

(1) Claims Based on a Procurement Officer's Actions or Omissions. If any action or omission on the part of a procurement officer or designee of the 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:

(A) The Contractor shall have given written notice to the Director or designee of such officer:

(i) Prior to the commencement of the work involved, if at that time the Contractor knows of the occurrence of the action or omission;

(ii) Within thirty (30) days after the Contractor knows of the occurrence of the action or omission, if the Contractor did not have knowledge prior to the commencement of the work; or

(iii) Within such further time as may be allowed by the Director in writing.

(B) 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 Director or designee of such officer, upon receipt of the notice may rescind the action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Director or designee of such officer;

(C) The notice required by subparagraph (A) 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

(D) The Contractor maintains and, upon request, makes available to the Director 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.

(2) Nothing herein contained, however, shall excuse the Contractor from compliance with any rules of law precluding any City 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.

(3) 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.

3.14 Claims Based on Oral Directives for Construction Contracts. Pursuant to HAR 3-125-16, the following shall apply to the procurement of construction under the contract:

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

(2) Not more than five days after receipt of the written notice from the contractor, the procurement officer shall issue a change order for the subject work if the procurement officer agrees that it constitutes a change. If no change order is issued in the time established, it shall be deemed a rejection of the contractor's claim for a change. If the contractor objects to the procurement officer's refusal to issue a change order, it shall file a written protest with the procurement officer within thirty days after delivery to the procurement officer of the contractor's written notice of its intention to treat the oral order as a change. In all cases the contractor shall proceed with the work. The protest shall be determined as provided in the disputes and claims section of the contract.

3.15 Termination for Default in Goods and Services Contracts. Pursuant to HAR 3-125-17, the following shall apply to the procurement of goods and services under this contract:

(1) 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, the officer may terminate the contractor's right to proceed with the contract or a 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.

(2) 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 State or county has an interest.

(3) Compensation. Payment for completed goods delivered and accepted by the City 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. The City may withhold from amounts due the contractor as the procurement officer deems to be necessary to protect the City against loss because of outstanding liens or claims of former lien holders and to reimburse the City for the excess costs incurred in procuring similar goods and services.

(4) 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, if the contractor has notified the procurement officer within fifteen days after the cause of the delay and the failure arises out of causes including but not limited to the following: 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. If the failure to perform is

caused by the failure of a subcontractor to perform or to make progress, and if the 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. Upon request of the contractor, the procurement officer shall ascertain the facts and extent of the failure, and, if the 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 City under the clause entitled in fixed-price contracts, 'Termination for Convenience' and in cost-reimbursement contracts, 'Termination'. As used in this paragraph, the term 'subcontractor' means subcontractor at any tier.

(5) Additional Rights and Remedies. The rights and remedies provided in this contract are in addition to any other rights and remedies provided by law.

3.16 Default, Delay, and Time Extensions for Construction Contracts. Pursuant to HAR 3-125-18, the following shall apply to the procurement of construction under this contract:

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

(2) Liquidated Damages Upon Termination. If fixed and agreed liquidated damages are provided in the contract, and if the City so terminates the contractor's right to proceed, the resulting damage will consist of the liquidated damages for the time as may be required for final completion of the work.

(3) Liquidated Damages in Absence of Termination. If fixed and agreed liquidated damages are provided in the contract, and if the City does not terminate the contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

(4) Time Extension. The contractor's right to proceed shall not be so terminated nor shall the contractor be charged with resulting damage if:

(A) The delay in the completion of the work arises from causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in either a sovereign or contractual capacity; acts of

another contractor in the performance of a contract with the City; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the contractor furnishes to the procurement officer proof that the contractor has diligently made every effort to obtain the materials from all known sources, and further proof that the inability to obtain the materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the contractor's operations; and

(B) The contractor, within ten days from the beginning of the delay (unless the procurement officer grants a further period of time before the date of final payment under the contract), notifies the procurement officer in writing of the causes of delay. The procurement officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in the judgment of the procurement officer, the findings of fact justify such an extension.

(5) Additional Rights and Remedies. The rights and remedies of the City provided in this contract are in addition to any other rights and remedies provided by law.

3.17 Termination for Convenience of Goods and Services Contracts. Pursuant to HAR 3-125-21, the following shall apply to the procurement of goods and services under this contract.

(1) Termination for Convenience. The procurement officer may, when the interests of the City so require, terminate this contract in whole or in part, for the convenience of the City. 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.

(2) 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 City'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 City. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(3) Right to Goods. The procurement officer may require the contractor to transfer title and deliver to the City in the manner and to the extent directed by the procurement officer:

(A) Any completed goods; and

(B) 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 City has an interest. If the procurement officer does not exercise this right, the contractor shall use the contractor's best efforts to sell the goods and manufacturing materials. Use of this section in no way implies that the City has breached the contract by exercise of the termination for convenience clause.

(4) Compensation:

(A) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by subchapter 15, chapter 3-122, bearing on the 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 (C).

(B) 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, and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the City, the proceeds of any sales of goods and manufacturing materials under subparagraph (3) of this clause, and the contract price of the work not terminated.

(C) Absent complete agreement under subparagraph (B), the procurement officer shall pay the contractor the following amounts, provided payments agreed to under subparagraph (B) shall not duplicate payments under this subparagraph for the following:

(i) Contract prices for goods or services accepted under the contract;

(ii) Costs incurred in preparing to perform and performing the terminated portion of the work plus a five percent markup on actual direct costs on the portion of the work, the markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods 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;

(iii) 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 paragraph (2). Subcontractors shall be entitled to a markup of no more than ten per cent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with clause (ii) of subparagraph (C).

(iv) 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 supplies and manufacturing materials under subparagraph (B), and the contract price of work not terminated.

(D) Cost claimed, agreed to, or established under subparagraphs (B) and (C) shall be in accordance with chapter 3-123.

3.18 Termination for Convenience of Construction Contracts. Pursuant to HAR 3-125-22, the following shall apply to the procurement of construction under this contract:

(1) Terminations. The procurement officer may, when the interests of the City so require, terminate this contract in whole or in part, for the convenience of the City. 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.

(2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work, and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the City'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 City. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

(3) Right to Construction and Goods. The procurement officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the procurement officer:

(A) Any completed constructions; and

(B) The partially completed construction, goods, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "construction material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall protect and preserve property in the possession of the contractor in which the City has an interest. If the procurement officer does not exercise this right, the contractor shall use the contractor's best efforts to sell the construction, goods, and construction materials in accordance with the standards of section 490:2-706, HRS. This in no way implies that the State has breached the contract by exercise of the termination for convenience clause.

(4) Compensation.

(A) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by subchapter 15, chapter 3-122, 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 clause (ii) of subparagraph (C).

(B) The procurement officer and the contractor may agree to a settlement

provided the contractor has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the City, the proceeds of any sales of construction, goods, and construction materials under clause (iii) of subparagraph (C), and the contract price of the work not terminated.

(C) Absent complete agreement under subparagraph (B), the procurement officer shall pay the contractor the following amounts, provided payments under subparagraph (B) shall not duplicate payments under this paragraph, for the total (without duplication of any items) of:

(i) The cost of all contract work performed prior to the effective date of the notice of termination plus a five percent markup on actual direct costs on the portion of the work (the markup shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of the work; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(ii) Subject to the prior approval of the procurement officer, the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to the "contractor's obligations" provisions of this contract. 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 clause (i);

(iii) The total sum to be paid the contractor under this paragraph shall not exceed the total contract price reduced by the amount of any sales of construction, goods, and construction materials under paragraph (3), and the contract price of work not terminated.

(D) Cost claimed, agreed to, or established under subparagraphs (B) and (C) shall be in accordance with chapter 3-123.

3.19 Prompt Payment by Contractors to Subcontractors. Pursuant to HAR 3-125-23, the following shall apply to this contract:

Prompt Payment Clause

(1) Generally. Any money paid to a contractor shall be disbursed 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 on which the procurement agency has withheld payment.

(2) Final payment. 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.

(3) Penalty. The procurement officer or the contractor, as applicable, will be subject to a penalty of one and one-half percent per month upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. Where a subcontractor has provided evidence to the contractor of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in paragraph (4), and:

(A) Has provided to the contractor an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 103-32.1, HRS; or

(B) The following has occurred:

(i) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to contractor and the surety, as provided for in section 103D-324, HRS; and

(ii) The subcontractor has provided to the contractor, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the contractor; any other bond acceptable to the contractor; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the contractor and subsequently, upon receipt from the procurement officer, by the contractor to the subcontractor within the applicable time periods specified in paragraph (2) and section 103-10, HRS. The penalty may be withheld from future payment due to the contractor, if the contractor was the responsible party. If a contractor has violated paragraph (2) three or more times within two years of the first violation, the contractor shall be referred by the procurement officer to the contractors license board for action under section 444-17(14), HRS.

(4) A properly documented final payment request from a subcontractor, as required by paragraph (3), shall include:

(A) Substantiation of the amounts requested;

(B) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:

(i) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

(ii) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

(iii) The payment request does not include any amounts that the subcontractor intends to withhold or retain from a subcontractor or

supplier in accordance with the terms and conditions of their subcontract; and

(C) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The procurement officer shall return any final payment request that is defective to the contractor within seven days after receipt, with a statement identifying the defect.

(5) In the case of a construction contract, a payment request made by a contractor to the procurement officer that includes a request for sums that were withheld or retained from a subcontractor and are due to a subcontractor may not be approved under paragraph (3) unless the payment request includes:

(A) Substantiation of the amounts requested; and

(B) A certification by the contractor, to the best of the contractor's knowledge and belief, that:

(i) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(ii) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the contract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

(iii) The payment request does not include any amounts that the contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

The procurement officer shall return any final payment request that is defective to the contractor within seven days after receipt, with a statement identifying the defect.

(6) This section shall not be construed to impair the right of a contractor or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under paragraph (3); provided that any such payments withheld shall be withheld by the procurement officer:"

Chapter 4 – Goods, Services, and Professional Services Provisions Supplement

4.1 Insurance Requirements. Refer to Section 2.26

4.2 Delivery.

(a) This clause shall apply to definite quantity goods or services contracts only. The number of calendar days for delivery of goods or completion of contract will be calculated from the official commencement date.

(b) After the contract is signed by the Director, the Officer in Charge or the Director will issue to the Contractor a written "Notice to Proceed" establishing the official commencement date.

(c) Should the Contractor begin work or make delivery in advance of the official commencement date, such work or delivery shall be considered as having been done at the Contractor's own risk and expense as a volunteer and no payment will be owed to the Contractor for such advance work or delivery.

(d) The service, material or goods shall be performed, completed or delivered on or before the due date specified by the City in its "Notice to Proceed." Should job completion or delivery of goods or services be delayed on account of any act or omission on the part of the City, extraordinary weather, fire, other extraordinary reasons for which the Contractor is not responsible, or by any other circumstances for which the Contractor has not control, the due date for such performance may be extended by the Director. The Director shall be the final judge for extending the due date of any contract, provided that written application for an extension of time is filed by the Contractor with the Director before the expiration of the due date or before the expiration of any extended time limit. The request for extension shall be in writing and include documents such as Contractor's Purchase Order, manufacturers' acknowledgment, shipping manifest and any other documents substantiating the causes of such delay. Such extension, if granted, shall not be deemed a waiver of the right to terminate the contract for other or additional delays not covered by the specific terms of such extensions(s).

(e) The Contractor shall deliver the materials or goods and furnish the services at such particular location designated and in the manner directed by the Director.

4.3 Execution of Professional Services Work.

(a) The contractor shall be available upon reasonable demand to discuss the progress of any professional services being performed under the contract. The contractor shall also remain available through any applicable alternative means of contact, such as pager or cellular phone, in the event of an emergency or other event that necessitates immediate communication with the contractor. All questions arising during the performance of the contract which must be resolved by the officer-in-charge shall be brought to the officer-in-charge's immediate attention.
The contractor shall direct its work to relate appropriately to, and in accordance with, established principles, practices and standards for such work. The contractor shall direct its work to relate appropriately to, and in accordance with, established engineering, planning and/or architectural design principles and practices for good exterior appearance, and the natural and man-made environment.

(b) The contractor shall furnish sufficient technical supervision and administrative personnel to insure the proper performance of the services under the contract.

(c) The contractor shall be responsible for the accuracy of all computations and completeness of all studies, designs and plans.

(d) All notes, deliverables, plans, specifications, calculations, field notes, and other data produced in the performance of the contract shall be the property of the City.

(e) The officer-in-charge shall have access, at all reasonable times, to all notes, designs, drawings, tracings or other technical data pertaining to the services being performed under the contract for the purpose of inspection and making copies of them. Upon completion of the services under the contract, any or all of such notes, studies, designs, drawings, tracings or other technical data shall be delivered and surrendered to the officer-in-charge on demand, provided that copies of notes, studies and other technical data may be delivered and surrendered instead of the originals.

4.4 Change Orders and Modifications Require Approval.

The Contractor will not undertake to perform any portion of the contract work affected by changes until authorized by the Director or an authorized representative in writing or until a change order or modification has been approved and issued.

4.5 Payments.

(a) Payments will be authorized by the Director after completion of performance or delivery and acceptance by the Director of all materials, goods, and services stipulated in the contract or Purchase Order and after the invoices, in triplicate, are received by the using agency, Attention: Fiscal Officer. The invoices must list the following information: contract and confirmation purchase order numbers (if any), item numbers, description of items, quantities, unit prices, and extended totals. Further, in the event that the Contractor is providing equipment under the contract or Purchase Order, the Contractor must also provide the following information with the submittal of its invoices: equipment make, model, serial number, and the specific equipment delivery or installation location, including delivery address and building facility room number, if such information is made available to the Contractor. Various equipment that make up a system shall be listed individually. Providing the aforementioned equipment information is required before payment is made to the Contractor. Attached is a SAMPLE OF EQUIPMENT LISTING showing how a Contractor shall provide the equipment information required.
Payments will be computed in accordance with any applicable unit prices bid.
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.

(b) Unless otherwise specified, partial payment(s) for any item or portion of any item under the contract may be permitted. Said partial payment(s) may be authorized by the Officer in Charge or an authorized representative, provided that delivery and acceptance of the item is made before the contract delivery date and upon submittal of proper invoices and substantiating documents by the Contractor. Said authorization by the Officer in Charge or an authorized representative shall be by endorsement on the submitted invoice; no other action will be required to effect the partial payment(s).

(c) Except for any contract entered pursuant to section 103D-307, HRS, final payment of a contract made pursuant to section 103D-302, 103D-303, 103D-304 or 103D-306, HRS, shall be withheld, until receipt of proof of compliance with HRS 103D-328 and HRS 103D-310. Hawaii Compliance Express (HCE) may be used for this purpose. The HCE website is at https://vendors.ehawaii.gov/hce/splash/welcome.html. These requirements do not apply to contracts of less than $2,500 awarded pursuant to HRS section 103D-305.

(d) The City shall withhold final payment for each delivery order equal to or greater than $2,500, issued on master, price list, or vendor list agreements, until receipt of the Contractor's compliance with the Hawaii Department of Taxation and Internal Revenue Service. Proof of compliance may be through Hawaii Compliance Express (HCE) or by written clearance issued by the Hawaii Department of Taxation and Internal Revenue Service.

4.6 Payment for Reimbursable Expenses.

Payment requests for all reimbursable expenses shall be accompanied and supported by receipted invoices for all charges. Unless otherwise specified, the City must approve of all reimbursable expenses in writing. Payment for reimbursable items shall be made for allowable costs in accordance with the Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Chapter 3-122, Subchapter 15, cost or pricing data, and Chapter 3-123, cost principles. Reimbursable amounts stated in the contract shall not be exceeded without a contract amendment. Any balance remaining from the reimbursable expense funds at the completion of the Agreement shall revert to the City.

4.7 Wages, Hours, and Working Conditions of Employees of Contractors Performing Services

(a) Pursuant to HRS Section 103-55, where the Contractor enters into a contract to perform services in excess of $25,000, the Contractor agrees and certifies by signing a contract with the City that the services to be performed will be performed under the following conditions:

(1) 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.

(2) 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.

(b) Failure to comply with the conditions of HRS Section 103-55 during the period of contract to perform services shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Final payment of a contract or release of bonds or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected.

(c) 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 HRS Section 76-16, paragraphs (7), (8), and (9) of HRS Section 46-33, and paragraphs (7), (8), and (12) of HRS Section 76-77.
(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.

