



**NOTICE OF SOLICITATION**

**GS-2020-5**

**FOR THE**

**FURNISHING AND DELIVERY**

**OF**

**One (1) Rubber Track Open Cab Excavator**

**February 2020**

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## NOTICE OF SOLICITATION

SEALED OFFERS will be received up to and publicly opened at **2:00 p.m. (Hawai'i Standard Time) on Friday, March 06, 2020**, at the Department of Water Office of the County of Kaua'i ("Department of Water" or "Department"), 4398 Pua Loke Street, Lihu'e, Kaua'i, Hawai'i, for the furnishing and delivery of GS-2020-5 One (1) Rubber Track Open Cab Excavator, to the Department of Water. **All bids shall be submitted via [www.publicpurchase.com](http://www.publicpurchase.com).**

The Department's Chief Procurement Officer reserves the right to reject any or all the offers and to waive any defects in said offer if deemed to be in the best interest of the Board.

Pursuant to §103D-328, Hawai'i Revised Statutes, as amended ("HRS"), the successful Offeror shall be required to submit to the Department of Water a tax clearance from the State of Hawai'i Department of Taxation and the U.S. Internal Revenue Service as a prerequisite to entering into a contract in the amount of \$25,000 or more. The successful Offeror shall also be required to submit, as a prerequisite to entering into a contract of \$25,000 or more, certificates of 1) Compliance, and 2) Good Standing pursuant to Hawai'i Administrative Rules ("HAR") §3-122-112.

Chief Procurement Officer

**OFFER**  
**FOR THE FURNISHING AND DELIVERY**  
**OF**  
**GS-2020-5**  
**One (1) Rubber Track Open Cab Excavator**  
**TO THE**  
**DEPARTMENT OF WATER**  
**COUNTY OF KAUA'I**  
**LĪHU'E, KAUA'I, HAWAI'I**

\_\_\_\_\_  
Date

Chief Procurement Officer  
Department of Water  
County of Kaua'i  
4398 Pua Loke Street  
Līhu'e, Kaua'i, Hawai'i 96766

The undersigned hereby agrees to furnish and deliver to the Department of Water, free of any and all liens, claims, and encumbrances whatsoever the following: One (1) Rubber Track Open Cab Excavator complete as specified herein, for the offer amount set forth below, all in strict compliance with the Offer, Scope of Work and Award, Specifications, Special Provisions, and General Terms and Conditions, all of which the Offeror understands and agrees are attached hereto and by reference made a part of this solicitation hereof:

**ITEM NO. 1, ONE (1) RUBBER TRACK OPEN CAB EXCAVATOR - GS-2020-5**, complete as specified hereinafter:

**TOTAL SUM BID: \$** \_\_\_\_\_

Manufacturer's Make & Model \_\_\_\_\_

Year of Production \_\_\_\_\_

BID EVALUATION – Please check one

\_\_\_\_\_ Applicable information available

\_\_\_\_\_ Applicable information not available.

OFFEROR TO INSERT INFORMATION AND COMPLETE EPA TOTAL FUEL MILEAGE COST FOR THE APPROXIMATE LIFE OF THE VEHICLE.

100,000 Miles X \$3.00 / (\_\_\_\_EPA MPG) = \$ \_\_\_\_\_ X 1 Unit = TOTAL  
\$ \_\_\_\_\_

Delivery shall be made within \_\_\_\_\_ calendar days.

**The Offeror understands that they are not required to bid on all items to be awarded a bid. The Offeror may bid on one or more items and the Department will determine the lowest responsive bidder for each item in the bid.**

All extensions must be made by considering the quantities and unit prices as factors and all extensions and summations should be arithmetically correct; however, mistakes in an Offeror's Offer shall be governed by HAR §3-122-31. In case of an error in extension of the UNIT PRICE



bid, the unit price bid shall govern.

Offerors also understand and agree that should a total amount be stated for any item, but no UNIT PRICE be stated, the UNIT PRICE shall be the amount arrived at by dividing the total amount stated by the quantity of units described.

Offerors also understand and agree that the quantities shown in the Offer are for purposes of comparing offers on a uniform basis only. As such, the **Department may increase or decrease the quantity of any item and enter into a contract based on the Department's actual requirements.** Should the quantity of any item be increased or decreased, the contract shall be entered into based on the unit prices bid and under the same terms and conditions specified herein. Further, should the quantity of any item be changed and a contract entered into based on the Department's actual requirements, any loss of anticipated profit or any expenses incurred by the Offeror as a result of submitting an Offer shall not constitute grounds for equitable adjustment of any payment. The Offeror waives and releases the Department from any claim for anticipated profit or loss should the quantities actually contracted for differ from those described in this Offer section.

**In submitting this Offer, the Offeror also understands, agrees, and acknowledges as follows:**

1. That items specified herein are being furnished for the exclusive use of the Department;
2. That the Offer price includes any and all costs, fees, and expenses (including, without limitation, delivery charges), and all applicable federal, state, and local taxes which apply to the described materials, or the furnishing, sale, or purchase thereof, whether assessed against, chargeable to, or payable to the Department of Water or the Board of Water Supply, or the Offeror;
3. That the Offeror will hold its Offer price(s) for **NINETY (90) CALENDAR DAYS** after the Offer submittal deadline;
  - a. This ninety day period replaces the offer price period of the General Terms 3.2.
4. That the Chief Procurement Officer reserves the right to reject any or all offers in whole or in part and waive any defects if such a rejection or waiver will be in the Department's best interest and is consistent with HRS Chapters HRS 103 & 103D and their implementing administrative rules, and the Charter of the County of Kaua'i, 1984, as amended;
5. That the Offeror declares that it has thoroughly studied, examined, and understood all of the terms and conditions of this solicitation and that the Offer submitted is made without collusion on the part of any person, firm, or corporation, and that no official or employee of the government is directly or indirectly interested in the Offer or in the supplies or work to which it relates or in any portion of the profits thereof;
6. That the Offeror certifies:
  - a. That this Offer does not pose a conflict with the Kaua'i County Code of Ethics, as referenced in Sec. 2.16 of the General Terms; and
  - b. That this Offer is submitted with the knowledge that a "Certificate of non-collusion" as referenced in Sec. 2.5 of the General Terms, is required if competing subsidiaries or jointly owned companies submit offers;
7. That a price adjustment or preference, where applicable, will be applied for Hawai'i Products List Items (3%, 5%, 10%); Printing, Binding and Stationery Work (15%); Reciprocal preferences; Recycled Products (5%); Software Development business (10%); and out-of-state vendors and Tax Exempt entities (4.167%, 0.5%);