Chapter 5 – Construction Contract Provisions Supplement

5.1 Insurance Requirements and Bonding.

5.1.1 Insurance. Refer to Section 2.26.

5.1.2 No Encumbrance/Free and Clear of Liens/Bond Release.

The Contractor guarantees the payment of all just claims for materials, supplies, tools, labor and other just claims against the Contractor or any subcontractor in connection with this Contract, and shall deliver the project free and clear of any liens or potential lien applications, whether filed or unfiled. Contractor's bond, if required, will not be released by final acceptance and payment by the City unless all such claims are paid or released, or so much of the monies due or to become due the Contractor under the contract as shall be considered necessary by the Contracting Officer upon recommendation by the Officer-in-Charge may be retained by the City. Should any suit or claim be filed against the Contractor, the City upon consultation with its Corporation Counsel may retain, from any monies due to the Contractor, such amount or amounts as may be deemed necessary by the City until such suits or claims have been finally settled and determined and upon satisfactory evidence of such settlement of such suits or claims the money retained shall be paid to the Contractor.

5.2 Performance.

5.2.1 Time is of the Essence. Performance of the Contract shall commence on the commencement date designated in the Notice to Proceed and shall be completed within the number of days specified in the contract, except as modified by mutual agreement. Contractor acknowledges that time is of the essence in the completion of the work within the designated time in the contract.

5.2.2 Commencement Requirements.

(a) Notice to Proceed. Upon execution of the contract by the Contracting Officer, the Officer-in-Charge may schedule a pre-work conference or issue a notice to proceed to the Contractor designating the official commencement date for performance of the contract. Unless otherwise specified in the SOLICITATION DOCUMENT, the notice to proceed shall be issued within 90 days after execution of the Contract by the Director of the Department of Budget and Fiscal Services unless a later date is agreed to by mutual agreement. In the event that the notice to proceed is delayed beyond the 90 days or the time mutually agreed to, the contract amount may be adjusted in accordance with contract provisions for the suspension of work or the Contracting Officer may, upon recommendation by the Officer-in-Charge, terminate the contract for convenience.

(b) Commencement of Work. Unless otherwise specified by the Officer-in-Charge, the Contractor shall begin work within ten working days from the official commencement date and shall diligently prosecute the same to completion within the contract time allowed. The Contractor shall notify the Officer-in-Charge at least three working days before beginning work. At any subsequent suspension and resumption of work, the Contractor shall notify the Officer-in-Charge at least twenty-four hours before beginning actual operations.

Unless otherwise specified in the contract or in any written order, the Contractor shall not proceed with any part of the Contract, such as ordering of any equipment or materials, or performing any work prior to the official commencement date.

(c) Unless otherwise provided for in these provisions or in the solicitation document, the requirements in this section, commencement requirements, shall be considered incidental to the Contractor's performance of the Contract.

(d) Submittals.

(1) The Contractor shall review, stamp and sign all submittals before submitting them to the Officer-in-Charge for acceptance in writing. Electronic submittals may be made at the discretion of the Officer-in-Charge. Submittals shall be identified by project title and appropriate specification section numbers or construction plan sheet numbers or both, and shall indicate all data necessary for evaluation. All nonapplicable data shall be blocked out and deviations from specifications and plans shall be clearly marked and justified.

(2) If required, the Contractor shall submit four prints of working or shop drawings to the Officer-in-Charge for acceptance as to the method of construction and design prior to the commencement of the work under Contract or the delivery to the project site of any equipment or material covered by the drawings, whichever is later. The Officer-in-Charge may require the drawings to be resubmitted as often as necessary to render them complete, legible and free from extensive corrections. If a resubmittal is required, the Officer-in-Charge shall return one print to the Contractor who shall make all the corrections or additions shown thereon. The Contractor shall then resubmit four prints of the corrected drawings for written acceptance by the Officer-in-Charge.

(3) No working or shop drawings that have been approved shall be changed without the written approval of the Officer-in-Charge. After acceptance, the Contractor may proceed with the parts of the project called for in such drawings.

(4) The Contractor shall submit for the acceptance of the Officer-in-Charge, other submittals as required by the Contract.

(e) Payment and Performance Schedules. Within seven days of the official commencement date or within such further time as the Officer-in-Charge may allow, the Contractor shall submit for acceptance in writing of the Officer-in-Charge:

(1) In addition to the schedule provided in the Final Proposal or offer, a detailed performance schedule of the critical path method (CPM) type or approved equal, in the form of a network diagram and activity listing, unless otherwise specified in the specifications. The schedule shall show in sufficient detail and in orderly sequence all activities, their description, duration, relationship and dependencies necessary to the completion of the contract. It shall contain, but not be limited to, the sequence of all operations including procurement and mobilization of equipment, plant and materials to complete the work within the contract period. If the schedule is not accepted, it shall be revised as directed by the Officer-in-Charge. Changes in the schedule shall be made only with the written acceptance of the Officer-in-Charge. The schedule shall be used as a basis for establishing major construction operations and as a check on the progress of the work performed under the contract. The CPM schedule shall also be used as basis for calculating liquidated damages. Claims by the Contractor for delays including related time extensions may be considered only if the initial performance schedule has been accepted by the Officer-in-Charge.

Within seven days after receipt of recommended revisions to the performance schedule, the Contractor shall submit a revised schedule to the Officer-in-Charge for acceptance. Progress payments will be withheld until final approval of the schedule. At all times the schedule shall represent the Contractor's plan for orderly completion of the work. Any changes to the schedule shall require the written acceptance of the Officer-in-Charge. The Contractor shall update the schedule within 15 days of acceptance of any change to the schedule or deviation of 30 days between the Contractor's performance and the accepted schedule.

(2) The Contractor's Work Week Schedule.
Contractor shall provide a schedule depicting the days and hours that the Contractor intends to work. Any changes to the schedule shall not be made without written acceptance by the Officer-in-Charge.

(3) Payment Schedule. Together with the performance schedule, the Contractor shall submit for the Officer-in-Charge's acceptance, an estimated payment schedule which coincides with the performance schedule. The schedule shall include an itemized breakdown of lump sum items. The schedule shall list the anticipated monthly payment and shall be used by the City for project budgeting purposes. Revised payment schedules shall be submitted for acceptance by the Officer-in-Charge immediately on acceptance of revised performance schedules.

(4) The Contractor’s Three Week Look Ahead Schedule.
Contractor shall provide a weekly three week look ahead schedule for the project. The schedule shall include, but not be limited to, all activities, their description, duration, relationship and dependencies necessary to the completion of the contract. If the schedule is not accepted, it shall be revised as directed by the Officer-in-Charge.

(f) Personal Supervision. The Contractor, at all times, shall be present in person, or be represented by the Contractor's superintendent with authority to act for the Contractor in connection with the contract during the performance of the contract. The Contractor shall submit to the Officer-in-Charge prior to start of work, the name of the person charged with the responsibility of all work. Failure of the Contractor or its superintendent to be present at the job site may result in suspension of the work by the Officer-in-Charge.

The Contractor shall be available upon reasonable demand to discuss the progress of the services being performed under the Contract. The Contractor shall also remain available through any applicable alternative means of contact, such as pager or cellular phone, in the event of an emergency or other event that necessitates immediate communication with the Contractor. The Contractor shall provide the names and contact information of key personnel during non-work hours to contact in the event of an emergency. All questions arising during the performance of the Contract which must be resolved by the Officer-in-Charge shall be brought to the Officer-in-Charge's immediate attention.

(g) Contractor's Place of Business. The Contractor shall maintain, for the duration of the Contract, a permanent place of business within the State where the Contractor may be served notice and legal process. Written notice may also be served on the Contractor or its superintendent on the project site personally, or via facsimile machine if the Contractor has one, or via mail to the local post office address or post office box. [HRS 444-14]

(h) Field Office.

(1) Field office. If required in the SOLICITATION DOCUMENT, the Contractor shall provide a field office for the Officer-in-Charge at a location approved by the Officer-in-Charge. It shall be available within seven days after the commencement of the work under the Contract. Unless otherwise specified in the SOLICITATION DOCUMENT, the field office shall be weatherproof and not less than one hundred twenty square feet in gross floor area. The aggregate window areas of the office shall not be less than ten percent of the floor area, and one exterior door shall be provided with a keyed cylinder-type lock. The office shall be furnished with one drafting table having a dimension of not less than 3' x 6' and a stool, adequate plan racks and hangers, one desk, two chairs, shelves, a broom, electric outlets, electric lighting, paper towels, paper cups, soap, toilet paper, and potable water and shall be maintained in good repair and in a clean and sanitary condition by the Contractor. If the office is not equipped with a water closet and lavatory, the Contractor shall make other arrangements to provide such facilities for the Officer-in-Charge. The Contractor shall comply with the requirements of the Land Use Ordinance of the City and County of Honolulu, relating to Special Permit Use and ADAAG. Payment for the field office shall be as specified in the Solicitation Document.

(2) The field office and equipment shall be maintained in good repair and in a clean and sanitary condition by the contractor until final payment or an earlier date as determined by the Officer-in-Charge. The ownership of the field office and equipment shall remain with the Contractor and shall be removed when instructed by the Officer-in-Charge.

(i) Sanitation Facilities. Sanitation facilities for the use of employees on the work site shall be provided and maintained by the Contractor and their exclusive use strictly enforced. These facilities shall comply with the requirements and regulations of the State Department of Health. Contractor's sanitation facilities shall be located so that it will be as inconspicuous as possible to the passing motorists and the facility visitors.

In parks and other sites where there are comfort stations and/or public facilities, the Contractor will not be required to provide sanitation facilities for use by its employees; however, the Contractor shall be responsible to keep the City facilities used by its employees clean and respectable.

(j) Project Sign. If required in the SOLICITATION DOCUMENT, the Contractor shall submit to the City for approval shop drawings of signs to identify the project. Upon approval, the signs shall be erected at locations approved by the Officer-in-Charge at the site of the project upon commencement of the work under the contract. Signs shall be properly erected and kept clean and legible. After completion of the work under the contract and final acceptance thereof, the Contractor shall remove the signs as the Contractor's property. Payment for the project signs will be as specified in the SOLICITATION DOCUMENT.

(k) Permits, Licenses. The Contractor shall obtain all necessary permits and licenses, pay all charges, fees, and taxes, give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. These may include, but not be limited to, demolition permit, building permit, dumping charges, grading permit, excavation permit, traffic permit, community noise permit, City park right-of-entry permit, National Pollutant Discharge Elimination System (NPDES) permit, compliance with Rodent Control Requirements on Demolition of Structures and Clearing of Sites and Vacant Lots, boiler permit, elevator permit, escalator permit, and operating permits. All City building and grading permit fees are waived for the contract. All cost and work under this subsection shall not be paid for directly but shall be considered incidental and included in the Offeror's Proposal prices for the various items of work.

(l) Surveys and Construction Stakes, Lines and Grades. Drawings include site plan showing approximate existing and new finish elevations. Contractor shall verify all grades, lines, levels, and dimensions shown on drawings and shall report any errors or inconsistencies to the Officer-in-Charge before commencing work. Failure to do so shall make the Contractor responsible for any changes which may be required thereafter in connection therewith. The Contractor shall at no additional cost to the City furnish all stakes, templates, platforms, equipment, and labor that may be required in setting and cutting or laying out any part of the work. The Contractor will be held responsible for the proper execution of the work to such lines and grades as may be indicated by the Officer-in-Charge, and all stakes or other marks thus established shall be preserved by the Contractor until their removal is authorized by the Officer-in-Charge. The Contractor shall be responsible for laying out the project.

The work required for construction shall be laid out and provided with grade stakes through the service of a registered land surveyor licensed in the State of Hawaii.

(m) Water Removal. The Contractor shall examine the site of the project and make all necessary arrangements with affected property owners for removal of water from the site. The Contractor shall provide a bridge or other means to prevent water, flowing into adjacent streets as a result of the Contractor's activities, from interfering with the traffic on such streets. The Contractor shall be responsible for all permits which may be required for removal of water from the site, including but not limited to, the National Pollutant Discharge Elimination System (NPDES) permit. All costs under this subsection shall be considered incidental and shall be included in the Offeror's proposal prices for the various items of work.

(n) Electrical and Water Services. Unless otherwise advised in writing by the City, the Contractor shall pay for all utility service or connection charges against the Department of Design and Construction by the various public utility companies, including the Board of Water Supply and the Department of Environmental Services, and it shall be considered that the cost of the charges are included in the submitted proposal, and no extra compensation shall be paid to the Contractor thereof.

Where there are existing utilities serving the project site and upon approval from the Officer-in-Charge, the Contractor may make a temporary connection into the utility lines within the site for use during construction of this project. The Contractor shall furnish all labor, materials (including temporary meters), and equipment necessary for proper installation and the protection of existing improvements. The Contractor will be assessed a charge based on the usage indicated from the meter readings. Upon completion of the project, the Contractor shall remove all temporary installations and restore the site to the satisfaction of the Officer-in-Charge at no cost to the City. All assessed charges for temporary utility services shall be included as part of the proposal price and independent of other utility allowances.

(o) Work Limitations, Protective Barriers, and Warning Signs. It may be necessary to confine the work to one area at any one time. The Contractor shall provide and maintain protective barriers, fencing, and whatever signs necessary to caution the visiting public. The cost of providing and maintaining the protective barriers and warning signs shall be considered incidental to the cost of the project and no extra compensation shall be made to the Contractor.

(p) Traffic Control.

(1) The Contractor shall obtain the necessary permits from the City's Department of Transportation Services prior to commencing operations. The Contractor shall notify the Honolulu Police Department and the Honolulu Fire Department of the construction work in progress and the blocking of any street during construction. Warning signs of adequate size, wording, and construction shall be located and installed as directed by the City's Department of Transportation Services, and the Contractor shall abide by other directives which may be issued by the City's Department of Transportation Services to eliminate other traffic problems and hazards. The Contractor shall include the State Department of Transportation (State DOT), as applicable, in discussions on traffic control for work on roads under State DOT jurisdiction.

(2) Work on any City street or in any area adjacent to a City street where traffic is impeded shall be performed between the hours of 8:30 a.m. to 3:30 p.m., unless otherwise permitted by the City's Department of Transportation Services.
(3) Whenever possible, the Contractor shall maintain roadways suitable for two lanes of traffic while construction is in progress. Adequate traffic control as required by the approved permit shall be provided by the Contractor during working hours.
(4) When material excavated for substructure construction is placed adjacent to the trench or excavation, it shall be placed in such a manner as to economize space and minimize interference with traffic. If necessary, such material shall be confined by suitable bulkheads or other devices. If the street is not of sufficient width to hold excavated material without using part of an adjacent walkway, a passageway in compliance with the requirements of the ADA shall be provided and kept open at all times.
(5) When substructure excavations cross street intersections, safe crossings for vehicles and pedestrians shall be provided and maintained. Pedestrian crossings shall be of a safe nonslip material, be separate from vehicle crossing and be provided with handrails except in areas opened for vehicular traffic.
(6) During nonworking hours, all excavations on the roadway shall be covered with a safe nonskid bridging material and all excavations in the sidewalk area shall be covered with a safe, nonslip surface.
(7) The Contractor shall provide paved detours as necessary.
(8) A roadway may be closed only with the express permission of the City's Department of Transportation Services.
(9) The Contractor shall cooperate with the Officer-in-Charge, the City's Department of Transportation Services and other authorized persons in locating all warning signs, lights, walkways and detours required under this subsection. If the Contractor fails to promptly provide adequate warning signs, lights, walkways and detours, the Officer-in-Charge may provide them at the Contractor's expense. The Contractor shall pay the cost of such work to the City, or the City may deduct the cost from any moneys due the Contractor from the City.
(10) All costs under this subsection shall be considered incidental and shall be included in the offeror's proposal prices for the various items of work.

5.2.3 Joint Contractor; Subcontractor.

(a) Specialty work. Joint contractors and subcontractors may perform only the specialty work for which they are listed.

(b) Changes. The Contracting Officer, upon recommendation by the Officer-in-Charge, or for informal bids, the Officer-in-Charge alone, may allow changes to the original listing of joint contractors and subcontractors only if justified by the Contractor for reasons such as the joint contractor or subcontractor:

(1) Files a petition in bankruptcy or is the subject of an involuntary petition in bankruptcy which is not dismissed within ten (10) days of filing;
(2) Is not performing in accordance with the subject contract;
(3) Is to perform additional work for which a joint contractor or subcontractor was not required to be listed in the proposal; or

(4) For any other reason that the Contracting Officer or the Officer-in-Charge may consider justified.

(c) Subcontractual Relations. The Contractor shall be responsible under the contract for the acts and omissions of its subcontractors, suppliers, and persons either directly or indirectly employed by them, as fully as the Contractor is for acts and omissions of its own employees. Nothing in the contract shall create any contractual relation between any subcontractor or supplier and the City, or any obligation on the part of the City to pay any money to, or cause to be paid any money from any subcontractor or supplier.