8. That the Offeror, upon award of contract, shall comply with all laws governing entities doing business in the State of Hawai‘i, including HRS Chapters 237, 383, 386, 392, and 393, and shall:
  - a. Be incorporated or organized under the laws of the State of Hawai‘i; or
  - b. Be registered to do business in the State of Hawai‘i as a separate branch or division that is capable of fully performing under the contract.

The Offeror shall produce documents to the procuring officer to demonstrate compliance with this Paragraph 8. Any Offeror making a false affirmation or certification under this Paragraph 8 shall be suspended from further offerings or awards pursuant to HRS §103D-702. (HRS §103D-310); and

9. That the Offeror has received and hereby accepts the following Addendum or Addenda and that the information provided therein is accounted for in this Offer.

<u>Addendum No.</u>	<u>Date:</u>
_____	_____
_____	_____
_____	_____
_____	_____

Evidence of the undersigned Offeror having the authority to submit this Offer and to enter a contract is herewith furnished.

**Respectfully submitted,**

\_\_\_\_\_  
**NAME OF OFFEROR (VENDOR)**

\_\_\_\_\_  
**PRINT/TYPE NAME & TITLE**

\_\_\_\_\_  
**AUTHORIZED SIGNATURE**

**OFFERORS ARE REQUIRED TO COMPLETE THE FOLLOWING INFORMATION FOR EVALUATION AND CONTRACT PURPOSES.**

**PLEASE DO NOT DETACH THIS SOLICITATION FROM THE SPECIFICATIONS. FILL IN ALL BLANK SPACES WITH INFORMATION REQUIRED OR YOUR OFFER MAY BE REJECTED.**

\_\_\_\_\_  
Name of Offeror (Vendor)

\_\_\_\_\_  
Address, Zip Code

(\_\_\_\_\_) \_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
State of Hawai'i General Excise Tax License No. (See General Terms 3.1(A))

\_\_\_\_\_  
Federal Employer Identification No.

Type of Organization: (Please designate)

- Sole Proprietorship     Partnership  
 Corporation             Joint Venture  
 Other (*please specify*) \_\_\_\_\_

State of Incorporation:     Hawai'i

Other (*please specify*) \_\_\_\_\_

NOTE: If "OTHER," is a corporate seal available in your  
Kaua'i or Honolulu Office?     Yes     No

ATTACH AND ENCLOSE WITH YOUR OFFER, EVIDENCE OF AUTHORITY TO SIGN:

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

If the Offeror is a **CORPORATION**, the legal name of the corporation shall be set forth on the Offer, together with the signature(s) of the Officer(s) authorized to sign on behalf of the corporation and the corporate seal affixed thereto. Evidence of the authority of the Officer(s) to sign on behalf of the Corporation **SHALL** be attached to this page and included in the Offer. Acceptable evidence of authority to sign includes, but is not limited to, a copy of the articles of incorporation, corporate resolution, or corporate by-laws. (See HRS Ch. 415, Hawai'i Business Corporation Act).

If the Offeror is a **LIMITED LIABILITY COMPANY**, the legal name of the company shall be set forth on the Offer, together with the signature(s) of the member of the limited liability company or manager of the manger-managed limited liability company authorized to sign on behalf of the entity. Evidence of the authority of the Officer(s) authorized to sign on behalf of the company **SHALL** be attached to this page and included in the Offer.

If the Offeror is a **PARTNERSHIP**, the legal name of the firm shall be set forth on the Offer, together with the signature(s) of the General Partner(s) authorized to sign on behalf of the partnership. Evidence of the authority of the General Partner(s) authorized to sign on behalf of the partnership **SHALL** be attached to this page and included with the Offer. Acceptable evidence of authority to sign for the partnership includes, but is not limited to, a copy of the partnership registration statement or authorization signed by all of the partners. (See HRS Ch. 425, Partnerships).

If Offeror is a **SOLE PROPRIETORSHIP**, Offeror's signature shall be placed above.

**SCOPE OF WORK AND AWARD  
FOR THE  
FURNISHING AND DELIVERY  
OF  
GS-2020-5**

**One (1) Rubber Track Open Cab Excavator**

- I. DEFINITIONS.** As used in this Scope of Work and Award and as used elsewhere in this solicitation, the terms shall be defined as stated in the General Terms and Conditions for Goods and Services of the Department of Water, County of Kaua‘i, dated August 25, 2010, as amended (herein “General Terms”), attached hereto and incorporated herein.

This solicitation is for multiple goods including vehicles and equipment as used in this solicitation “vehicle” shall also mean and refer to “equipment” where appropriate.

- II. SCOPE OF WORK.** The Contractor shall furnish and deliver the GS-2020-5 One (1) Rubber Track Open Cab Excavator as specified in this solicitation in strict compliance with the Offer, Scope of Work and Award, Specifications, Special Provisions, and General Terms, all of which the Offeror understands and agrees are attached hereto and by reference made a part of this solicitation and any award.

**A. INSTRUCTIONS TO OFFERORS; OFFER SUBMISSION DOCUMENTS.**

1. Offerors are required to submit as their Offer all of the documents listed in the Table of Contents. The Department has conveniently stapled or bound all of said documents for ease of submission.
2. OFFERORS ATTENTION IS DIRECTED TO THE OFFER SECTION, WHERE EVIDENCE OF THE AUTHORITY OF THE PERSON(S) SIGNING THE SOLICITATION MUST BE INCLUDED WITH THE OFFER DOCUMENTS. **FAILURE TO COMPLY WITH THIS REQUIREMENT WILL BE CAUSE FOR REJECTION OF AN OFFER.**
3. **All bids shall be submitted via [www.publicpurchase.com](http://www.publicpurchase.com)** . Offerors shall sign the Offer form in ink and submit the offer form with the original signature included in the Offer. If submission is via the Department’s electronic procurement system, an electronic copy of the original signature is acceptable.
4. Offerors shall designate those portions of their offer that contain trade secrets or other proprietary data that are to remain confidential, subject to HAR §3-122-30(c) and (d); further, the material designated as confidential shall be readily separable from the Offer in order to facilitate public inspection of the non-confidential portions of the Offer.
5. The General Terms are attached hereto and incorporated into this solicitation. Offerors are advised to familiarize themselves with all of its terms and conditions.

- B. PREFERENCES.** The following preferences are applicable when preceded by a checked box. Information and legal and procedural requirements pertaining to all preferences can be found within the General Terms:

- HAWAI‘I PRODUCTS PREFERENCE; SCHEDULE B.** Pursuant to HRS 103D-1002, Offers should complete the Certificate of Hawai‘i Products Preference for application of this preference. (See: General Terms, 3.1(B); applicable to IFB/CSP)



- PRINTING, BINDING, AND STATIONARY WORK PREFERENCE. Pursuant to the provisions of Section 103D-1004, HRS and 3-124, HAR, production-related work shall be performed within the State of Hawai‘i unless otherwise permitted. Offerors should complete or answer applicable questions in the solicitation. (See: General Terms, 3.1(C); applicable to IFB)
- RECIPROCAL PREFERENCE. Pursuant to the provisions of Section 103D-1004, HRS and 3-124, HAR, the Manager may impose a reciprocal preference against Offerors from those states which apply preferences. (See: General Terms, 3.1(D); applicable to IFB)
- RECYCLED PRODUCTS PREFERENCE; SCHEDULE E. Pursuant to HRS 103D-1005, Offerors should complete the Certification of Recycled Content form (SCHEDULE E) in this solicitation; answer applicable questions in the Offer or solicitation; and state their prices for recycled and non-recycled products offered for application of this preference. (See: General Terms, 3.1(E); applicable to IFB)
- SOFTWARE DEVELOPMENT BUSINESS PREFERENCE. See General Terms 3.1(F); HRS 103D-1006 and HAR 3-124; applicable to IFB/CSP.
- HAWAI‘I EXCISE AND USE TAX PREFERENCE. For evaluation purposes, the Offeror’s tax-exempt price shall be increased by the applicable retail rate of general excise tax and the applicable use tax. For competitive sealed bids, the lowest responsive, responsible Offeror, taking into consideration the above increase, shall be awarded the contract, but the contract amount of any contract awarded shall be the amount of the price offered and shall not include the amount of the increase.

See: HAR §3-124-50, et. seq. Any “taxpaying bidder,” as defined in HAR §3-124-51, shall qualify for a tax preference by submitting with an offer a current and valid tax clearance certificate issued by the State of Hawai‘i Department of Taxation and the U.S. Internal Revenue Service.

- QUALIFIED COMMUNITY REHABILITATION PROGRAMS PREFERENCE. Pursuant to HRS 103D-1009, a five per cent preference shall be given to services to be provided by nonprofit corporations or public agencies operating qualified community rehabilitation programs in conformance with criteria established by the DLIR for all competitive sealed bid and proposal procurements.

Organizations listed in the “Partners in employment program list,” also known as the PEP, issued by the State Procurement Office, qualify for a 5% preference. For application of this preference Offeror shall submit with the Offer the “Certificate of Eligibility to Claim a Preference as a Qualified Community Rehabilitation Program” form. (Form available upon request only; See General Terms 3.1(G)).

Any contract awarded pursuant to this preference shall be exempt from the wages provision of HRS 103-55.

Said preference shall be applied by increasing the offer price for non-community rehabilitation program Offerors.

- HRS 103-55, WAGES, HOURS, AND WORKING CONDITIONS OF EMPLOYEES OF CONTRACTORS SUPPLYING SERVICES, SCHEDULE A. Contractors supplying services in excess of \$25,000 shall complete and submit with their Offer a signed statement certifying compliance with HRS §103-55.

C. STATE OF HAWAI‘I TAX REQUIREMENTS. The Offeror’s attention is

directed to Publication-1 issued by the State of Hawai‘i reference to information on Hawai‘i State Taxes administered by the Department of Taxation. Copies of said Publication-1 are on file and may be inspected and/or obtained at the Division of Purchasing, Department of Finance, County of Kaua‘i, during regular business hours of the County.

- D. **NON-DISCRIMINATION.** The contractor or subcontractor shall not discriminate on the basis of race, religion, color, sex, or national origin in the performance of this contract. Failure to comply with this requirement may be cause for termination of this contract or such other remedy as the Department deems appropriate.
- E. **GENERAL RULE FOR APPLICABILITY OF THE TERMS AND CONDITIONS FOR THIS SOLICITATION.** The terms and conditions stated in this solicitation shall not apply to any transaction if the provisions conflict with any federal laws or if it shall prevent the Department from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.
- F. **BID BOND OR PERFORMANCE AND PAYMENT BONDS.** For this solicitation:
  - 1. Bid bond is not required in an amount equal to at least five per cent of the base bid and additive alternates or in an amount required by the terms of the federal funding, when required.
  - 2. Performance bond is not required in an amount not to exceed fifty per cent of the amount of the contract price, when required.
  - 3. Payment bond is not required. in an amount not to exceed fifty per cent of the amount of the contract price, when required.