5.2.4 Contract, Plans and Specifications to be Kept on Site. The Contractor shall keep a copy of the most current plans and specifications, contract and shop drawings on the site of the project readily accessible for reference.

5.2.5 Construction Methods and Equipment. The Contractor shall use proper and efficient methods and equipment for the performance of the contract. All equipment furnished by the Contractor and used on the work shall be of such size and of such mechanical condition that the work can be prosecuted in an acceptable manner at a satisfactory rate of progress and the quality of work produced will be satisfactory.

5.2.6 Access and Inspection.

(a) Circumstances under which the City may perform inspections include but are not limited to, inspections of the Contractor's, its subcontractor's, or supplier's plant, or site of the project in order to determine [HAR 3-122-166]:

(1) whether the prospective offeror has or is maintaining the financial ability, resources, skills, capability, and business integrity necessary to perform the work;

(2) whether the contract is being performed in accordance within its terms;

(3) whether the goods or services are acceptable by inspection of the goods or services;

(4) whether the cost or pricing data by audit of its books and records pursuant to section 3-122-175, HAR, is accurate; or

(5) whether or not to debar or suspend a person from consideration for award of contracts pursuant to sections 3-126-11 through 3-126-18, HAR.

(b) During the performance of the contract, the Contractor shall provide the Officer-in-Charge with proper and safe facilities for access to the site of the project and the shops of the Contractor, its subcontractors or suppliers. The Contractor, its subcontractor, or supplier shall provide without charge, all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing. Such assistance may include but not be limited to installation of hoists and ladders necessary to inspect the plant or site of project.

(c) The presence or absence of an inspector shall not result in the waiver of any requirements of the contract, nor shall any act, statement or omission by an inspector constitute or be deemed a change unless the procedure for changes is followed.

(d) Other contractors of the City shall be permitted access to the site of the project when it is required for performance of their respective contracts.

(e) Covered Work

(1) If a portion of the work is covered contrary to the request of the Officer-in-Charge or to requirements specifically expressed in the contract, it must, if required in writing by the Officer-in-Charge, be uncovered for the inspection and be replaced at the Contractor's expense without change in the contract time.

(2) Work shall not be covered without the approval of the Officer-in-Charge, in order to provide for inspection. If a portion of the work has been covered which the Officer-in-Charge has not specifically requested to inspect prior to its being covered or is not expressly required by the Contract to remain uncovered for inspection, the Officer-in-Charge may request to see such work and it shall be uncovered by the Contractor. If such work is in accordance with the Contract, costs of uncovering and replacement shall, by appropriate change order, be charged to the City. If such work is not in accordance with the Contract, the Contractor shall pay such costs unless the condition was caused by the City or a separate contractor in which event the City shall be responsible for payment of such costs.

(3) The Contractor shall promptly correct work rejected by the Officer-in-Charge or failing to conform to the requirements of the contract, whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work, including additional testing and inspections and compensation for any consultant services and expenses incurred by the City made necessary thereby.

(4) The Contractor shall remove from the site portions of the work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

(5) If the Contractor fails to correct nonconforming work within seven days, or within the time specified in the written notice, the Officer-in-Charge may take over the work and perform the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, the materials, appliances, and plant as may be on the site of the work and necessary therefore. If the Contractor does not proceed with correction of such nonconforming work within the time fixed by written notice from the Officer-in-Charge, the City may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay the costs of such removal and storage within ten days after written notice, the City may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for any consultant services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the contract shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City.

(6) The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or other contractors caused by the Contractor's correction or removal of work which is not in accordance with the requirements of the contract.

(7) Nothing contained in this subsection shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the contract.

5.2.7 Quality of Materials and Equipment.

(a) Materials and equipment installed as part of any permanent construction shall be new, unless otherwise specified. The contract contemplates the use of first-class materials and equipment throughout the performance of the contract, and it is agreed that any material for which no particular specification is given shall be of the highest quality of its class or kind. For the purpose of this subsection, "new" shall mean purchased specifically for the project for which award was made.

(b) Samples. Whenever requested by the Officer-in-Charge, the Contractor shall furnish samples of materials to be used in the performance of the contract. Said samples, if accepted, will be retained by the Officer-in-Charge and shall be used as the standard with which all like materials furnished under the contract must conform. The acceptance of any sample tested by the Officer-in-Charge or the failure of the Officer-in-Charge to require the furnishing of samples shall not relieve the Contractor from performing the work in accordance with the contract.

(c) Samples and Test Specimens. When required by the Officer-in-Charge, test specimens or samples of materials, appliances and fittings to be used or offered for use in the performance of the contract shall be prepared and furnished by the Contractor in such quantities and sizes as may be required for proper examination and tests, with information as to their sources. The Contractor shall furnish additional test specimens and samples as directed. Unless otherwise advised in writing by the City, samples, test specimens, and tests, shall be considered incidental to the Contractor's performance of the contract.

(1) Test specimens and samples shall be submitted in ample time to enable the Officer-in-Charge to make such tests or examinations as may be necessary. Laboratory tests and examinations made in a laboratory other than that of the City shall be at the expense of the Contractor.

(2) Tests. Tests specified by the contract, statute, regulation or ordinance shall be made and the costs thereof shall be borne by the Contractor unless otherwise provided for in such contract, statute, regulation or ordinance. Such tests shall be conducted under the direction of the Officer-in-Charge and the Contractor shall repair any damage resulting therefrom.

(3) In addition, the Officer-in-Charge may require such tests as deemed necessary to carry out the Officer-in-Charge's duties during the performance of the work under the contract. When a test is required by the Officer-in-Charge, the Contractor under the direction of the Officer-in-Charge shall conduct such test and shall bear all of the costs, including the cost of tools, labor and materials necessary therefore.

5.2.8 Character of Workers, Methods and Equipment.

(a) The Contractor shall employ persons who possess the skill required to properly perform the work under the contract. When required by the Officer-in-Charge, whose decision

shall be final, the Contractor shall replace any employee who lacks the skill to perform the work assigned to the employee or is discourteous or disorderly while performing such work. If acceptable to the Officer-in-Charge, a person who has been so replaced may be assigned other work on the project. Any such acceptance by the Officer-in-Charge shall not relieve the Contractor from performing the work in accordance with the contract.

(1) All workers must have sufficient skill and experience to perform properly the work assigned to them. All workers engaged in special work or skilled work such as bituminous courses of mixtures, concrete pavement or structures, electrical installation, plumbing installation, or in any trade shall have sufficient experience in such work and in the operation of the equipment required to properly and satisfactorily perform all work. All workers shall make due and proper effort to execute the work in the manner prescribed in the Contract.

(2) Insufficient workers. Should the Officer-in-Charge find that the work is being performed with an insufficient number of workers, the Contractor shall be required to increase the number of workers on the project5.2.9 Other Contracts.

The Contractor shall coordinate its operations with those of other contractors who may be employed on adjacent or related projects of the City, shall avoid interference therewith, and shall cooperate with the other contractors so as to avoid unnecessary delay or hindrance in the performance of their respective contracts. Any difference or conflict which may arise between the Contractor and the other contractors of the City in regard to their projects shall be resolved by the Officer-in-Charge, whose decision shall be final and binding.

5.2.10 Wages and Hours.

(a) Contractors shall observe and comply with all the provisions of Chapter 104, HRS, relating to wages and hours of employees on public works. The Contractor shall pay all employees on any contract with the City, the minimum basic wage rate in conformance with applicable Federal and State laws.

(b) Minimum Wages. The minimum wage shall be periodically increased during the performance of the contract in an amount equal to the increase in the prevailing wages for those kinds of work as periodically determined by the State Director of Labor and Industrial Relations. Notwithstanding the provisions of the original contract entered into, if the Director of Labor and Industrial Relations determines that the prevailing wage has increased, the rate of pay of laborers and mechanics on the contract shall be raised accordingly. No additional compensation shall be made to the Contractor for failing to consider increases of the minimum wage during the duration of the contract.

(c) Overtime Work. No laborer or mechanic employed on the job site shall be permitted or required to work on a Saturday, Sunday, or a legal holiday of the State or in excess of eight hours on any other day unless the laborer or mechanic receives overtime compensation for all hours worked on a Saturday, Sunday, and a legal holiday of the State or in excess of eight hours on any other day. For purposes of determining overtime compensation under this subsection, the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined by the Director of Labor and Industrial Relations to be the prevailing basic hourly

rate for corresponding classes of laborer and mechanics on projects of similar character in the State.

(d) Certified Payrolls. One (1) certified copy of all payrolls and a certified copy of a fringe benefit reporting form supplied by the Department of Labor and Industrial Relations (DLIR) or any certified form that contains all of the required fringe benefit information shall be submitted weekly to the Officer-in-Charge. The fringe benefit reporting form shall itemize the cost of fringe benefits paid by the general contractor or subcontractor for:

(1) Health and welfare benefits;
(2) Pension and annuity benefits;
(3) Vacation benefits;
(4) Continuing education and training benefits; and
(5) Other fringe benefit costs paid by the general contractor or subcontractor.

A copy of the Certified Payroll with Reporting of Fringe Benefits form issued by DLIR can be found at: http://labor.hawaii.gov/wsd/forms/

The Contractor shall be responsible for the submission of one (1) certified copy of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision of the Director of Labor and Industrial Relations and the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed. The payrolls shall contain the name of each employee, the employee's correct classification, rate of pay, the itemized fringe benefit reporting form pursuant to above, daily and weekly numbers of hours worked on this project as well as hours performed on other projects, deductions made and actual wages paid.

(e) Maintain Payroll Records. Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the Contractor and its subcontractors, during the course of the work and preserved for a period of three years thereafter. The records shall contain the name of each employee, the employee's correct classification, rate of pay, daily and weekly numbers of hours worked, deductions made and actual wages paid.

(f) Availability of Payrolls. The Contractor shall make payroll records available for examination within ten (10) days from the date of a written request by a governmental agency or any authorized representative thereof. Any Contractor who: (1) fails to make payroll records accessible within ten days; (2) fails to provide information requested for the proper enforcement of this chapter within ten (10) days; or fails to keep or falsifies any record required under this chapter; shall be assessed a penalty as provided in section 104-22(b) of the HRS.

(g) Violations. If the Officer-in-Charge finds that any laborer or mechanic employed on the job site by the Contractor or any subcontractor has been or is being paid wages at a rate less than the required rate, or has not received the laborer's or mechanic's full overtime compensation, the Officer-in-Charge may take appropriate action in accordance with HRS 104-21, or the Contracting Officer may, upon recommendation of the Officer-in-Charge, by written notice to

the Contractor, terminate the Contractor's right, or the right of any subcontractor, to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid and may complete such or part by contract or otherwise, and the Contractor and its sureties shall be liable to the City for any excess costs occasioned thereby.

(h) Post Wage Schedule. The Contractor is required to post the applicable wage schedule in a prominent and easily accessible place at the job site. The Contractor shall give to each laborer and mechanic employed under the contract a copy of the rates of wages required to be posted.

(i) Federally Funded or Federally Assisted Projects. On federally funded or federally assisted projects, the current federal wage rate determination in effect at the time of advertising the SOLICITATION DOCUMENT is incorporated as part of the contract, and both Federal and State wage rates shall apply. Where rates for any class of laborers and mechanics differ, the higher rates shall prevail. The minimum federal wage rates shall be those in the U. S. Department of Labor Wage Determination Decision and Modifications in effect ten days prior to the bid opening date.

A copy of the wage rate determination, (including any additional classification and wage rate conformed under 29 CFR 5.5a(1)(ii)) and Davis-Bacon poster (WH-1321) shall be posted at all times at the site of work in a prominent and accessible place where it can be easily seen by the workers.

Employee Interviews. The Officer-in-Charge and the State of Hawaii Department of Labor and Industrial Relations may interview employees during working hours on the job. Failure to allow employees to be interviewed may be assess penalties described under section 104-22(b) of the HRS.

(j) Failure to Comply. Failure to comply with the requirements of this section may result in disqualification from bidding or submitting proposals on future projects.

(k) Inclusion in Subcontract. The Contractor shall include this section in every subcontract for work under this Contract.

5.2.11 Overtime Inspections.

(a) Written Request. If the Contractor wishes to work at such time of the day which is during the period other than the regular business hours of the City, or on a Saturday, Sunday, or legal State holiday, the Contractor shall make a written request for inspection services during such period.

(b) Notice. If such a request is made and granted, the Contractor shall notify the Officer-in-Charge not less than twenty-four hours in advance of the time when such inspection services are required. The Contractor shall pay the City in accordance with section 41-20.1, ROH, at the rate for the current fiscal year set by the Director, Department of Budget and Fiscal Services, or

in the event that the City has retained a private construction manager, the Contractor shall pay the rate established by the private construction manager.

(c) Invoice.

(1) City inspector. The City shall invoice the Contractor for overtime inspection services rendered by City inspectors.

(2) Private construction manager. The private construction manager will invoice the Contractor at the construction manager's established rate for overtime inspection.

5.2.12 Safety and Health.

(a) The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. The cost of Safety and Health shall not be paid for directly but shall be considered incidental and included in the prices bid for the various items of work.

(b) Safety Program. The Contractor shall comply with chapter 396, HRS, relating to the standards of occupational safety and health and all applicable Federal, State and City laws and regulations, including but not limited to section 396-18, HRS, relating to safety and health programs for contractors for City construction projects where the proposal amount is in excess of $100,000.

(c) Responsibility. The Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Officer-in-Charge.

(d) Safeguards, Signs. The Contractor shall erect and maintain, as required by existing conditions and performance of the contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

(e) No Loading. The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

(f) Emergency. In an emergency affecting safety of persons or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. The Contractor shall notify the Officer-in-Charge in writing of such emergency and remedial steps taken as soon as reasonably feasible. Additional compensation or extension of time claimed by the Contractor on account of an emergency may be considered by the City.

(g) Safety and Health Certificate of Compliance. A certificate of compliance shall be submitted with each offer certifying that, if awarded the contract, the offeror will comply with Section 396-18, HRS, relating to safety and health programs for City construction projects, where the offer amount is in excess of $100,000. The certificate of compliance included as

Exhibit "O" hereinafter shall be submitted with the offer. Failure to submit the required certification may be grounds for disqualification of the offer.

5.2.13 Protection of Pedestrians and Vehicular Traffic; Access to Property.

(a) Unless otherwise advised in writing by the City, the requirements in this section shall be considered incidental to the Contractor's performance of the contract.

(b) Safe Passage and Access to Site. The Contractor shall employ such methods in the performance of the contract and provide such barriers, guards, temporary bridges, detours, notices, lights, warnings, and other safeguards as may be necessary to prevent injury to persons and property, and to provide safe access to property. The Contractor shall define the line of safe passage with suitable lights, wherever the public may have access to the site of the project, during the hours from one-half hour before sunset to one-half hour after sunrise. All passages and accesses shall be in conformance with the Americans with Disabilities Act and related regulations and guidelines. All traffic controls shall conform to the requirements of the Administrative Rules of Hawaii Governing the Use of Traffic Control Devices at Work Sites On or Adjacent to Public Streets and Highways adopted by the City Director of Transportation Services, Manual of Uniform Traffic Control Devices, U.S. Department of Transportation, Federal Highway Administration, and the current Traffic Code of the City.

(c) Traffic Bridges. The Contractor shall provide proper traffic bridges where necessary so that all streets, roads, lanes, alleys, driveways, and garages will be accessible to traffic at all times. These bridges shall be constructed so that their decks are flush with the pavement, and maintained free from projecting nails, splinters, or rough edges. In lieu of the traffic bridges, the Contractor may use suitable steel plates. The bridges or steel plates shall be able to support all legal highway loads permitted by law and shall have a non-skid surface. Any steel plate edges shall be in conformance with accessibility requirements pursuant to the Americans with Disabilities Act and related regulations and guidelines.

(d) Public and Private Right-of-Way. The Contractor shall provide safe access to property abutting the site of the project when the usual means of access are obstructed by the performance of the contract. The Contractor shall provide free access to water meters, water valves, and abutting public and private property. No material or obstruction of any sort shall be placed within twenty-five feet of any fire hydrant. Fire hydrants must be readily accessible to the fire department at all times. Special attention is called to private and public rights-of-way. Driveways shall be kept open unless the owners of the property using these rights-of-way are otherwise provided for satisfactorily. During the construction of driveways and driveway ramps, satisfactory access shall be provided by the Contractor for each driveway and driveway ramp. The accesses provided by Contractor shall conform with any and all accessibility requirements pursuant to the Americans with Disabilities Act and related regulations and guidelines.

5.2.14 Discovery of Hazardous Materials.

(a) Responsibility. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the contract.

(b) Prompt Health and Safety Action in the Affected Area is Required. In the event the Contractor encounters on the site material, substances and/or waste reasonably believed to be hazardous to human health or the environment, which have not been rendered harmless, the Contractor shall immediately take appropriate action in the area affected and report the condition to the Officer-in-Charge in writing. The work in the affected area and response to the discovery of hazardous materials, substances, and/or waste shall include all actions required by law and actions according to the Contractor's health and safety plan. The work in the affected area shall be resumed in the absence of any hazardous materials, substances, and/or waste or when it has been rendered harmless.

(c) Notice. The Contractor shall give any notices required by law and/or bearing on safety of persons or property or their protection from damage, injury or loss and any other required notices or reports and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities.

(d) Safeguards, Signs. The Contractor shall erect and maintain, as required by existing conditions and performance of the contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent site and utilities.

5.2.15 Environmental Pollution and Hazardous Materials, Substances, and/or Waste Control.

(a) Environmental pollution prevention and hazardous materials, substances, and/or waste control shall consist of the protection of human health and the environment from pollution or the release of contaminants during and as a result of construction operations under the contract. The control of environmental pollution and hazardous materials, substances, and/or waste requires the consideration of air, water and land from pollutants, including but not limited to, solid and hazardous waste management, noise, dust, as well as other pollutants. It is the responsibility of the Contractor to investigate and comply with all applicable laws, including but not limited to those relating to control, remediation, and abatement. Unless otherwise advised in writing by the City, the requirements in this section shall be considered incidental to and part of the Contractor's performance of the contract.

(b) Explosives, Hazardous Materials. When use or storage of explosives or hazardous materials or equipment or unusual methods are necessary to perform work, the Contractor shall, prior to such usage, notify the Officer-in-Charge in writing of the nature of the explosive, hazardous material or equipment, its intended use, its intended duration of use on the premises and method of maintenance on the premises. The Contractor shall exercise utmost care in maintaining and using the explosive or hazardous material and carry on such activities under supervision of properly qualified personnel.

(c) Protection of Land Resources. Land resources within the project area and areas adjacent to and/or impacted by work performed under the contract shall be preserved in their present condition or be restored to a natural condition that will not detract from the appearance of the surrounding area. Except in areas marked on the drawings to be cleared, the Contractor shall maintain and water trees in the construction area. Except in areas marked on the drawings to be cleared, the Contractor shall not deface, injure or destroy trees or shrubs nor remove or cut them without approval. Any tree or other landscape features scarred or damaged by the Contractor's equipment or operations shall be restored as nearly as possible to its original condition at the Contractor's expense.

(d) Water Pollution. The Contractor shall comply with the provisions of Chapter 54, Water Quality Standards and Chapter 55, Water Pollution Control, of Title 11, Administrative Rules of the State Department of Health during all phases of work. The Contractor shall not pollute state waters or other water resources, including but not limited to, streams and drainage systems with any pollutant, including but not limited to, fuel, oils, bituminous materials, calcium chloride, acids, construction wastes, wash waters, or other harmful materials. Surface drainage from cuts and fills, whether or not completed, and from borrow and waste disposal areas shall, if turbidity producing materials are present, be held in suitable sedimentation ponds or shall be graded to control erosion to meet legally acceptable limits. Objectionable construction discharges shall be processed, filtered, ponded or otherwise treated prior to discharge into a waterway or drainage system to ensure compliance with the Clean Water Act and applicable permits. Such oversight shall not relieve the Contractor from obtaining permits and meeting any requirements under applicable statutes, ordinances, rules, regulations or guidelines.

(e) Protection of Fish and Wildlife. The Contractor shall at all times perform all work in such a manner as to prevent any interference or disturbance to fish and wildlife as required by law.

(f) Dust Control. The Contractor shall maintain all excavation, embankment, stockpiling and all other work within or adjoining the project site shall be performed such that it will be free from dust or the release of particulate matter that would cause a hazard or nuisance or could harm human health or the environment. Sprinkling of water, chemical treatment, bituminous treatment, or similar methods of dust control will only be permitted upon acceptance by the Officer-in-Charge. Sprinkling must be repeated at such intervals as to keep all pavements and disturbed areas at least damp enough to prevent dust nuisance at all times, and the Contractor shall have sufficient sprinkling equipment on the job. Wet cutting shall be required for cement masonry blocks, concrete and asphaltic concrete pavements unless attachments are used with dry cutting equipment to capture the dust created thereby. All grinding work shall be wet. No dry powder brooming will be permitted in unconfined areas--vacuuming, wet mopping, wet sweeping, or wet power brooming may be used upon acceptance by the Officer-in-Charge.

(g) Damages and Loss. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the contract) to property caused in whole or in part by the Contractor, a subcontractor at any tier, or anyone directly or indirectly employed by the Contractor or any subcontractor or by anyone for whose acts the

Contractor or subcontractor may be liable and for which the Contractor is responsible under this section, except damage or loss attributable to acts or omissions of the City and the damage or lost is not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to any other obligations of the Contractor under the contract.

(h) The Officer-in-Charge will notify the Contractor of any non-compliance with the foregoing provisions and the action to be taken. If the Contractor fails or refuses to comply promptly, the Officer-in-Charge, with the approval of the Contracting Officer, may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No extension of time or payment for excess costs or damages shall be made for the time lost due to such stop action. The cost of environmental pollution control shall not be paid for directly, but shall be considered incidental and included in the proposal prices for the various items of work.

(i) Asbestos Prohibition. No Asbestos-containing materials or equipment shall be used for this project. The Contractor shall ensure that all materials and equipment incorporated in the project are asbestos-free and shall submit a written certification confirming this.

5.2.16 Noise Control.

(a) The Contractor shall comply with the provisions of Title 11 Chapter 46, Community Noise Control, of the State Department of Health, Administrative Rules. When required, the Contractor shall obtain a community noise permit.

(b) Construction activities shall not create "excessive noise" when measured as required by the State.

(c) Construction activities which emit noise in excess of State limits shall be restricted.

(d) The costs and work covered by this section shall not be paid for directly, but shall be considered incidental and included in the proposal prices for the various items of work.

5.2.17 Rubbish Disposal.

All unusable debris and waste materials shall be hauled away to an appropriate off-site dump area. However, with prior approval of the State Department of Health, burning may be permitted. It shall be the responsibility of the Contractor to obtain prior written approval from the State Department of Health.

5.2.18 Restoration and Precautions.

(a) The Contractor shall protect property adjacent to the site of the project from damage and shall immediately restore property damaged by the Contractor to the condition it was in prior to the damage. Unless otherwise advised in writing by the City, the requirements in this section shall be considered incidental to the Contractor's performance of the contract.

(b) Buildings and other structures. If the site of the project passes close to or under buildings and other structures, the Contractor shall protect all such buildings and structures by suitable means from any and all damages.

(c) Dewatering.

(1) The Contractor shall be responsible for the water and its control and disposal during the construction of all work covered by the contract. Dewatering shall be accomplished by suitable means. The Contractor shall repair any and all damages to property including buildings, retaining walls, etc., resulting from such dewatering operation to the satisfaction of the owners of such property. Dewatering shall be prohibited in areas subject to substantial damages to adjacent buildings and properties resulting from settlement due to dewatering.

(2) All concrete pours shall be dewatered in accordance with applicable sections of the standard specifications.

(3) The Contractor shall construct and maintain all cofferdams, drains, sumps, temporary diversions and protective works; and shall furnish, install, maintain and operate all necessary pumping and other equipment for dewatering the various parts of the work, regardless of the source of water. The Contractor shall maintain a water-free foundation to properly perform the items of work. The Contractor shall maintain the work free from water for at least six hours following the placement of each unit of concrete, concrete unit masonry or concrete rubble masonry. All temporary protective works shall be removed in a manner satisfactory to the Officer-in-Charge.

(4) The contractor shall comply with all applicable water pollution or environmental protection requirements in connection with dewatering.

(d) Pavement, Curb and Gutter. The Contractor shall replace, restore and repair pavements, gutters, and curbings damaged or removed by the Contractor.

(e) Fences. The Contractor shall replace fences removed by the Contractor. Precautions shall be taken to prevent livestock from escaping when fences enclosing them are removed.

(f) Grass. When lawns are disturbed by trenching, the area over the trench shall be carefully graded and replanted with similar grass spaced over the trench substantially similar to the condition it was in prior to the excavation.

(g) Trees and Shrubbery. Trees and shrubbery which must be disturbed shall be transplanted under the direction of the owner or lessee of the property to some other site and, upon completion of the backfill, shall be replanted on the original site, to the satisfaction of the said owner or lessee.

(h) Property Marks. The Contractor shall reference and replace marks, stakes, pipes, monuments of the property line, and similar objects which may be disturbed by the Contractor while performing the contract. Any such replacements shall be certified by a surveyor licensed by the State of Hawaii.

(i) Sidewalks, Patios, Driveways and Other like Concrete Construction. When trenches are to be made across concrete sidewalks, patios, driveways, and other like concrete construction, the Contractor shall make neat cuts in the concrete with pavement saws, or other

means acceptable to the Officer-in-Charge, and shall thoroughly compact the backfill and reconstruct such construction with concrete similar to the existing construction.

(j) Topsoil. Where private land under cultivation is disturbed, the Contractor shall place the upper twelve inches of topsoil to one side, which shall not be mixed with the general excavated material. After backfill has been made to within twelve inches of the surface, the topsoil shall be replaced.

(k) Excavated Material. Unless other specified, all excavated material shall become the property of the Contractor and shall be hauled from the jobsite to a disposal site acceptable to the Officer-in-Charge. Hauling of wet, dripping material over public streets is not permitted.

(l) Walls, Rock, and Masonry. The Contractor shall replace rock and masonry walls removed by the Contractor.

(m) After the construction, the Contractor shall restore the premises used for its operations to its original condition.

(n) The cost of the work under this section shall not be paid for directly, but shall be considered incidental and included in the proposal prices for the various times of work.

5.2.19 Historical and Archaeological Finds.

All items having any apparent historical or archaeological interest discovered in the course of construction activities shall be preserved. The Contractor shall leave the archaeological find undisturbed and immediately report the find to the Officer-in-Charge so that the proper authorities may be notified.

5.2.20 Surface and Subsurface Conditions.

(a) City representations. Where investigation of subsurface conditions has been made by the City in respect to foundation or other design, the Contractor may inspect the records of the City as to such investigation and examine any sample that may be available. Where such information is shown in the plans, said information represents only the statement by the City as to the character of material which has been actually encountered by the City in its investigation and is included only for the convenience of Contractor and other offerors.

(b) Any subsurface information or hydrographic survey data furnished are for the Contractor and other offerors' convenience only. The information and data furnished are the product of the Officer-in-Charge's interpretation of the facts gathered in investigations made at the specific locations indicated to aid in the design of the project, and the City assumes no responsibility whatever in respect to the sufficiency or accuracy of borings or of the log of test borings or other preliminary investigations, or of the interpretation thereof, and there is no guaranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work. In addition, no assurance is given that conditions found at the time of the subsurface explorations, such as the presence or absence of water, will be the conditions

that prevail at the time of construction. The Contractor shall be solely responsible for all assumptions, deductions, or conclusions the Contractor may make or derive from the subsurface information or data furnished.

(c) Making information concerning subsurface conditions available to Contractor and other offerors is not to be construed in any way as a waiver of the Contractor's responsibility to examine the SOLICITATION DOCUMENT and the site. Contractor must satisfy itself through its own investigation as to conditions to be encountered.

(d) The Contractor is alerted to its encountering obstacles whether shown on the plans or not, or which may differ in location from that shown or the plans which may interfere with the Contractor's normal method of operations. The Contractor shall take into account any additional costs anticipated due to these conditions and shall have these costs included in its offer pricing, as appropriate. No separate additional compensation shall be made.

5.2.21 Utilities, Underground.

(a) The Contractor shall be responsible for the protection of existing surface and subsurface utilities and facilities within and abutting the project site that the Contractor encounters during the progress of the work, such as telephone system, electric system, water system, sewer system, drainage system, gas system, cable system, and irrigation system, etc., whether or not shown on the plans. Such utilities and facilities shall not be disturbed or damaged unless otherwise instructed in the plans and specifications. The Contractor shall notify the Officer-in-Charge of the affected utility and/or facility immediately of any damage or disturbance to the utility and/or facility.

(b) The existing surface and subsurface utilities and facilities shown on the plans are approximate in their locations. Unless otherwise specified, the Contractor shall be fully responsible for any and all damages, injuries, death and expenses to property and persons from accidents to and from existing utilities and facilities.

The Contractor shall immediately notify the Officer-in-Charge of any disturbance or damage to any utility. The Contractor shall repair, restore or reconstruct at its cost any damage to the disturbed utilities and facilities to the pre-existing condition. Any damage claims due to the disruption of service caused by the utilities being damaged shall be paid by the Contractor, who shall save harmless the City from all suits, actions or claims of any character brought on account of such action.

(c) Damage to Sewer Facility. The Contractor shall notify the Officer-in-Charge and the Department of Environmental Services Collection System Maintenance Division immediately whenever a sewer facility is damaged. All costs incurred by the City caused by Contractor-related damages, such as sewer backups, spills, overflows, shall be billed to and paid by the Contractor. Any subsequent fines, imposed upon the City by the Environmental Protection Agency (EPA) and/or State Department of Health will be billed to and paid by the Contractor.

5.2.22 Materials and Equipment. The City does not assume any responsibility for the availability of any materials or equipment required under this contract. Unless otherwise advised in writing by the City, the offeror shall be considered as having taken into account when submitting a proposal the availability of materials or equipment required under the contract.

5.2.23 Maintenance of Site and Final Cleanup.

(a) The requirements in this section shall be considered incidental to the Contractor's performance of the contract.

(b) Maintenance of Site. The Contractor shall maintain the site of the project in an orderly and clean condition, and shall at suitable intervals and upon completion of each phase of the project, remove accumulations of rubbish or refuse materials, surplus concrete, mortar and excavated materials not required or suitable for backfill. Washings from concrete mixers or mixing boxes shall not be deposited in the drainage or sewer system of the City or on paved streets. The Contractor shall keep the project and surrounding area neat and free of dirt and dust by periodic blading, power brooming, watering or other approved means.

(c) Surplus Excavated Material. All surplus excavated materials from the project shall become the property of the Contractor unless otherwise specified. Excess material, debris, adobe and unacceptable material shall be hauled away. The cost of the work under this section shall be considered incidental and included in the proposal prices for the various items of work.

(d) Removal. Upon completion and before final acceptance by the Officer-in-Charge of the work performed under the contract, the Contractor shall remove rubbish, surplus or discarded materials, falsework, forms, temporary structures, field offices, project signs, signs not a part of the project, and Contractor's equipment and machinery, and shall leave the site and ground occupied by the Contractor in connection with the performance of the contract in an orderly and clean condition. Buildings constructed, altered, or worked in by the Contractor in the performance of the contract shall be left "broom clean," and stains and other blemishes resulting from the Contractor's operations, such as dropped or splattered concrete or mortar and paint, shall be removed from floors, walls, ceilings, windows, and all other exposed surfaces.

5.2.24 Partial Acceptance of Project.

The Officer-in-Charge may accept and place parts of the project in service as completed and the Contractor shall give proper access to such portions for this purpose.

Use by the public without permission of the Officer-in-Charge shall not in any way be construed as an acceptance of the work under the contract and shall not in any way relieve the Contractor from the Contractor's obligation under the contract.

5.2.25 Responsibility of the Contractor Prior to Acceptance.

(a) The Contractor shall repair, reconstruct, restore, and replace the work or any part thereof which is injured, damaged or vandalized prior to acceptance of the work by the Officer-

in-Charge, by any cause whatsoever, except damage to the work due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to, acts of God, such as earthquakes, tsunamis, lava flows, and acts of the public enemy or governmental authorities.

(b) Occupancy Prior to Acceptance. The City may occupy or use any completed or partially completed portion of the work at any stage prior to acceptance when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the Contractor's insurer. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, air conditioning, utilities, damage to the project and insurance, and have agreed in writing concerning the period for correction of work and commencement of the guarantee required by the contract. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.

(c) Inspection. Immediately prior to such partial occupancy or use, the Officer-in-Charge and Contractor shall jointly inspect the area to be occupied or used in order to determine and record the condition of the area.

(d) No Acceptance of Non-Complying Work. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the project shall not constitute acceptance of work not complying with the requirements of the contract.