**III. METHOD OF AWARD.** The award of the contract shall be made in writing to the lowest responsive, responsible offeror whose offer is deemed by the Department to be in the best interest of the Department and in compliance with HRS 103D-410. The Department shall add the “energy efficiency through life cycle costing” (the total cost of fuel for the approximate life of the vehicle based on the current Federal EPA Gas Mileage Gas Guide) to determine the lowest Offer price for the vehicle(s) as defined below:

- A. Definitions to the formula to compute the total evaluated bid price (total bid price of the vehicle plus the total cost of fuel) as listed in the offer page.
  - 1. “Total Evaluated Bid Price” is the total of fuel for the approximate life of the vehicle, which shall be added to the total bid price of the vehicle, solely for the purpose of determining the lowest responsible Offeror.
  - 2. The 100,000 miles is the estimated total city miles to be derived for the approximate useful life of the vehicle(s).
  - 3. The \$3.00 represents the approximate price per gallon unleaded gasoline, which the Department is paying for fuel at the present time.
  - 4. The “Federal City Driving EPA MPG” shall be the EPA rating published by the U. S. Department of Energy, which the Department shall use as the official EPA MPG listing to compute the cost of fuel for the life of the vehicle. All Offerors shall use the latest issue of the Federal EPA MPG listing, which is available from the local U. S. Department of Energy Office.
  - 5. The total cost of energy efficiency through life cycle costing shall be computed by dividing the 100,000 total miles by the Federal City Driving EPA city MPG rating and multiplied this amount by \$3.00 (the approximate cost of fuel) multiplied by the number of units which shall be added to the total cost of the vehicle, to arrive the total evaluated bid price. In computing the total evaluated bid price, Offerors shall compute the cost to two decimal

places.

All Offerors shall insert their own Federal EPA (city) MPG rating and complete the computation; however, the Department shall confirm the computation accuracy.

In the event the Offeror's vehicle performance rating has been filed with the U.S. Department of Energy, but is missing or omitted from the latest publication, the Offeror shall submit with his offer his factory certificate, certifying that the vehicle's performance rating is on file with the Department of Energy and submit the performance rating. Failure to comply with the requirements herein shall be sufficient cause for rejection of offer.

In case of an error in extending the unit bid price, the unit bid price shall govern. In the event of an error in computing the total cost of energy efficiency through life cycle costing; the computation procedure under (5) above shall govern.

- B. **LOWEST RESPONSIBLE OFFEROR.** Award will be made to the responsible, responsive Offeror whose offer complies with the specifications herein, in the following order of priorities:
1. To the Offeror with the lowest total evaluated bid price which includes the total cost of the vehicle and the total gasoline mileage cost for the approximate life of the vehicle.
  2. In the event the Offeror bidding on the total evaluated price (total cost of the vehicle and total gasoline mileage cost for the approximate life of the vehicle), competes with an Offeror who is unable to furnish substantiating data to compute the total evaluated bid price, preference shall be given to the Offeror submitting the total evaluated bid price.
  3. In the event all Offerors are unable to bid on the total evaluated bid price, award will be made to the Offeror offering the lowest unit bid price of the cost of the vehicle.
  4. The contract amount of any contract awarded shall be the amount of the bid offered on the vehicle only and shall not include the total gasoline mileage cost for the approximate life of the vehicle.
- C. In the event that the low Offeror is the same for more than one of the vehicles, a single contract will be made for the applicable vehicles.
- D. Additionally, General Terms 3.2 shall apply to any award, as amended herein.
- E. The Department reserves the right to increase, decrease, or modify the quantity of the any item and enter into a contract in accordance with available funds. Should the quantity of any item be increased, the contract shall be entered into at the same unit price(s) in the offer and under the same terms and conditions specified herein. Further, should the quantity of any item be changed and a contract is entered into according to available funds, any loss of anticipated profit or any expenses incurred by the Offeror as a result of submitting an offer shall not constitute grounds for equitable adjustment of any payment.

#### **IV. OFFEROR'S RESPONSIBILITY; SUCCESSFUL OFFEROR.**

- A. Offeror is advised that if awarded a contract of \$25,000 or more under this solicitation, Offeror shall, upon award of the contract, furnish proof of compliance with the requirements of HAR §3-122-112. The successful offeror is advised that it shall, prior to award of the contract, furnish proof of compliance with the requirements of **HAR** §3-122-112:

1. Chapter 237, tax clearance;
  2. Chapter 383, unemployment insurance;
  3. Chapter 386, workers' compensation;
  4. Chapter 392, temporary disability insurance;
  5. Chapter 393, prepaid health care; **and**
  6. One of the following:
    - a) Be registered and incorporated or organized under the laws of the State (herein a "Hawai'i business"); or
    - b) Be registered to do business in the State. (herein a "compliant non-Hawai'i business").
- B. To comply with these requirements, the successful offeror shall produce the following documents to the Department of Water to demonstrate compliance with this section.

1. HRS Chapter 237 tax clearance requirement for award and final payment. Instructions are as follows:
  - a) Pursuant to H.R.S. §103D-328, successful offeror shall be required to submit a tax clearance certificate issued by the Hawai'i State Department of Taxation ("DOTAX") and the U.S. Internal Revenue Service ("IRS"). The certificate is valid for six (6) months from the most recent approval stamp date on the certificate and must be valid on the date it is received by the Department of Water.
  - b) The tax clearance certificate shall be obtained on the State of Hawai'i, DOTAX *TAX CLEARANCE APPLICATION* Form A-6 (Rev. 2003) which is available at the DOTAX and IRS offices in the State of Hawai'i or the DOTAX website, and by mail or fax:  
  
DOTAX Website: <http://www.state.hi.us/tax/alphalist.html#a>  
DOTAX Forms by Fax/Mail: (808) 587-7572 or 1-800-222-7572
  - c) Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are: DOTAX: (808) 587-1488    IRS: (808) 539-1573
  - d) The application for the clearance is the responsibility of the offeror, and must be submitted directly to the DOTAX or IRS and not to the Department of Water.
  - e) **Contractor is also required to submit a tax clearance certificate for final payment on the contract.** A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

2. HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award. Instructions are as follows:
  - a) Pursuant to H.R.S. §103D-310(c), the successful offeror shall be required to submit an approved certificate of compliance issued by the Hawai'i State Department of Labor and Industrial Relations ("DLIR"). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the Department of Water.
  - b) The certificate of compliance shall be obtained on the State of Hawai'i, DLIR *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR*, Form LIR#27 which is available at [www.dlir.state.hi.us/LIR#27](http://www.dlir.state.hi.us/LIR#27), or at the neighbor island DLIR District Offices. The DLIR will return the form to the

Offeror who in turn shall submit it to the Department of Water.