5.2.26 Final Inspection.

(a) Before notifying the Officer-in-Charge that the project is substantially complete including compliance with maintenance of site and final cleanup requirements, the Contractor shall inspect the project and test all equipment with all of its subcontractors. The Contractor shall also proceed to obtain the documents required under the Contract such as but not limited to:

(1) All written guarantees;
(2) All "as-built" drawings;
(3) All certified payroll affidavits if not submitted earlier;
(4) Certificate of plumbing and electrical inspection;
(5) Certificate of building occupancy;
(6) Certificate of soil and wood treatments;
(7) Certificate of water system chlorination;
(8) Maintenance service contract;
(9) Two (2) copies of a list of all equipment installed; or
(10) All operating and maintenance manuals for equipment installed.
(11) Operating permits for any boilers, elevators, or escalators.

(b) Prior to requesting a final inspection to determine substantial completion, Contractor shall also complete the following items:

(1) Arrange to deliver tools, spare parts, extra materials, and similar items to a location designated by the Contracting Officer. Label with manufacturer's name and model number, where applicable.
(2) Complete startup testing of systems.
(3) Submit test, adjust and balance records.
(4) Terminate and remove temporary facilities from Project site, along with mockups, construction tools, and similar elements.
(5) Advise the Contracting Officer of changeover in other utilities.
(6) Complete final cleaning requirements.

(c) "Substantially complete" means:
(1) All utilities are connected and in working condition;
(2) All air conditioning and other major equipment are in acceptable working condition;
(3) The building, structure, improvement, or site can be used for its intended purpose; and
(4) The completed work conforms to the specifications of the Contract.

(d) After finding everything in order, the Contractor shall notify the Officer-in-Charge in writing that the project is substantially complete and ready for inspection.

(e) The Officer-in-Charge shall then make a determination as to whether or not the project is ready for inspection. If the Officer-in-Charge is not satisfied, the Contractor will be notified in writing of the items that require completion prior to inspection. After the Contractor complies with the Officer-in-Charge's instructions, the Contractor will again submit, in writing, a request for inspection.

(f) When the Officer-in-Charge determines that the project is substantially complete, a pre-final inspection will be conducted by the Officer-in-Charge along with representatives of other City agencies interested in the project, within seven days of receipt of the request from the Contractor.

(g) If the pre-final inspection discloses only minor discrepancies, the Officer-in-Charge shall accept the project as substantially complete and issue in writing, a list of the discrepancies that need to be corrected including all documents required by the Contract, hereinafter referred to as the "punch list," and the time in which the Contractor must complete the punch list. The date of acceptance of the project as substantially complete shall signify the end of the contract completion time.

(h) The Contractor shall, within seven days after receipt of the punch list, proceed to complete the items on the punch list. Upon completion, the Contractor shall submit a written request for a final inspection, after which, if the Officer-in-Charge finds that all discrepancies are satisfactorily corrected, the Officer-in-Charge will accept the project as completed, hereinafter referred to as "final acceptance."

(i) Noncompliance. If the Contractor fails to proceed or complete the punch list within the specified times, the Officer-in-Charge may proceed to have such work performed at the Contractor's expense, and the Contractor's sureties will be liable therefore. The City shall be entitled to reasonable attorneys' fees, consultants' fees and costs necessarily incurred by the Contractor's refusal to complete the contract and to pay such costs of corrective work.

(j) Upon final acceptance, the Contractor shall be relieved of its responsibility in maintaining and protecting the work and site and for injury to persons or property.

(k) Prior to release of final payment, the Contractor shall submit, within thirty days after final acceptance, or within such time as the Officer-in-Charge may allow, all remaining documents required by the Contract.

5.2.27 Guarantee.

(a) This guarantee shall be deemed supplemental to guarantee provisions provided in other sections of the specifications for the individual units and systems of units so specified.

(b) Performance. The Contractor guarantees its performance and the performance of its subcontractors under the contract.

(c) Materials and Equipment. The Contractor also guarantees all materials and equipment furnished or installed under the contract against defects and poor workmanship and to be in operable condition upon final acceptance of the work or portions of the work, and that all such materials and equipment conform to the requirements of this contract and be fit for the use intended.

(d) Design. When the Contractor is providing design services under the contract, the Contractor guarantees that the design meets the criteria and operating requirements specified and against failure to perform in accordance with such criteria and operating requirements.

(e) Guarantee Period. Unless otherwise specifically stated in the SOLICITATION DOCUMENT that a longer period is intended, the guarantee shall extend for a period of one year upon final acceptance of the work by the Officer-in-Charge and shall include all labor, materials, equipment and parts. The Officer-in-Charge may also determine the guarantee period to commence upon acceptance of the material or equipment installed, or work performed. Furthermore, this period shall be extended from the time of correction of any defect or failure, corrected under the terms of this guarantee, for a like period of one year. The Contractor shall provide a new certificate of guarantee for the extended one-year period. Establishment of the time period of one year as described, relates only to the specific obligation of the Contractor to correct work, and has no relationship to the time within which the obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct work.

(f) Correction. The Contractor shall correct all defects or failures discovered within the guarantee period. The City will give the Contractor prompt written notice of such defects or failures following their discovery. The Contractor shall commence corrective work within seven days following notification and shall diligently prosecute such work to completion. The Contractor shall bear all costs of corrective work, which shall include necessary disassembly, transportation, reassembly and retesting, as well as repair or replacement of the defective materials or equipment and any necessary disassembly and reassembly of adjacent work.

(g) Noncompliance. If the Contractor fails to perform corrective work in the manner and within the time stated, the City may proceed to have such work performed at the Contractor's expense, and the Contractor's sureties will be liable therefore. The City shall be entitled to reasonable attorneys' fees, consultants' fees and costs necessarily incurred by the Contractor's refusal to complete the contract and to pay such costs of corrective work.

(h) Performance Bond. Unless otherwise specifically stated in the SOLICITATION DOCUMENT that a longer period is intended, the performance bond shall be in full force and effect for the duration of the contract and for a period of one year after final acceptance of the contract by the Officer-in-Charge.

(i) Rights and Remedies. The rights and remedies of the City under this provision do not preclude the exercise of any other rights or remedies provided by this contract or by law with respect to unsatisfactory work performed by the Contractor.

5.2.28 As-Built Drawings.

The Contractor shall maintain at the job site two (2) sets of full size contract drawings, marking them in red to show all variations between the construction actually provided and that indicated or specified in the contract documents, including buried or concealed herein, or where variations in scope or character of work from that of the original contract are authorized, the drawings shall be marked to define the construction actually provided. Where equipment installation is involved, the size, manufacturer’s name, model number and power input or output characteristics, as applicable, shall be shown on the as-built drawings. The representations of such changes shall conform to standards and details as necessary to clearly portray the as-built construction.

The drawings shall be maintained and updated on a daily basis. Monthly and final payments to the Contractor shall be subject to prior approval of the updated drawings, including approved Change Order changes to design, where design services are being furnished by the Contractor.

On completion of the work, both sets of marked-up drawings shall be delivered to the Officer-in-Charge and shall be subject to the Officer-in-Charge’s approval before acceptance.

5.2.29 Employment of State Residents on Construction Procurement Contracts.

(a) The definitions for terms used in HRS Chapter 103B, as amended by Act 192,

SLH 2011, and as used in this section are as follows:

(1) "Contract" means contracts for construction under 103D, HRS.
(2)"Contractor" has the same meaning as in Section 103D-104, HRS, provided that "contractor" includes a subcontractor where applicable.
(3) "Construction" has the same meaning as in Section 103D-104, HRS.
(4) "General Contractor" means any person having a construction contract with a governmental body.
(5) "Procurement Officer" has the same meaning as in Section 103D-104, HRS.
(6) "Resident" means a person who is physically present in the State of Hawaii at the time the person claims to have established the person's domicile in the State of Hawaii and shows the person's intent is to make Hawaii the person's primary residence.
(7) "Shortage trade" means a construction trade in which there is a shortage of Hawaii residents qualified to work in the trade as determined by the Department of Labor and Industrial Relations.

(b) The Contractor's requirements relating to the employment of State residents are as follows:

(1) A contractor awarded a contract shall ensure that Hawaii residents comprise not less than 80% of the workforce employed to perform the contract work on the project. The 80% requirement shall be determined by dividing the total number of hours worked on the contract by Hawaii residents, by the total number of hours worked on the contract by all employees of the contractor in the performance of the contract. The hours worked by any subcontractor of the contractor shall count towards the calculation for this section. The hours worked by employees within shortage trades, as determined by the Department of Labor and Industrial Relations (DLIR), shall not be included in the calculation for this section.

(2) Prior to award of a contract, an Offeror/Bidder may withdraw an offer/bid without penalty if the Offeror/Bidder finds that it is unable to comply with HRS Chapter 103B as amended by Act 192, SLH 2011.

(3) Prior to starting any construction work, the Contractor shall submit the subcontract dollar amount for each of its Subcontractors.

(4) The requirements of this section shall apply to any subcontract of $50,000 or more in connection with the Contractor; that is, such Subcontractors must also ensure that Hawaii residents comprise not less than 80% of the Subcontractor's workforce used to perform the subcontract.

(5) Certification of compliance shall be made in writing under oath by an officer of the General Contractor and applicable Subcontractors and submitted with the final payment request. The certification of compliance shall be made under oath by an officer of the company by completing a "Certification of Compliance for Employment of State Residents" form and executing the Certificate before a licensed notary public.

(6) In addition to the certification of compliance as indicated above, the Contractor and Subcontractors shall maintain records such as certified payrolls for laborers and mechanics who performed work at the site and time sheets for all other employees who performed work on the project. These records shall include the names, addresses and number of hours worked on the project by all employees of the Contractor and Subcontractor who performed work on the project to validate compliance with HRS Chapter 103B as amended by Act 192, SLH 2011. The Contractor and Subcontractors shall retain these records and provide access to the State for a minimum period of four (4) years after the final payment, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the four-year period, the Contractor and Subcontractors shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the four-year period, whichever occurs later. Furthermore, it shall be the Contractor's responsibility to enforce compliance with this provision by any Subcontractor.

(7) A general contractor or applicable subcontractor who fails to comply with this section shall be subject to any of the following sanctions:

(A) With respect to the general contractor, withholding of payment on the contract until the contractor or its subcontractor complies with HRS Chapter 103B as amended by Act 192, SLH 2011.

(B) Proceedings for debarment or suspension of the Contractor or Subcontractor under Hawaii Revised Statutes §103D-702.

(c) Conflict with Federal Law: This section shall not apply if the application of this section is in conflict with any federal law, or if the application of this section will disqualify the City from receiving Federal funds or aid.

5.2.30 Apprenticeship Program Preference Contract Administration.

(a) For the duration of a construction contract awarded utilizing the apprenticeship preference, the contractor shall certify each month that work is being conducted on the project and that it continues to be a participant in the relevant apprenticeship program for each trade it employs.

(b) Monthly certification shall be made on Monthly Certification Form 2 prepared and made available by the Hawaii State Department of Labor, be a signed original by the respective apprenticeship program sponsor’s authorized official, and submitted by the contractor with its monthly payment requests.

(c) Should the contractor refuse to submit its monthly certification forms of, at any time during the construction of the project, cease to be a party to a registered apprenticeship agreement for each apprenticeable trades the contractor employs, or will employ, the contractor will be subject to the following sanctions:

(1) Withholding of the requested payment until the required form(s) are submitted;

(2) Temporary or permanent cessation of work on the project, without recourse to breach of contract claims by the contractor, provided the agency shall be entitled to restitution for nonperformance or liquidated damages claims; or
(3) Proceed to debar or suspend pursuant to HRS 103D-702.

(d) If events such as "acts of God," acts of a public enemy, acts of the State or any other government body in its sovereign or contractual capacity, fires, floods, epidemics, freight embargoes, unusually severe weather, strikes or other labor disputes prevent the contractor from submitting the certification forms, the contractor shall not be penalized as provided herein, provided the contractor completely and expeditiously complies with the certification process when the event is over. [HRS 103-55.6]

5.2.31 Plans and Specifications Copies.

Unless otherwise provided in the contract, for CD-ROM or electronically downloaded solicitations, the City will provide three (3) sets of plans and specifications to the Contractor awarded the project. Any additional sets required shall be provided by the Contractor at its own expense.

5.3 Modifications; Change Orders; Price Adjustment.

5.3.1 Requirement for Change Order or Written Order.

In the absence of a change order or written order, the Contractor will not be entitled to payment for any such extra work. [HAR 3-125-4(1)]

5.3.2 Preparation of Cost and Price Estimates.

(a) The Contractor's cost of responding to requests for price or time adjustments is included in the contract price. No additional compensation will be allowed unless authorized by the Contracting Officer.

(b) On any price adjustment, Contractor shall submit detailed cost breakdowns in the format attached herein as Exhibit "F," for material, equipment and labor, including additional or reduction in time, for the Officer-in-Charge's approval, within three working days or within such further time as the Officer-in-Charge may allow, from the time the Contractor is informed of the work to be performed or of any changes. The substantiation shall include the Contractor's and subcontractor's cost breakdown to a level of detail acceptable to the Officer-in-Charge.

Should the Contractor delay or refuse to submit detailed cost breakdown for the changed work, this may be deemed a breach of contract.

5.3.3 Supplemental Plans and Specifications.

The Officer-in-Charge may furnish by written order such supplemental plans and specifications, during the performance of the Contract, as may be necessary to clarify the Contract or define it in greater detail, and the Contractor shall comply with such supplemental plans and specifications. Such supplemental plans and specifications shall become a part of the Contract upon execution of a no-cost change order or otherwise.

5.3.4 Omission, Errors or Discrepancies in Contract.

(a) Omissions. Work incidental to the Contract, although not specifically referred to in the Contract, shall be furnished and performed by the Contractor without change in the contract price. Labor, materials and equipment directly or indirectly necessary to complete the construction of the project, whether or not the same may have been expressly provided for in the Contract, shall be furnished and performed by the Contractor without change in the contract price.

(b) Errors or Discrepancies. The Contractor shall notify the Officer-in-Charge in writing immediately upon discovery of any error, omission or discrepancy:

(1) In points or instructions furnished by the Officer-in-Charge; or

(2) Within the contract or any part thereof.

(c) After discovery of an error, omission, or discrepancy, the Contractor shall provide written notice of same in the manner and time prescribed above to the Officer-in-Charge. The Contractor shall proceed with the performance of the contract only after receiving written approval or instructions from the Officer-in-Charge.

5.3.5 Delay; Time Extensions; Unforeseeable Delays; Suspension.

(a) Permits. For delays in obtaining the necessary building and/or grading permits which are extraordinary and beyond the control of the Contractor and will result in a delay of the commencement of work, the Contractor may be granted an extension of time for the performance of the contract corresponding to the delay, provided the Contractor notifies the Officer-in-Charge immediately upon first encountering the delay. The Contractor shall keep the Officer-in-Charge informed as to the estimated length of the requested delay.

(b) Increases in Scope of Work. For increases in the scope of work caused by alterations and additional work under this Agreement, the Contractor will be granted an extension of time only if the changes are on the critical path and affect the final completion date of the Contract. If the Contractor feels that an extension of time is justified, the Contractor must request it in writing when submitting the detailed cost breakdown for the change order. The Contractor must show how the final completion date will be affected based on the progress of the project and must also support the claim with schedules and statements from its subcontractors, suppliers, and/or manufacturers as to the extent of the delay.

(c) Delivery of Materials and Equipment.

(1) For delays in delivery of materials and equipment which occur as a result of unforeseeable causes beyond the control and without fault or negligence of either the Contractor, subcontractors or suppliers, the Contractor may be granted an extension of time provided that the Contractor complies with the procedures herein. No extension of time will be considered unless the material and equipment were ordered at the earliest possible date.

(2) No extension of time shall be granted for a delay caused by a shortage of materials unless the Contractor, within ten days from the beginning of the delay (unless the Officer-in-Charge grants a further period of time before the date of final payment under the contract), notifies the Officer-in-Charge in writing of the delay and submits proof that the Contractor has diligently made every effort to obtain the materials from all known sources, and further proof that the inability to obtain the materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the Contractor's operations. [HAR 3-125-18]

(3) The extent of delay must be substantiated by submission of evidence and supported by specific reasons for the delay to the satisfaction of the Officer-in-Charge, which may include.

(A) State specifically the reason or reasons for delay. Also, explain as necessary, the effect of this delay to the other trades and to the specified completion date of the project.

(B) List the pertinent chronological events and their dates, for the project such as, but not limited to, the following:

(i) Notice to proceed
(ii) Sample or shop drawing submittal
(iii) Sample or shop drawing return
(iv) Purchase order
(v) Factory shipment
(vi) Arrival of ship
(vii) Delivery to job site
(viii) Material installation
(ix) Specified completion of project
(x) Actual completion of project
(xi) Pertinent correspondence, telegrams, meetings and telephone conversations.

(C) Submit copies of purchase order, factory invoice, bill of lading, shipping manifest, delivery tag and any other pertinent correspondence as evidence to support the delay.

(D) Cite the period of delay and the number of days requested therefore. The period of delay shall not exceed the difference between the originally scheduled delivery date at the job site versus the actual delivery date.

(d) Other Unforeseeable Delays. If any delay in the completion of the work arises from causes such as acts of God, acts of the public enemy, acts of the City and any other governmental entity in either a sovereign or contractual capacity, acts of another contractor (but not the Contractor's subcontractor) in the performance of a contract with the City, fires, floods,

epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, unusually severe weather, or delays of subcontractors due to causes similar to those set forth above, then the Contractor shall be granted an extension of time provided that:

(1) The Contractor shall notify the Officer-in-Charge in writing, within ten days from the commencement of the delay (unless the Officer-in-Charge grants a further period of time before the date of final payment under the Contract), of the causes of the delay and, if possible, the possible effects such circumstances may have on the completion date of the Contract. Upon becoming aware of the extent of any such delay, the Contractor shall immediately inform the Officer-in-Charge in writing, stating specifically the reason or reasons for the delay and submit evidence to support its reasons. [HAR 3-125-18]

(2) The extent of any delay must be substantiated as follows:

(A) State specifically the reason or reasons for the delay. Also, explain as necessary, the effect of this delay to other trades and to the specified completion date of the project.

(B) List the pertinent chronological events for the project and their dates, such as, but not limited to, the following:

(i) Notice to proceed
(ii) Sample or shop drawing submittal
(iii) Sample or shop drawing return
(iv) Purchase order
(v) Delivery to job site
(vi) Material installation
(vii) Specified completion of project
(viii) Actual completion of project
(ix) Pertinent correspondence, telegrams, meetings and telephone conversations.

(C) Submit copies of purchase orders, delivery tags, and any other pertinent correspondence as evidence to support claim.

(D) Cite the period of delay and the number of days requested therefore.

(E) A statement either that the above circumstances have been cleared and normal working conditions restored as of a certain day or that the above circumstances will continue to prevent completion of the project.

(e) Other Work. For subsections (b), (c), and (d), the Officer-in-Charge shall have the option of extending the contract time for only that portion of the work affected by the delay. If the Officer-in-Charge exercises this option, the Contractor shall defer work in the areas approved by the Officer-in-Charge and complete the remaining work within the time specified in the contract.

(f) While the Contractor may be allowed an extension in contract time, the Contractor shall not be entitled to overhead markup for a change that only involves an extension in contract time; the Contractor shall never be entitled to anticipated profit or actual profit for change orders only involving an extension in contract time.

(g) Additional Rights and Remedies. The rights and remedies of the City provided in the contract are in addition to any other rights and remedies provided by law. [HAR 3-125-18]

5.3.6 Variations in Estimated Quantities.

All quantities appearing in the SOLICITATION DOCUMENT are approximate, and those indicated in the SOLICITATION DOCUMENT are prepared for the comparison of proposals only. The City does not, expressly or by implication, warrant that the actual quantities will correspond therewith. The Contractor understands and has included in its proposed prices, the entire cost of the performance of the contract, and it is understood and agreed that there is included in each lump sum or unit priced item, the entire cost of any and all items incidental to the performance of the contract covered by such lump sum or unit priced item. By submittal of its proposal, the Contractor certifies that it has verified these quantities in a manner deemed necessary or expedient.

5.3.7 Value Engineering Incentive.

The Contractor may develop and submit value engineering change proposals for drawings, designs, specifications, or other requirements of the contract in accordance with HAR 3-132-1 et seq. If any proposal is accepted and approved, in whole or in part, by the Officer-in-Charge, the contract shall be modified and shall include an equitable adjustment of the contract price in accordance with this section.

This section shall not apply to any cost reduction proposal that is not identified as a value engineering change proposal by the contractor at the time of its submission to the Officer-in-Charge.

Exhibit “J” titled "Value Engineering Change Proposal" may be used to initiate a value engineering change proposal.

5.3.8 Brand Names, Models; Substitutions.

(a) Where the contract specifies one or more manufacturer's brand names or makes of materials, devices, equipment or system as indicating a quality, style, appearance, or performance, or method of construction, the contractor shall furnish one of the specified brands, makes, or method, or on an alternate brand, make, or method, which has expressly been found to be equal or better by the Officer-in-Charge. Alternate brands, makes, or methods may be accepted through the submittal of a written request for substitution to the Officer-in-Charge for review and approval. Electronic submittal of the written request may be made at the discretion of the Officer-in-Charge. An alternate brand, make, or method approved for one project is not to be considered as approved for any other project. Unless otherwise specified in the contract, the request for substitution shall comply with the provisions of this section.

(b) The written request to the Officer-in-Charge must be submitted for review and approval at the earliest date possible. The written request must be clearly marked SUBSTITUTION REQUEST on the envelope or transmittal and addressed to the Officer-in-

Charge. Five copies of the request must be submitted together with three sets of technical brochures which shall either be marked or be accompanied by three copies of a statement of variances. The statement of variances must list all features of the proposed substitution which differ from the contract documents, and must further certify that the substitute has no other variant features. The brochures must include sufficient evidence to enable the Officer-in-Charge to evaluate each feature listed as a variance.

(c) Should an unlisted variance be discovered after installation or delivery of the item, the Contractor shall immediately replace the item with the specified item at no cost to the City and without any extension to the contract completion time.

(d) The written substitution request shall be submitted in the following format:

SECTION	ITEM	SPECIFIED	SUBSTITUTE	VARIANCE

(For a sample request form refer to General Terms and Conditions Exhibit P.)

(e) If sufficient evidence to make a determination of acceptability of the proposed substitute does not accompany a request for substitution, the request shall be denied unless the Officer-in-Charge allows further evidence to be submitted to qualify the same model. Substitution requests not complying with the above requirements will be denied. Any offeror whose bid is based on a substitute item which has been approved by the Officer-in-Charge shall have included in its contract price, the additional cost required for all modifications in the contract and the cost of all additional diagrams and drawings required to accommodate the substitute item. The modifications referred to include the changes in design that may be required for such work as, but not limited to, architectural, structural, electrical and plumbing.

(f) Substitutions may not be made without the prior written approval of the Officer-in-Charge and only for the following reasons:

(1) The specified or prequalified item is delayed by a lengthy strike in the factory or other unforeseeable contingency beyond the control of the Contractor which would cause an abnormal delay in the project completion;
(2) All specified or prequalified items are found to be unusable or unavailable due to change or other circumstances;
(3) The Contractor is willing to provide a more recently developed or manufactured model or item of the same name manufacturer which the Officer-in-Charge determines to be equal or better than the one specified or prequalified; or for
(4) Any other reason which the Officer-in-Charge may determine to be acceptable in the best interest of the City.

(g) Any savings in cost will be credited to the City and any additional cost for the substituted items will be paid for by the Contractor.

(h) The Officer-in-Charge shall determine whether or not to consider any substitution request.

(i) Burden of Proof. The burden of proof as to the comparative quality and suitability of substitute equipment, materials, devices, systems, or methods of construction, shall be upon the Contractor. The Contractor shall furnish, at the Contractor's own expense, such information relating thereto as may be required by the Officer-in-Charge.

(j) Officer-in-Charge's Decision. Nothing herein shall be construed to mean that the Officer-in-Charge must accept or approve any substitution request submitted under this section. Contractors should not furnish substitute brands, makes, or methods without first obtaining approval from the Officer-in-Charge. The Officer-in-Charge reserves the right to reject any request that the Officer-in-Charge deems irregular or not in the best interest of the City. The Officer-in-Charge shall also have the right to terminate the process of evaluation of any request for substitution if continuation of the evaluation will result in a lengthy delay. The Officer-in-Charge shall judge as to what constitutes acceptability of the substitution with the cost factor to be considered. The Officer-in-Charge's approval of a substitute brand, make, or method shall not release the Contractor from the responsibility of ensuring that the substitute brand, make, or method will provide the same or superior result expected. A request for substitution shall not in any way constitute a justification for an extension of contract time.

5.4 Payment

5.4.1 Payment.

(a) The Contractor shall be paid the contract price as full compensation for the performance of work in accordance with the Contract Documents. If an error, omission or misstatement shall be discovered in the quantities or measurements stated in the Contract, the same shall not vitiate the contract, or release the Contractor or the surety or sureties from performing the Contract, or affect the price agreed to under the Contract, or excuse the Contractor from any of the obligations or liabilities under the Contract, or entitle the Contractor to damages or compensation, except as provided herein.

(b) Each application or request for payment shall be based upon the most recent schedule of payment submitted by the Contractor and accepted by the City in accordance with the terms of the Contract, the sum of which shall not exceed the total Contract amount. Each request shall be supported by data to substantiate its accuracy. The schedule of payment must be approved by the Officer-in-Charge, prior to any progress payments.

(c) Requests for payment must include the following documents before the City is obligated to make any payment under this Contract:

(1) A copy of the City-approved schedule of payment;
(2) A certificate by the Contractor of the percentage of completion of each position of the work as well as the materials that have been obtained by the Contractor and accepted by the Officer-in-Charge as of the end of the period covered by the request for payment; and
(3) An updated monthly critical path method (CPM) schedule for the Project that shows:

(A) Any Contractor claimed event of delay;
(B) The impact of the event of delay on the critical path of the Project; and
(C) The current revised critical path based upon the event of delay.

(d) Lump Sum Contracts.

(1) For lump sum contracts, the contract price shall be the result obtained by first reducing the amount designated as the total sum proposed in the award by the amount included therein for allowances and contingencies, and adding thereto or deducting therefrom any extra cost or any reduction in cost, respectively, to the City as a result of supplemental agreements in writing and written orders.

(2) Lump sum contract prices include all materials, equipment, labor and all other incidental work required for the complete construction and installation of the lump sum product, all in accordance with the contract. Payment will be made only for the item in place complete, regardless of the amount of material, equipment and labor necessary to complete the same in a proper and workmanlike manner and in accordance with the contract.

5.4.2 Allowance Items.

Requests for payment for allowance items shall be included in the monthly requests for progress payment upon submittal of paid invoices. Unless otherwise specified in the contract, the Contractor shall be reimbursed from the allowance items as follows:

(1) For utility allowance, no markup of any kind will be allowed.

(2) For special duty or off-duty police officers, the reimbursement shall also include the administrative fees charged by the Honolulu Police Department, plus a maximum of twenty percent inclusive of any other costs, such as but not limited to, workers' compensation, administrative costs, insurance fee, overhead/profit, bond fee, and applicable taxes.

5.4.3 Mobilization.

(a) Mobilization shall consist of preparation work and operations, including but not limited to, those necessary for the movement of personnel, equipment, supplies and incidentals to the project site; for the acquisition of all work materials; for the establishment of all offices; buildings, and other facilities, excluding field office and project site laboratories, necessary for work on the project; and for all other work and operations which must be performed, or costs incurred, prior to beginning work on the various items on the project site.

(b) Maximum allowed amount for mobilization. Where there is an item in the SOLICITATION DOCUMENT for mobilization, unless otherwise specified, the maximum offer allowed for this item is an amount not to exceed six percent of the total sum of all items within the group of items in which the mobilization item is included, excluding the price of the mobilization item. If the proposal submitted by the offeror indicates an amount in excess of the allowable maximum, the amount or amounts submitted by the offeror shall be reduced to the

allowable maximum, and the total sum offer shall be adjusted to reflect any such reduction. For the purpose of comparing offers and determining the contract price to be inserted in the contract awarded to the offeror, if any is so awarded, the sum of all items adjusted in accordance with the foregoing shall be used and the offeror's proposal shall be deemed to have been submitted for the amounts as reduced and adjusted in accordance herewith.

(c) Payment. Mobilization will be paid for on a lump sum basis. Partial payments will be made as follows:

(1) When five percent of the total sum offer is earned, fifty percent of the amount proposed for mobilization will be paid;
(2) When ten percent of the total sum offer is earned, seventy-five percent of the amount proposed for mobilization will be paid; and
(3) When twenty percent of the total sum offer is earned, one hundred percent of the amount proposed for mobilization will be paid.

Nothing herein shall be construed to limit or preclude partial payments otherwise provided for by the contract. The cost for demobilization shall be considered incidental to the mobilization and no further allowances will be made for such.

5.4.4 Payments During Performance of Work.

Monthly Estimate and Payment. The Officer-in-Charge shall, not later than the fifteenth day of each month during the performance of the contract, make an estimate of the amount of work completed in accordance with the contract during the immediately preceding month for the construction items listed in the performance schedule as provided by the Contractor and approved by the Officer-in-Charge under the commencement of work requirements of the contract. In arriving at an estimate of work completed during the month, the Officer-in-Charge shall deduct sufficient allowance for any incomplete or unprotected work or to provide for any contingencies for remedy of defects or damage to said work or for the necessity of performing any part of the work over again to cure defects or damage.

5.4.5 Retention.

Refer to Section 2.27.

5.4.6 Payment for Delivered Materials or Equipment.

(a) No payment for any material or equipment that is affixed, movable or removable, delivered to the site of the work under the contract will be made until said material or equipment is incorporated into the parts of the project required to be constructed under the contract. Payment for the delivered material or equipment shall be included in the monthly progress payment under the appropriate cost item. Each progress payment shall include the completed "Report of Equipment Purchased with Construction Contracts" (Form BFS-P-79), Exhibit "L." Whenever payment is requested for delivered equipment that is movable or removable, two copies of the list of such equipment must be attached to the report. The list shall include the equipment description, make, model, serial number, quantity, cost, an indication of whether or

not the equipment is movable or removable, and the specific location of the equipment such as the room number. The amount included for payment under this subsection shall be subject to the retention requirement. Approval of progress payment shall be contingent upon the submission of the report (Form BFS-P-79) and the equipment list.

(b) Specialized or Special Ordered Materials, Equipment. The Officer-in-Charge may, to the extent provided for in the contract, include in the monthly estimate for progress payment the delivered cost of specialized materials, special ordered materials or equipment usable only for the contract. Such inclusion in the monthly estimate will be allowed only if all costs are substantiated by evidence of delivery and payment, and only for such materials or equipment as are specifically described or referred to in the contract as being the subject matter for such inclusion in the monthly estimate for progress payment. The progress payment shall include the "Report of Equipment Purchased with Construction Contracts" and a list of the movable and removable equipment. Payment to the Contractor shall not terminate the Contractor's responsibility or ownership of such materials or equipment until incorporated in place and accepted by the Officer-in-Charge. The Contractor shall be responsible for the safekeeping of such specialized materials or equipment until incorporated into the work and accepted by the Officer-in-Charge. The amount included for payment under this subsection shall be subject to the retention requirement.

(c) Movable or Removable Equipment. Movable or removable equipment as specified in subsection (a) is defined as any item that can be removed with a hand tool, or can be moved or transferred to another location, or can be tagged with an identification number. The City policy is that such equipment shall be budgeted and purchased with equipment phase funds.

5.4.7 Final Payment.

(a) Final Payment. After final acceptance by the Officer-in-Charge, the Contractor will be paid the balance due in accordance with the Officer-in-Charge's final estimate of the construction actually performed and approved by the Contractor, provided that final payment will be made only with the approval of the Contracting Officer or, for improvement districts, the City Council, and upon submittal of the following to the Contracting Officer:

(1) Completed form BFS-P-79, "Report of Equipment Purchased with Construction Contracts";

(2) Whenever the payment includes payment of movable or removable equipment, two copies of the list of equipment installed or provided under the contract, listing the description, make, model, serial number, quantity, cost, an indication of whether or not the equipment is movable or removable, and the specific location of the equipment such as the room number;

(3) Written consent of the surety or sureties on the Contractor's bonds;

(4) Completed form DF-P-65 (Exhibit "K"), acknowledging any outstanding claims arising out of the performance of the Contractor's work; and

(5) Evidence of continuing insurance as required.

(6) Except for any contract entered pursuant to section 103D-307, HRS, final payment of a contract made pursuant to section 103D-302, 103D-303, 103D-304 or 103D-306, HRS, shall be withheld, until receipt of proof of compliance with HRS

103D-328 and HRS 103D-310. Hawaii Compliance Express (HCE) may be used for this purpose. The HCE website is at https://vendors.ehawaii.gov/hce/splash/welcome.html. These requirements do not apply to contracts of less than $2,500 awarded pursuant to HRS section 103D-305

(b) Failure to Comply. If the Contractor delays or fails to comply with the requirements of this section, the Contracting Officer, upon recommendation of the Officer-in-Charge and without further obligation to the Contractor, may take any or all of the following actions:

(1) Upon notice from the State Department of Taxation or Internal Revenue Service, assign payment to the appropriate tax agency.

(2) Unilaterally, use the final payment estimate of the Officer-in-Charge as the final payment to the Contractor.