- c) The application for the certificate is the responsibility of the Offeror, and must be submitted directly to the DLIR and not to the Department of Water.

C. REQUIREMENT FOR AWARD. To be eligible for award, the offeror must comply as follows:

1. Hawai'i Business. A business entity referred to as a "Hawai'i business" is registered and incorporated or organized under the laws of the State of Hawai'i. As evidence of compliance, offeror shall submit a *CERTIFICATE OF GOOD STANDING* issued by the State of Hawai'i Department of Commerce and Consumer Affairs Business Registration Division ("BREG"). A Hawai'i business that is a sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate. An offeror's status as sole proprietor or other business entity and its business street address indicated on the OFFER form will be used to confirm that the offeror is a Hawai'i business.
2. Compliant Non-Hawai'i Business. A business entity referred to as a "compliant non-Hawai'i business" is not incorporated or organized under the laws of the State of Hawai'i but is registered to do business in the State of Hawai'i. As evidence of compliance, offeror shall submit a *CERTIFICATE OF GOOD STANDING*.
  - a) To obtain a *CERTIFICATE OF GOOD STANDING* go online to [www.BusinessRegistrations.com](http://www.BusinessRegistrations.com) and follow the prompt instructions. To register or to obtain a "Certificate of Good Standing" by phone, call (808) 586-2727 (M-F 7:45 to 4:30 HST). The "Certificate of Good Standing" is valid for six months from date of issue and must be valid on the date it is received by the Department of Water.
  - b) Offerors are advised that there are costs associated with registering and obtaining a "Certificate of Good Standing" from the DCCA.

D. TIMELY SUBMISSION OF ALL CERTIFICATES. All certificates should be applied for and submitted to the Department of Water as soon as possible after the Department provides the written Notice of Award. **If valid certificates are not submitted on a timely basis after the Department so notifies the successful offeror, the successful offeror's Offer shall be disqualified and any prospective award (even though the successful offeror's offer is otherwise responsive and responsible) shall be cancelled without any liability whatsoever to the Department of Water.** The Department, and not the successful offeror, shall determine whether all necessary certificates have been timely submitted.

E. AWARD TO SUBSEQUENT OFFEROR. If the Department cancels **any** prospective award for failure to submit all required certificates, the Department reserves the right to make an award to the next-lowest, responsive, responsible Offeror who is able to submit all of the required certificates.

F. FINAL PAYMENT REQUIREMENTS. An original "Certification of Compliance for Final Payment" (SPO Form-22), will be required for final payment and is attached hereto.

## V. DELIVERY CONDITIONS AND SAFETY REQUIREMENTS.

- A. Before the delivery of the vehicle(s), for acceptance by the Department, the Contractor shall, at its own expense, be responsible for:



1. Weighing each vehicle;
2. Securing all weight registration forms and completing each registration form. Registration shall be in the name of the Department of Water, County of Kaua'i;
3. Ensuring that each vehicle delivered meets Federal, Hawai'i State and County safety requirements including furnishing all safety stickers; and
4. Washing and polishing completely each vehicle and delivering the vehicle(s) with full tanks of fuel.

B. The Department shall be responsible for obtaining all license plates.

**VI. DELIVERY, INSPECTION, AND ACCEPTANCE.**

- A. ASSEMBLED DELIVERIES. The vehicle and/or equipment specified herein shall be delivered to the Department completely assembled.
- B. PRE-DELIVERY INSPECTION. The Contractor may request in writing that the Department perform a pre-delivery inspection on the equipment at the Department's shop facilities. In the event the pre-delivery inspection is not conducted within three (3) working days from receipt of the written request, the Contractor shall immediately notify the Chief Procurement Officer.
- C. DELIVERY. The Contractor shall be responsible to contact the Department for delivery appointment and arrangement and; further shall physically deliver the vehicle(s) to the destination as specified herein. In the event the Contractor is unable to comply with these provisions for reasons beyond its control, the Contractor shall immediately notify the Chief Procurement Officer.
- D. A delivery receipt shall be supplied by the Contractor, showing the description of the vehicle(s), date, time and place of delivery. The receipt shall be properly executed by the Contractor and the Department at the time of delivery. The Contractor shall submit a copy of the delivery receipt to the Department within three (3) working days thereof.
- E. ACCEPTANCE; REJECTION. The Department shall notify the Contractor, in writing, within ten (10) working days after delivery, if the vehicle(s) has been accepted or rejected. In the event the vehicle(s) is rejected, the Department shall furnish written details of the deficiencies.

**VII. WARRANTIES, TECHNICAL MANUALS, AND ADVICE.**

- A. WARRANTIES AND CERTIFICATION. All materials shall be warranted against factory defects. The warranty on the vehicle(s) and/or equipment shall be the standard manufacturer's warranty against factory defects. The contractor shall also submit those certifications described in the Specifications section of this solicitation.
- B. TECHNICAL MANUALS. Contractor shall furnish a copy of each of the vehicle(s) and/or equipment warranty and the following technical manuals with the delivery for each of the vehicles and equipment:
  1. Service and Repair Manuals
  2. Technical Service Bulletins
  3. Operator's Manual
  4. Parts Manual
- C. ADVICE. The Offeror shall, without cost to the Department, provide all technical advice such as, but not limited to vehicles and equipment usage, service, repairs and identification of replacement of parts.