(3) Determine the Contractor to be nonresponsible which may jeopardize the Contractor's future status as a qualified offeror.

(c) Upon final payment to the Contractor, full payment to all subcontractors shall be made. Contractor shall be in compliance with HRS Section 103-10.5, Prompt payment, for final payment to its subcontractors.

5.4.8 Payment Does not Imply Acceptance of Work.

The granting of any payment by the City, or the receipt thereof by the Contractor, shall in no way imply acceptance of work. The unsatisfactory character of such work, equipment, components or workmanship that does not conform to the requirements of this Agreement may be rejected by the City and in such case must be replaced by the Contractor without delay.

5.4.9 Force account.

When the Contractor and the Officer-in-Charge cannot agree to the price adjustment of any change in work, the Officer-in-Charge may, in accordance with price adjustment clause of this contract, require that the work be performed under force account until such time that an equitable adjustment can be agreed to by both parties, provided that the Officer-in-Charge promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. Payment for work under force account shall be as follows:

(a) Allowable Costs. In force account, cost shall be the sum of the costs of the following:

(1) Labor. The Contractor shall receive the current wage rate including fringe benefits for actual work engaged by the hourly worker and supervisor in charge of the specific force account work. Fringe benefits are required amounts established by the State Department of Labor and Industrial Relations, any collective bargaining agreement and other employment contract generally applicable to the classes of labor employed. The Contractor shall submit the fringe benefits for each class in writing to the Officer-in-Charge for acceptance before the force account work begins. The wages for labor shall not exceed the rate of wages paid for similar labor performed

under the contract, as evidenced by the record of the Contractor's payroll on file with the Officer-in-Charge.

For salaried workers, the Officer-in-Charge will determine the hourly wage rate by dividing the monthly salary plus benefits by one hundred seventy-six hours. The Officer-in-Charge shall authorize salary workers to perform the work.

For overtime work, payment will be for one and a half times the hourly wage rate plus the actual hours of overtime for fringe benefits, and/or as required by any collective bargaining agreement. For authorized salaried workers, payment will be for the hourly wage rate times the actual hours of overtime.

(2) Insurance and tax. The Contractor will receive the projected average rate for the required insurance including property damage (excluding builder's risk), liability, workers compensation insurance premiums, State unemployment contributions, Federal unemployment taxes, social security and Medicare taxes to which six percent may be added.

The Contractor shall submit the projected average rate for taxes and insurance premium for the applicable current year for acceptance by the Officer-in-Charge.

(3) Materials. The Contractor will receive the actual cost of materials accepted by the Officer-in-Charge and entering permanently into the work under the contract including transportation charges as shown by the invoices submitted to the Officer-in-Charge.

For stock materials, used and incorporated into the work, the Contractor shall receive the actual cost as certified by the Contractor to the cost paid by the Contractor. The Officer-in-Charge will include transportation charges and taxes paid by the Contractor.

(4) Machinery and equipment, other than small tools and minor equipment, which may be necessary or desirable to perform the work. The Officer-in-Charge may reject any machinery or equipment which the Officer-in-Charge deems unnecessary, inefficient or inadequate for the work to be performed. The term "small tools and minor equipment" shall include individual equipment or tools having a replacement value of two hundred fifty dollars or less, whether or not they are consumed in the use thereof.

(A) The rate shall be the per-hour rental rate based on the monthly rate established for said machinery or equipment in the then-current edition of the Rental Blue Book for Construction Equipment including the estimated operating cost per hour, and regional correction provided therein.
The hourly rate will be determined by dividing the monthly rate by one hundred and seventy-six. The rate includes the estimated operating cost per hour and the regional correction factor.

If no rate is listed for a particular kind, type or size of machinery or equipment, then the monthly, hourly rate shall be as agreed upon in writing by the Contractor and the Officer-in-Charge prior to the use of said machinery or equipment. The Contractor shall provide proof of the rental rates charged.

(B) For trucks not owned by the Contractor, rental rates as those established under the Hawaii State Public Utilities Commission will be used to determine the cost and will be paid for as a material item under paragraph (3).

(C) For Contractor-owned trucks not listed in the Rental Rate Blue Book, the rates shall be as agreed upon in writing by the Contractor and the Officer-in-Charge prior to the use of said trucks.

(D) Rental rates which are higher than those specified in the Rental Rate Blue Book may be allowed where such higher rate can be justified by job conditions such as work in water, on lava, etc. Request for higher rate shall be submitted in writing to the Officer-in-Charge for approval prior to the use of the machinery or equipment in question.

(E) All rental rates for machinery and equipment shall include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs, maintenance, tire wear, depreciation, storage, and all other incidentals.

(F) Transportation and/or Mobilization

(i) The location from which the equipment is to be moved or transported shall be approved by the Officer-in-Charge.

(ii) Payment will be made for mobilizing and transporting the equipment or machinery to the force account work site, including loading and unloading, and back to its original location or other site, whichever cost is less. The cost of transportation shall not exceed the rates established by the Hawaii State Public Utilities Commission. If rates are nonexistent, then the rates will be determined by the Officer-in-Charge based upon the prevailing rates charged by established haulers within the locale.

(iii) Payment for self-propelled equipment or machinery will be for the cost of moving the equipment by its own power to the force account work site and back to the original location or other site, whichever cost is less.

(iv) When transporting equipment or machinery by other than its own power, payment shall be made for the transporter, if owned by the Contractor, at the hourly rate including the estimated operational rate and the applicable regional correction factor. Payment for the transporter, if not owned by the Contractor, shall be by invoice cost and paid for as a material item. Payment for the equipment or machinery shall be at the rate of "idle time" under (G).

(v) Payment for mobilization and transportation will not be made if the equipment or machinery is used on the work in any other way than upon extra work paid for under force account.

(G) Rental Period

(i) Idle Time. Idle time herein means the period in which the machinery or equipment designated for the specific force account work is not in use for the work. The time period shall be for a working day (8 hours). Payment shall be fifty percent of the hourly rate excluding the estimated operational cost per hour per working day.

(ii) Standby Time. Standby time herein means the period in which the machinery or equipment are standing by for the specific force account work day. A work day shall not exceed eight hours (standby time plus the operating time) unless the Officer-in-Charge authorizes the overtime. Payment shall be at the hourly rate including the estimated operational cost per hour per working day.

(iii) The rental period shall begin at the time equipment reaches the site of work, shall include each day that the machinery or equipment is at the site of the work and shall terminate at the end of the day on which the Officer-in-Charge directs the discontinuance of the use of the machinery or equipment.

(iv) Less than thirty minutes of operation will be considered a half hour of operation.

(v) Rental time will not be allowed or credited for any day on which machinery or equipment is inoperative due to its breakdown. On such days, the Contractor will be paid only for the actual hours that the machinery or equipment was in operation.

(vi) When force account work is completed within less than 8 hours, payment shall be for 8 hours.

(vii) For the purpose of determining the rental period, the continuous and consecutive days shall be the normal 8-hour shift work day, Monday through Friday excluding Saturday, Sunday, and legal holidays. Any work day to be paid less than 8 hours shall not be considered as continuous, except for equipment removed from rental for fuel and lubrication.

(viii) Overtime shall be paid for each hour in excess of the normal 8-hour shift work day at the corresponding hourly rate for daily, weekly, and monthly rates.

(5) Bond. A bond allowance up to one per cent will be added to the total sum of paragraphs (1) through (4).

(6) State excise tax. State excise tax, not to exceed the rate assessed by the State, will be added to the total sum of paragraphs (1) through (5).

(7) Determining Adjustments in Price. Adjustments under force account will be in accordance with HRS Section 103D-501(b)(5)(A) and (B). In determining the adjustment in price to the government resulting from a change under force account, the allowances for all overhead, extended overhead resulting from adjustments to contract time (including home office and branch office overhead) and profit ("overhead and profit"), which only apply to "work performed" and does not apply to purchase or rental of equipment (as set forth in previous provisions), shall not exceed the percentages set forth below:

(A) For the Contractor, for any work performed directly by the Contractor, twenty percent (20%) of the actual cost; and

(B) For subcontractor's billing to the contractor, ten percent (10%) for Contractor's overhead and profit.

(8) For change orders exceeding $50,000, the City may provide a cap on the total cost of the work.

(9) Payment for the above shall be deemed payment in full for work done under force account including superintendence, overhead, use of tools, machinery and equipment for which no rental is allowed, profit, taxes, subcontracting and other costs in connection therewith which are not provided for herein. No payment will be made until itemized records along with receipted invoices and appropriate documents have been submitted and approved.

(b) Records. The Contractor shall submit records of the above to the Officer-in-Charge at the end of each day on Daily Force Account Report sheets (Form DF-49), Exhibit "G," issued by the Officer-in-Charge. Such records submitted shall be subject to the approval of the Officer-in-Charge as evidenced by the Officer-in-Charge's signature thereon. The Contractor shall submit a statement covering the cost of all of the above items not later than the tenth day of the month following the month in which the costs were incurred.

5.4.10 Payment in Bonds.

When the contract is for an improvement district project, payment to the Contractor may be made in either cash or improvement district bonds.

Chapter 6 - Disputes and Remedies.

6.1 Contractors Responsibilities Under Suspension of Work

(a) Contractor's Responsibilities. In case of suspension in the performance of the work under the contract from any cause whatsoever, the Contractor in addition to being responsible for performing the work under the contract shall:

(1) Continue to indemnify and save the City and its officers and employees harmless from liability for any injury or damage occurring during the period that the performance of the contract is suspended;
(2) Be responsible for all materials and equipment delivered to the site of the project, including materials and equipment for which Contractor has received partial payment;
(3) Properly store the materials and equipment which have been partially paid for by the City or which have been furnished by the City;
(4) Remove immediately as directed by the Officer-in-Charge all surplus materials, equipment, and rubbish;
(5) Neatly and compactly store all materials and equipment on the site of projects within public highways or streets so as not to impede traffic or interfere with the use of public utilities or facilities;
(6) Provide suitable drainage and erect such temporary structures as are necessary to protect the project or parts of the project from damage;
(7) Properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedlings, and sodding furnished under this contract; and
(8) Continue to maintain liability insurance coverages.

6.2 Default.

Any of the following causes may be deemed by the City to be a default and result in Contractor's termination under the contract:

(1) Failure to commence work within the time specified in the notice to proceed;
(2) Failure to perform the work with sufficient workers and equipment or with sufficient materials to assure the prompt completion of said work;
(3) Failure to comply with orders of the Officer-in-Charge;
(4) Discontinuation of the prosecution of the work;
(5) Failure to resume work which has been discontinued within a reasonable time after notice to resume;
(6) Insolvency or is declared bankrupt, or commits any act of insolvency or bankruptcy;
(7) Allows any final judgment to stand against the Contractor unsatisfied for a period of ten days;
(8) Assignment for the benefit of creditors;
(9) Unauthorized changes in the subcontractor listing submitted with the Contractor's proposal; or
(10) Failure to correct deficiencies or to complete the contract.

6.3 Dispute/Final Decision

(a) When a controversy cannot be resolved by mutual agreement between the Officer-in-Charge and the Contractor, at the written request of the Contractor, the Director shall issue a written decision within ninety calendars after receipt of the request for a final decision.

(b) Any such decision shall be final and conclusive, unless fraudulent, or unless the Contractor brings an action seeking judicial review of the decision in the circuit court of this State within 6 months from the date of receipt of the decision by the Contractor.

EXHIBIT "A"

SURETY BID BOND

Bond No._____

KNOW TO ALL BY THESE PRESENTS:

That we, _____,
(Full name or legal title of Bidder)
as Bidder, hereinafter called Principal, and _____
_____,
(Name of bonding company)
as Surety, hereinafter called Surety, a corporation authorized to transact business as a Surety in the State of Hawaii, are held and firmly bound unto the **CITY AND COUNTY OF HONOLULU**, as Owner, hereinafter called Owner, in the penal sum of_____
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 number, if available and description)

NOW, THEREFORE:

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

Signed this _____day of _____, 20___.

(Principal)

By_____
Its

(Surety)

By_____
Its Attorney-in-Fact

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 Principal, and _____

_____
(Name and Street Address of Bonding Company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a

surety in the State of Hawaii, are held and firmly bound unto the _____,
(State/County Entity)

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 _____, _____.

(Seal) _____
Name of Principal (Contractor)

* _____
Signature

_____
Title

(Seal) _____
Name of Surety

* _____
Signature

_____
Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBIT "C"

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 _____,
(State/County Entity)
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 the 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 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 "D"

PERFORMANCE BOND

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 **City and County of Honolulu**, its successors and assigns as Obligee, in the amount of _____ Dollars ($_____), lawful money of the United States of America, for 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 _____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 _____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:_____;

EXHIBIT "D"

[ ] Treasurer's Check No. _____, dated _____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 _____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 to: _____;

WHEREAS:

The Contractor has by written agreement dated _____, entered into a contract with Obligee for the following

Project_____

_____ ,

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

NOW, THEREFORE:

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, and shall deliver the Project to the Obligee, or to its successors or assigns, fully completed as in the Contract specified and free from all liens and claims 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

EXHIBIT "D"

of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

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

EXHIBIT "D"

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 _____, 20_____.

(Contractor) (Seal)

*By_____

Its

*By_____

Its

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC.

EXHIBIT "E"

LABOR AND MATERIAL PAYMENT BOND

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 **City and County of Honolulu**, its successors and assigns as Obligee, hereinafter called Obligee, in the amount of _____ Dollars ($_____), lawful money of the United States of America, for 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 _____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 _____drawn on _____a bank, savings institution or credit union insured by the

EXHIBIT "E"

Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

[ ] Treasurer's Check No. _____, dated _____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 _____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 to _____;

WHEREAS:

The Contractor has by written agreement dated _____, entered into a contract with Obligee for the following Project: _____ _____, hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW, THEREFORE:

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, 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

EXHIBIT "E"

thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, and shall promptly pay all persons supplying labor and materials for the performance of the Contract, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

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

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

The amount of this bond may 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 and sealed this _____ day of _____, 20_____.

(Contractor) (Seal)

*By _____

Its

EXHIBIT "E"

*By _____

Its

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBIT "F"

ESTIMATE FOR CHANGE ORDER WORK

PROJECT:_____

CONTRACTOR:_____

Reference: PCD No._____ Other_____

Complete an additional form for each subcontractor and an additional form for any subcontractor to each subcontractor.

MATERIALS

Description	Qty.	Unit Price	Subtotal
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____

TOTAL FOR MATERIALS..... $_____(1)

LABOR

(2) Fringe*/(3) Classification	Hours	Hourly Rate	
			$_____
Fringe		$_____	
			$_____
Fringe		$_____	
			$_____
Fringe		$_____	
			$_____
Fringe		$_____	
			$_____
Fringe		$_____	
			$_____
Fringe		$_____	

*Identify fringe benefit separately.

Subtotal for labor.....$_____(2) $_____(3)

TOTAL FOR LABOR (Wages & fringes), (2+3)..... $_____(4)

SUBTOTAL - MATERIALS & LABOR (1+4)..... $_____(5)
O.H. & Profit (__%) of (5) (Per HAR 3-125-13, not to exceed 20%)..... $_____(6)
Ins. & Taxes (____%) of (3)..... $_____ (7)
O.H. for Ins. & Taxes, 6% of (7).....>..... $_____ (8)
TOTAL FOR MATERIALS & LABOR (5+6+7+8)..... $_____(9)

EQUIPMENT

Type or Class	Hours	Hourly Rate	Subtotal
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____

TOTAL FOR EQUIPMENT..... $_____(10)

SUBCONTRACTOR

Name	Amount	O.H. & Profit, not to exceed 10% No more than three tiers of markups HAR 3-125-13
_____	$_____	x ___% = $_____
_____	$_____	x ___% = $_____

Subtotal for Subcontractor.....$_____(11).....$_____(12)

TOTAL FOR SUBCONTRACTOR (11+ 12)..... $_____(13)

TOTAL FOR MATERIAL, LABOR, EQUIPMENT, SUBCONTRACTOR (9+10+13).. $_____ (14)
Bond Fee 1 % on (14) (If applicable)..... $_____ (15)
Gross Excise Tax (not to exceed 4.712%) on (14 + 15 minus 11)..... __ $_____ (16)

TOTAL FOR THIS CHANGE ORDER (14+15+16)……. $_____)

AUTHORIZED REPRESENTATIVE:

_____
CONTRACTOR

Date_____

EXHIBIT "G"
CITY AND COUNTY OF HONOLULU

_____
(DEPARTMENT)

DAILY FORCE ACCOUNT

Contract No.: _____ Contractor: _____ Date: _____

Project: _____ Covering Change Order No.: _____

Part A

Materials	Unit	Unit Price (1)	No. of Units (2)	Total (3)=(1)x(2)	
			Total for Part A		

Part B

Name of Employee (4)	Class of Employee (5)	Basic Hourly Rate (6)	Fringe Benefit/Hr. (7)	Total Rate (8)	Hours (9)	Total (10)=(8)x(9)	Insurance & Tax Rate* (11)	Insurance Amount (12)=(6)x(9)x(11)
					Total for Part B		Total for Column (12)	

*Worker's Compensation, PL/PD, FICA, TDI, Federal/State Unemployment Compensation

Part C

Total for Part C = (Total Part A + Total Part B + Total Column (12)):	

Part D

Overhead and Profit (HAR 3-125-13), Not to Exceed 20% of Part C:	

Part E

Addition for Insurance and Taxes, 6% of Total Column (12)	

Part F

Equipment	Type or Class	Rate (13)	Hours (14)	Total (15)=(13x(14)	
				Total for Part F	

Part G

Subcontractor		Amount (16)	Allowance (17)=(10%)x(16)	Total (18)=(16)+(17)	
	Total for Column (16)			Total for Part G	

Part H

Gross Earned (Parts C Through G, Inclusive):	

Part I

Bond Fee 1.00 % of Part H (1% maximum):	

Part J

4.712% State Excise Tax on (Parts H + I - Part G Column (16)):	

Grand Total This Report (Parts H + I + J):	

Description of Work:

_____
_____
_____
_____
_____

The above is a true statement of all force account work for this date.