**VIII. DELIVERY TIME REQUIREMENTS.** The Contractor shall deliver the item specified in this solicitation within **ONE HUNDRED EIGHTY (180) CALENDAR DAYS**, or sooner,

as stated in the Written Notice to Proceed.

**IX. DELIVERY LOCATION.** The vehicle shall be delivered to:

County of Kaua'i, Department of Water  
Attn: Val Reyna  
4398 Pua Loke Street  
Līhu'e, Kaua'i, Hawai'i 96766

**CERTIFICATION OF COMPLIANCE FOR FINAL PAYMENT**  
(Required by HAR §3-122-112)

**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: \_\_\_\_\_





## SPECIFICATIONS

One (1) Rubber Track Open Cab Excavator

**ITEM NO. 1 – One (1) Rubber Track Open Cab Excavator**

**THE MINIMUM SPECIFICATIONS SHALL NOT BE LESS THAN:**

DESCRIPTION	MINIMUM REQUIREMENTS	BIDDER'S PROPOSAL MUST BE FILLED
<b>GENERAL</b>		
Model	New, current production model compact excavator	
Cab Type	Open Canopy	
Operating Weight	10,957 lbs	
<b>OPERATING PERFORMANCE</b>		
Digging Depth Capability	12' 4"	
Maximum Dump Height	13' 3"	
Maximum Reach (Ground Level)	20' 1"	
Maximum Bucket Digging Force	10,430 lb	
Maximum Arm Digging Force	5,261 lb	
Traction Force	12,320 lb	
<b>ENGINE</b>		
Type	Diesel	
Fuel Tank Capacity	18 gal	
Horsepower	39 hp	
Rated Engine Speed	2400 rpm	
Maximum Torque @1440rpm	106.9 ft-lb	
<b>UNDERCARRAGE</b>		
Track Type	rubber track	
Track Width	15.7"	
Ground Pressure	4.2 psi	
Maximum Travel Speed (Low/High)	1.7 mph / 3.2 mph	
<b>HYDRAULIC SYSTEM</b>		
System Operating Pressure	3,481 psi	
Total Hydraulic Flow	40.9 gpm	
Auxiliary Hydraulic Flow	24.2 gpm	
Hydraulic Reservoir Capacity	11.9 gal	
Hydraulic System Capacity	25.1 gal	
<b>DIMENSIONS</b>		
Undercarriage Width	6' 0"	
Height (Transport)	8' 5.2"	
Length (Transport)	18' 0.3"	
Ground Clearance	Minimum 13 inches	
Undercarriage Length	8' 2.4"	

DESCRIPTION	MINIMUM REQUIREMENTS	BIDDER'S PROPOSAL MUST BE FILLED
Min Front Swing Radius	7' 7.7"	
Min Tail Swing Radius	4' 5.5"	
Trenching Buckets (two)	12" and 24" wide heavy duty buckets with hydraulic thumbs and quick coupler	
FEATURES	Engine monitoring system	
	Heavy Duty Dozer Blade with Float	
	Control pattern selector valve to quickly change between SAE and ISO operating control system	
	Travel alarm	
	Adjustable suspension seat with seat belt	
	Mechanical pin grabber quick coupler (for bucket) main pin hydraulic thumb	
	Two front work lights, side mounted swing lights and rear work lights	
	Rotating Beacon Light	
MANUALS	The following manufacturer's manuals shall be provided: a) Operators manual b) Service manual c) Parts manual	
WARRANTY	Manufacturers Standard Warranty.	
NOTE	Unit shall be brand new and complete, meeting these specifications as well as the general catalog specifications describing this unit. Unit shall be completely assembled, serviced and in good running order and delivered to the destination indicated.	
DELIVERY	180 calendar days or sooner.	

**GENERAL TERMS AND CONDITIONS FOR GOODS AND SERVICES**

(Bound separately)

DEPARTMENT OF WATER  
COUNTY OF KAUAI

GENERAL TERMS AND CONDITIONS  
FOR GOODS AND SERVICES

September 1, 1995

REVISED August 25, 2010

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## SECTION 1 - DEFINITIONS OF TERMS

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

### 1.1 BID

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

### 1.2 BID OR PROPOSAL FORM

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

### 1.3 BID OR PROPOSAL GUARANTY OR SECURITY

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

### 1.4 CHANGE ORDER

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

### 1.5 CONTRACT

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

### 1.6 CONTRACT BOND

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

### 1.7 CONTRACT MODIFICATION

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

### 1.8 CONTRACTOR

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

### 1.9 DAYS

Days mean calendar days unless otherwise specified.

### 1.10 HEAD OF THE PURCHASING AGENCY

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

### 1.11 OFFER

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

### 1.12 OFFEROR

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

### 1.13 PROCUREMENT OFFICER

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

### 1.14 PRIORITY-LISTED OFFERORS

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

### 1.15 PROPOSAL

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

### 1.16 PURCHASING AGENCY

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

### 1.17 SOLICITATION

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

### 1.18 SPECIAL PROVISIONS

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

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

### 1.19 SPECIFICATIONS

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

### 1.20 COUNTY

County means the County of Kauai.

### 1.21 SURETY

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

### 1.22 WORK

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

### 1.23 DEPARTMENT

Department means the Department of Water, County of Kauai

### 1.24 MANAGER

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

## SECTION 2 - OFFER REQUIREMENTS AND CONDITIONS



## 2.1 COMPETENCY OF OFFEROR

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

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

## 2.2 SOLICITATION FORMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2.6 USE OF FACSIMILES

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

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

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

## 2.7 OFFER GUARANTY

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

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

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

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

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

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

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

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

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

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

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

This section shall not apply to:

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

#### 2.9 PRE-OPENING MODIFICATION OR WITHDRAWAL OF OFFERS

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

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

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

#### 2.10 RECEIPT, OPENING, AND RECORDING OF BIDS

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

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

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

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

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

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

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

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

#### 2.11 RECEIPT AND REGISTRATION OF PROPOSALS

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

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

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

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

#### 2.12 LATE OFFERS, LATE WITHDRAWALS, AND LATE MODIFICATIONS

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

#### 2.13 MISTAKES IN BIDS

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

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

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

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

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

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

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

#### 2.14 MISTAKES IN PROPOSALS

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

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

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

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

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

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

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

#### 2.15 OFFER INSPECTION

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

#### 2.16 DISQUALIFICATION OF OFFERORS

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

#### 2.17 CANCELLATION OF SOLICITATIONS AND REJECTION OF OFFERS

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

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

Section 84-15, HRS, provides as follows:

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

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

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

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

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

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

2.20 CONFIDENTIALITY OF MATERIAL

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

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

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

SECTION 3 - EVALUATION, AWARD AND EXECUTION OF CONTRACT

3.1 EVALUATION

A. HAWAII EXCISE AND USE TAXES

Section 103-53.5, HRS, provides as follows:

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

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

B. PREFERENCE FOR HAWAII PRODUCTS

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

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

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

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

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

C. PRINTING PREFERENCE

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

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

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

D. RECIPROCAL PREFERENCE

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

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

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

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

E. RECYCLED PRODUCTS PREFERENCE

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

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



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

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

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

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

F. SOFTWARE DEVELOPMENT BUSINESSES PREFERENCE

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

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

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

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

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

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

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

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

G. LOW TIE BIDS

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

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

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

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

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

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

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

### 3.2 ACCEPTANCE OF OFFER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 3.4 CONTRACT BOND

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

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

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

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

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

#### 3.6 RETURN OF OFFER GUARANTIES

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

#### 3.7 SUBMISSION OF INSURANCE CERTIFICATION

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

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

#### SECTION 4 - PERFORMANCE OF CONTRACT

##### 4.1 CONTRACT ADMINISTRATION

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

##### 4.2 COMPLIANCE WITH CONTRACT TERMS, ETC.

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

##### 4.3 CHANGE ORDERS AND MODIFICATIONS

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

##### 4.4 DELIVERY EXTENSIONS

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

##### 4.5 CONTRACT PROVISIONS TO CONSIDER TRAFFIC

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

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

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

#### SECTION 5 - LEGAL RELATIONS AND RESPONSIBILITY

##### 5.1 LAWS TO BE OBSERVED

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

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

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

#### 5.2 PATENTED ARTICLE

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

#### 5.3 SUBCONTRACTING AND ASSIGNING

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

#### 5.4 ASSIGNMENT OF ANTITRUST CLAIMS

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

#### 5.5 RESPONSIBILITY FOR DAMAGE CLAIMS

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

#### 5.6 PERSONAL LIABILITY OF PUBLIC OFFICIALS

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

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

#### 6.1 GENERAL

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

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

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

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

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

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

## 6.2 CONTRACT CHANGE ORDERS

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

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

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

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

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

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

## 6.3 CONTRACT MODIFICATIONS

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

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

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

(B) Adjustments of price or time for performance. If any modification increases or decreases the Contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this contract or as negotiated.

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

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

#### 6.4 AUTHORIZATION FOR A STOP WORK ORDER

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

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

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

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

#### 6.5 STOP WORK ORDERS

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

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

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

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

#### 6.6 VARIATIONS IN QUANTITIES FOR DEFINITE QUANTITY CONTRACTS

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

#### 6.7 VARIATIONS IN QUANTITIES FOR INDEFINITE QUANTITY CONTRACTS

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

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

#### 6.8 PRICE ADJUSTMENT

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

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

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

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

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

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

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



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

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

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

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

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

- 1) The contractor shall have given written notice to the procurement officer or designee of such officer:
  - (a) Prior to the commencement of the work involved, if at that time the contractor knows of the occurrence of such action or omission; or
  - (b) Within **thirty days** after the contractor knows of the occurrence of such action or omission, if the contractor did not have such knowledge prior to the commencement of the work; or
  - (c) Within such further time as may be allowed by the procurement officer in writing.
- (2) This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The procurement officer or designee of such officer, upon receipt of such notice may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the chief procurement officer or designee of such officer;
- (3) The notice required by subparagraph (1) describes as clearly as practicable at the time the reasons why the contractor believes that additional compensation, damages, or an extension of time may be remedies to which the contractor is entitled; and
- (4) The contractor maintains and, upon request, makes available to the procurement officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

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

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

#### 6.11 TERMINATION FOR DEFAULT

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

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

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

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

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

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

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

#### 6.12 LIQUIDATED DAMAGES

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

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

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

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

#### 6.13 TERMINATION FOR CONVENIENCE

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

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

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

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

#### (D) Compensation:

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

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

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

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

#### 6.14 TERMINATION FOR COST-REIMBURSEMENT CONTRACTS

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

#### 6.15 COMPLAINTS AND PROTESTS

Chapter 3-126, HAR, provides that:

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

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

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

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

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

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

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

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

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

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

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

#### 6.17 REMEDIES

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

### SECTION 7 - PAYMENT

#### 7.1 METHOD OF PAYMENT

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

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

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

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

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

#### 7.3 PROMPT PAYMENT BY CONTRACTOR TO SUBCONTRACTORS

(A) Any money, other than retainage, paid to a contractor shall be dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and

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

EXHIBIT A

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

Bond No. \_\_\_\_\_

**KNOW TO ALL BY THESE PRESENTS:**

That we,

\_\_\_\_\_  
(full name or legal title of offeror)

as Offeror, hereinafter called Principal, and

\_\_\_\_\_  
(name of bonding company)

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

\_\_\_\_\_  
(required amount of bid security)

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

**WHEREAS:**

The Principal has submitted an offer for \_\_\_\_\_

\_\_\_\_\_  
(project by number and brief description)

**NOW, THEREFORE:**

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

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(Seal)

\_\_\_\_\_  
Name of Principal (Offeror)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

(Seal)

\_\_\_\_\_  
Name of Surety

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

EXHIBIT B

PERFORMANCE BOND (SURETY)

(6/21/07)