_____
Project Inspector

_____
Contractor or Contractor's Representative

(Submit in triplicate, signed by both parties immediately after the day's work, with invoices, etc.)

EXHIBIT "H"

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in section 3-122-122, HAR, and submitted pursuant to section 3-122-125, HAR; either actually or by specific identification in writing to the officer-in-charge in support of *_____

are accurate, complete, and current as of **_____
.
(Month, day, year)

This certification includes the cost or pricing data supporting any advance agreement(s) between the offeror and the City which are part of the proposal.

Firm: _____

Signature:_____

_____
(Print name & title of person signing)

***Date of execution:_____

* Describe the project and reference (i.e. project name, PCD No., field change, change order number, etc.).

** The date should be a mutually determined date prior to but as close to the date when price negotiations were concluded and the price was agreed to as possible.

*** Date of execution should be as soon after the date when price negotiations were concluded and the contract price was agreed to as practical.

EXHIBIT "I"

AGREEMENT

(NAME CHANGE)

Notification is given that the name of _____

_____has been changed, effective _____,

to _____.

In accordance with Section 3-125-14(3) of the Hawaii Administrative Rules, the corporation/sole proprietorship/partnership (circle one) of

_____

(insert new name and address)

hereby agrees that all other terms and conditions of the contract(s) listed below, entered into between the City and County of Honolulu and

_____

(insert previous name)

are in full force and effect. A copy of the Articles of Amendment to Change Corporate Name (or other document indicating the name change) is attached hereto.

Contract No.	PROJECT NAME AND DESCRIPTION

_____

By_____
Its

By_____
Its

Dated:_____

ACCEPTED:
CITY AND COUNTY OF HONOLULU

By_____
Director, Department of Budget
and Fiscal Services

Dated_____

(VECP1.DOC)

EXHIBIT "J"

VALUE ENGINEERING CHANGE PROPOSAL (VECP)
CITY AND COUNTY OF HONOLULU

	VECP NO.	DATE:
PROJECT TITLE:	PROJECT NO.	CONTRACT NO.
	CONTRACTOR:	

A. CHANGES: The following changes are to be performed in accordance with all contract stipulations and covenants (Specifications, drawings, special provisions, etc.):

B. CONTRACTOR'S QUOTATION: The changes included under Part A will be performed at a contract price decrease of $_____in accordance with all terms of the contract documents. Six copies of our cost breakdown are attached herewith. We are aware that this VECP must be approved by the City in the designated space below and that no work is to be performed until an approved change order has been given us. In case of rejection of this VECP by the City, we will continue all work in accordance with the existing contract terms.

NAME	TITLE
AUTHORIZED SIGNATURE	DATE

C. STATEMENT OF FUNDS:

Original contract price.....$_____
Amended contract price.....$_____

D. SUMMARY DESCRIPTION AND POTENTIAL IMPACTS OF THE PROPOSED CHANGES:

(VECP1.DOC)

E. TIME EXTENSION:

F. VALIDATION OF CHANGE ORDER

Recommended for approval:

CONSTRUCTION ENGINEER

Approved:

DEPARTMENT HEAD

Distribution:

DATE

G. REJECTION OF CHANGE ORDER

CONSTRUCTION ENGINEER

Disapproved:

DEPARTMENT HEAD

Distribution:

DATE

REASONS FOR REJECTION:

(VECP2.DOC)

EXHIBIT "J"

VALUE ENGINEERING CHANGE PROPOSAL (VECP)
City and County of Honolulu
(Contractor-required information)

From: _____
To: _____ VECP No._____
Project: _____ Contract: No._____

INFORMATION REQUIRED OF THE CONTRACTOR: (If answer to any of the following questions is "Yes", explain in "REMARKS" below.)

		YES	NO
1.	Does this proposed change affect the time of completion of the contract as stated in the Contract?		
2.	Has the Contractor submitted this proposed change previously to this office or any other government agency?		
3.	Does this change affect other costs to the government, such as government-furnished property or costs of contract-related items?		
4.	Does this proposed change increase the maintenance or operation costs of original or proposed items.		
5.	Is a subcontractor involved in this proposed change to the original contract?		
6.	Does the Contractor intend to restrict the government's right to use any data described in this proposed change?		
7.	Does this proposed change involve use of proprietary materials?		

CHANGES OR REVISIONS TO DRAWINGS AND SPECIFICATIONS: (Attach applicable contract drawings and specifications, including Contractor's or shop drawings or literature with all changes marked on the drawings and specifications.)

REMARKS:

CONTRACTOR'S REPRESENTATIVE:

_____ _____ _____
NAME SIGNATURE DATE

RECEIVED BY:_____
Department

_____ _____ _____
NAME SIGNATURE DATE

(VECP3.DOC)

EXHIBIT "J"

VALUE ENGINEERING CHANGE PROPOSAL (VECP)
City and County of Honolulu
(Contractor Summary Submittal)

From: _____ Date:_____
To: _____ VECP No._____
Project No./Title:_____ Contract No._____

SUMMARY OF CHANGE (Description - compare advantages and disadvantages. Include all information required by the Contract and Section 3-132-4, HAR for value VECPs)

BEFORE: (Sketch, when applicable.) AFTER:

ESTIMATED COST SUMMARY: (Costs shall be estimated in accordance with the change provisions of the Contract. Attach cost estimating form, for detailed estimate whenever applicable.)

		QTY.	UNIT COST	TOTAL
A.	Original	_____	$_____	$_____
B.	Proposed	_____	$_____	$_____
C.	Gross savings (A-B)			$_____
D.	Contractor's implementing cost			$_____
E.	Total estimated decrease (C-D)			$_____
F.	City's implementing cost		$_____	
G.	Difference (E-F)		$_____	
H.	½ Difference (E-F divided by 2)			$_____
I.	Reduction in Contract Price (E-H)			$_____

Date by which a change order must be issued so as to obtain maximum cost reduction: _____

CONTRACTOR'S REPRESENTATIVE:

_____ _____ _____
NAME SIGNATURE DATE

Received by:_____
DEPARTMENT

_____ _____ _____
NAME SIGNATURE DATE

(EXHIBITK.WPD)

EXHIBIT "K"

FORM DF-P-65

_____
(Date)

Director, Department of
Budget and Fiscal Services
City and County of Honolulu
Honolulu, Hawaii 96813

Subject: Contract No._____

As of this date, _____

(Contractor) _____

acknowledges receipt of the following outstanding bodily injury or death and property damage claims made by third parties arising out of the performance of it work in connection with the subject contract. The Contractor agrees to notify the City of the final disposition of said claims; or, if no final disposition of such claims, their status before actual payment of any amount withheld by the City.

1. _____

_____

_____

2. _____

_____

_____

3. _____

_____

_____

_____

Sincerely,

_____
(Authorized Signature)

_____
(Contractor's Name)

City and County of Honolulu ● Department of Budget and Fiscal Services ● Division of Purchasing

Report of Equipment Purchased With Consultant or Construction Contracts

INSTRUCTIONS

1. Request for BFS Approval / Processing-Agency to complete Section I— Attach 1 copy of this form to every contract document that requires BFS approval or processing; i.e. **consultant contracts and amendment**; and construction contract drafts and finals, bid referrals, addendums, change orders, and request for payment.

2. Request for Payment of Equipment-Contractor and agency to complete Section II **only when there is request for payment of equipment, as defined in Item No. 3.**

3. Equipment That Must Be Reported On This Form: Equipment that is **movable** or that is **removable with a hand tool,** which will hereafter be referred to as "equipment".

SECTION I (Agency to complete and attach to all documents requiring BFS approval/processing)

Contract Number:	Invoice Number:	Job/Project No.
Agency:	Agency Project Manager:	
Phone:	Contractor:	
Job / Project No.: (MORE INFORMATION)		

Check the appropriate box:

4. ☐ Contract **does not include** equipment, as defined in Item No. 3
5. ☐ Contract **includes** equipment, as defined in Item No. 3.

(Note to Fiscal Services: If Item No. 5 is checked and there is a request for payment of equipment, completion of Section II is a perquisite for payment.)

Comments:

_____ _____

Signature of Department Head or Representative: Date

SECTION II (Contractor and Agency to complete **only** when there is a **request for payment of equipment** as defined in Item No. 3 above)

Contractor:

6. Two (2) copies of the detailed list of equipment are attached and includes the following information: description, make, model, serial number, quantity, cost, indication of whether or not it is movable or removable, and the specific location of the equipment such as the room number. See Item No. 9 for a sample of the detail list.

_____ _____

Signature of Department Head or Representative: Date

Agency: Check the appropriate box:

7. ☐ Federal funds **are not** being used to partially or totally reimburse, or pay, for the equipment.

8. ☐ Federal funds **are** being used to partially or totally reimburse, or pay, for the equipment.

_____ _____

Signature of Department Head or Representative: Date

Form BFS-P-79 09/28/07 Distribution at payment from Fiscal to: 1) Purchasing /Property Management & Disposal Section Only if Section II is completed. Transmit with Invoice & equipment list. 2) Pre-Audit

SAMPLE OF EQUIPMENT LISTING

9. The following is a sample of the detailed list of equipment that is required. *To request an electronic copy of this Word software table: Contact the Property Management & Disposal Section, Purchasing Division, BFS, 808-768-3954 .*

DETAILED LIST OF EQUIPMENT

Date _____ Contract No. _____ Purchase Order No. _____ Invoice No. _____

Proposal No. _____ City Department _____ City Department Requisitioner (if known) _____

City Requisitioner Phone No. (if known) _____ Contractor Name _____

Project Description _____

SAMPLE

	DESCRIPTION	MAKE	MODEL NUMBER	SERIAL NUMBER	QTY	UNIT PRICE	TOTAL PRICE	SPECIFIC LOCATION (i.e. Room No.)
1	Portable lift	American Equipment Company	ABC123	12345678901 67890123456 98765432101	3	40,000.00	120,000.00	Mechanic Shop Room 3
2	Hand Truck 55 gallon	International Sales Inc	DEF45678	2345678912	1	4,000.00	4,000.00	Tire Shop, Work Station A
3	CPU 5.0 GHZ Pent6 700MB SDRAM 60GB HD with keyboard, mouse	The Computer Place	GHI876	C0001234 C0001235	2	900.00	1,800.00	Administration Room 5
4	Monitor Flat Panel 21"	The Computer Place	JKL543	M0001236 M0001237	2	500.00	1,000.00	Administration Room 5
				TOTAL	**8**		**126,800.00**	

I certify that the following information is correct. Page _____ of _____

Contractor or Representative _____ _____ Phone _____

Print name Signature

(10/01/2012)
Misc/Procurement.Equipment list sample .doc

CERTIFICATION OF COMPLIANCE FOR FINAL PAYMENT

(Reference §3-122-112, HAR)

Reference: _____ _____
(Contract Number) (IFB/RFP Number)

_____ affirms it is in
(Company Name)
compliance with all laws, as applicable, governing doing business in the State of Hawaii to include the following:

1. Chapter 383, HRS, Hawaii Employment Security Law — Unemployment Insurance;
2. Chapter 386, HRS, Worker's Compensation Law;
3. Chapter 392, HRS, Temporary Disability Insurance;
4. Chapter 393, HRS, Prepaid Health Care Act; and

maintains a "Certificate of Good Standing" from the Department of Commerce and Consumer Affairs, Business Registration Division.

Moreover, _____
(Company Name)
acknowledges that making a false statement shall cause its suspension and may cause its debarment from future awards of contracts.

Signature: _____

Print Name: _____

Title: _____

Date: _____

Exhibit N

CERTIFICATION OF COMPLIANCE
FOR
EMPLOYMENT OF STATE RESIDENTS
HRS CHAPTER 103B, AS AMENDED BY ACT 192, SLH 2011

Project Title: _____

Agency Project No: _____

Contract No.: _____

As required by Hawaii Revised Statutes Chapter103B, as amended by Act 192, Session Laws of Hawaii 2011—Employment of State Residents on Construction Procurement Contracts, I hereby certify under oath, that I am an officer of _____and
(Name of Contractor or Subcontractor Company)

for the Project Contract indicated above, _____ was in
(Name of Contractor or Subcontractor Company)

compliance with HRS Chapter 103B, as amended by Act 192, SLH 2011, by employing a workforce of which not less than eighty percent are Hawaii residents, as calculated according to the formula in the solicitation, to perform this Contract.

- ❑ I am an officer of the **Contractor** for this contract.
- ❑ I am an officer of a **Subcontractor** for this contract.

CORPORATE SEAL

_____
(Name of Company)

_____
(Signature)

_____
(Print Name)

_____
(Print Title)

Subscribed and sworn to me before this

_____day of _____, 20_____.

_____
Notary Public, 1st Circuit, State of Hawaii
My commission expires: _____

Doc. Date: _____# of Pages_____1" Circuit

Notary Name: _____

Doc. Description: _____

_____

_____

_____
Notary Signature Date
NOTARY CERTIFICATION

EXHIBIT “O”

CERTIFICATION OF COMPLIANCE
WITH HRS 396-18, SAFETY AND HEALTH PROGRAMS
FOR CONTRACTOR BIDDING ON CITY JOBS

PROJECT NAME AND NUMBER:

JOB NO.

This is to certify that the undersigned will comply with the requirements of HRS 396-18, as follows:

(A) Pursuant to HRS 396-18, all bids and proposals in excess of $100,000 shall include a signed certification from the bidder that a written safety and health plan for the job will be available and implemented by the notice to proceed dates of the project. The written safety and health plan shall include:

(1) A safety and health policy statement reflecting management commitment;

(2) A description of the safety and health responsibilities of all levels of management and supervisors on the job, and a statement of accountability appropriate to each;

(3) The details of:

(a) The mechanism for employee involvement in job hazard analysis;

(b) Hazard identification, including periodic inspections and hazard correction and control;

(c) Accident and “near-miss” investigations; and

(d) Evaluations of employee training programs.

(4) A plan to encourage employees to report hazards to management as soon as possible and to require management to address these hazards promptly; and

(5) A certification by a senior corporate or company manager that the plan is true and correct.

(B) Failure to submit the required certification may be grounds for disqualification of the bid.

(C) Failure to have available on site or failure to implement the written safety and health plan by the project’s Notice to Proceed Dates shall be considered willful noncompliance and be sufficient grounds to disqualify the award and terminate the contract.

_____
Name of Contractor

_____
Signature and Title

_____
Date

EXHIBIT P
(REQUEST FOR SUBSTITUTION - SAMPLE)

DATE: _____

City and County of Honolulu
Budget and Fiscal Services
Purchasing Administrator
530 South King Street, Room 115
Honolulu, Hawaii 96813

To Whom it May Concern:

SUBJECT: REQUEST FOR SUBSTITUTION

PROJECT TITLE: _____

_____

In accordance with the requirements of the Special Provisions, we hereby submit for substitution six (6) sets of descriptive literature, technical brochures and/or plans, and statement of variances for your review and approval for the item(s) shown below:

SECTION/ ITEM	SPECIFIED BRAND	SUBSTITUTE OR ALTERNATE BRAND	VARIANT FEATURES

I further certify that my request for substitution of the above item(s) has no other variant features.

_____
SIGNATURE

NOTE:
1. Please use own letterhead.
2. Submit original and two (2) copies of letter.
3. If no variant feature, indicate "None".
4. Submit six (6) sets of descriptive literature, technical brochures and/or plans.