KNOW TO ALL BY THESE PRESENTS:

That

\_\_\_\_\_  
(full legal name and street address of Contractor)

as Contractor, hereinafter called the Principal, and

\_\_\_\_\_  
(name and street address of bonding company)

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

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

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

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

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

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

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

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

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Seal)

\_\_\_\_\_  
Name of Principal (Contractor)

\* \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

(Seal)

\_\_\_\_\_  
Name of Surety

\* \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\*ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

EXHIBIT C

PERFORMANCE BOND

(11/17/98)

KNOW TO ALL BY THESE PRESENTS:

That we,

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

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

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



**WHEREAS:**

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

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

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

**NOW, THEREFORE,**

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

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

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

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Seal)

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

\*  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

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

EXHIBIT D

LABOR AND MATERIAL PAYMENT BOND (SURETY)

(6/21/07)

KNOW TO ALL BY THESE PRESENTS:

That

\_\_\_\_\_  
(full legal name and street address of Contractor)

as Contractor, hereinafter called Principal, and

\_\_\_\_\_  
(name and street address of bonding company)

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

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

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

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

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

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

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

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Name of Principal (Contractor)

\*  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

(Seal)

\_\_\_\_\_  
Name of Surety

\*  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\*ALL SIGNATURES MUST BE ACKNOWLEDGED  
BY A NOTARY PUBLIC

EXHIBIT E

LABOR AND MATERIAL PAYMENT BOND

(11/17/98)

KNOW TO ALL BY THESE PRESENTS:

That we,

\_\_\_\_\_  
(full legal name and street address of Contractor)

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

\_\_\_\_\_  
(dollar amount of contract)

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

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

**WHEREAS:**

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

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

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

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

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Seal)

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

\*\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

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

EXHIBIT F

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

KNOW TO ALL BY THESE PRESENTS:

That we,

\_\_\_\_\_  
(full legal name and street address of Contractor)

as Contractor, hereinafter called the Principal, and

\_\_\_\_\_  
(name and street address of bonding company)

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

\_\_\_\_\_  
(twice the dollar amount of contract)

DOLLARS (\$ \_\_\_\_\_), being \_\_\_\_\_

DOLLARS as performance bond and \_\_\_\_\_

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

WHEREAS:

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

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

NOW, THEREFORE,

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

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

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

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

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

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

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Name of Principal (Contractor)

\*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

(Seal)

\_\_\_\_\_  
Name of Surety

\*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\*ALL SIGNATURES MUST BE ACKNOWLEDGED  
BY A NOTARY PUBLIC

EXHIBIT G

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

(11/17/98)

KNOW TO ALL BY THESE PRESENTS:

That

\_\_\_\_\_  
(full legal name and street address of Contractor)

as Contractor, hereinafter called Principal, and

\_\_\_\_\_  
(name and street address of bonding company)

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

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

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

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

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

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

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

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Name of Principal (Contractor)

\*  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

(Seal)

\_\_\_\_\_  
Name of Surety

\*  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\*ALL SIGNATURES MUST BE ACKNOWLEDGED  
BY A NOTARY PUBLIC

EXHIBIT H

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

KNOW TO ALL BY THESE PRESENTS:

That we,

\_\_\_\_\_  
(full legal name and street address of Contractor)

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

\_\_\_\_\_  
(dollar amount of contract)

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

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



**WHEREAS:**

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

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

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

**NOW, THEREFORE,**

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

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

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

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal)

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

\*  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

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

EXHIBIT I

CONTRACTOR ACKNOWLEDGMENT

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

CONTRACTOR ACKNOWLEDGMENT:

STATE OF \_\_\_\_\_ )  
 ) :SS  
\_\_\_\_\_ COUNTY OF \_\_\_\_\_ )

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

(Notary Seal)

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

EXHIBIT J

SURETY ACKNOWLEDGMENT

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

SURETY ACKNOWLEDGMENT:

STATE OF \_\_\_\_\_ )  
 ) :SS  
\_\_\_\_\_ COUNTY OF \_\_\_\_\_ )

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

(Notary Seal)

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

EXHIBIT K

CONTRACT  
(2/22/07)

CONTRACT NO. \_\_\_\_\_

GOODS CONTRACT

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

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

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

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

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

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



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

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

\_\_\_\_\_ and for the total sum of \_\_\_\_\_

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

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

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

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

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

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

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

APPROVED:

\_\_\_\_\_  
Manager and Chief Engineer

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
Deputy County Attorney

**BOARD OF WATER SUPPLY:**

By \_\_\_\_\_  
Its: Chairperson

\_\_\_\_\_:

By \_\_\_\_\_  
Its

By \_\_\_\_\_  
Its

STATE OF HAWAII     )  
                                  ) ss.  
COUNTY OF KAUAI    )

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

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

STATE OF HAWAII     )  
                                  ) ss.  
\_\_\_\_\_ )

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

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

EXHIBIT L

CONTRACT CHANGE ORDER  
(2/22/07)

DEPARTMENT OF WATER  
COUNTY OF KAUAI

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

EXHIBIT M

CONTRACT MODIFICATION FORM  
(2/22/07)

DEPARTMENT OF WATER  
COUNTY OF KAUAI  
STATE OF HAWAII

MODIFICATION ORDER NO. \_\_\_\_\_ Date \_\_\_\_\_  
Contractor \_\_\_\_\_ Contract No. \_\_\_\_\_  
Contract Title \_\_\_\_\_

A. MODIFICATIONS

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

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

B. CONTRACTOR'S QUOTATION

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

\_\_\_\_\_  
Contractor's Signature and Date

C. STATEMENT OF CONTRACT FUNDS

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

D. VALIDATION OF CONTRACT MODIFICATION

\_\_\_\_\_  
User Agency Date [Procurement Officer] Date

DISTRIBUTION: Original - Contracting Office c: Contractor



## SPECIAL PROVISIONS

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

2. DEFINITIONS.

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

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

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

"COUNTY" means the County of Kauai.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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