

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS
HONOLULU, HAWAII

SPECIAL PROVISIONS, SPECIFICATIONS, PROPOSAL,

CONTRACT AND BOND

FOR

FURNISHING OF HIGHWAY TRAFFIC CONTROL

AND SAFETY MEASURES AT VARIOUS LOCATIONS FOR THE OAHU DISTRICT

LANDSCAPE AND MAINTENANCE CREWS AND SPECIAL PROJECTS,

ISLAND OF OAHU

PROJECT NO. HWY-C-46-24

2024

NOTICE TO BIDDERS
Hawaii Revised Statutes (HRS),
Chapter 103D

The receiving of bids for **FURNISHING OF HIGHWAY TRAFFIC CONTROL AND SAFETY MEASURES AT VARIOUS LOCATIONS FOR THE OAHU DISTRICT LANDSCAPE AND MAINTENANCE CREWS AND SPECIAL PROJECTS, ISLAND OF OAHU, PROJECT NO. HWY-C-46-24**, will begin as of the HiePRO Release Date. Bidders shall register and submit complete bids through HiePRO only. Refer to the following HiePRO link for important information on Vendor Registration: <https://hiepro.ehawaii.gov/welcome.html>.

The solicitation specifications, proposal, and additional documents designated or incorporated by reference shall be available in HiePRO.

HiePRO OFFER DUE DATE & TIME is October 14, 2024, at 2:00 p.m., Hawaii Standard Time (HST). **Bidders shall submit and upload the complete proposal to HiePRO prior to the offer due date and time. Proposals received after said due date and time shall not be considered. Any additional support documents explicitly designated as confidential and/or proprietary shall be uploaded as a separate file to HiePRO. Bidders shall not include confidential and/or proprietary documents as part of their proposal. The record of each bidder and their respective proposal shall be open to public inspection. FAILURE TO UPLOAD THE PROPOSAL TO HiePRO SHALL BE GROUNDS FOR REJECTION.**

The scope of work consists of furnishing highway traffic control and safety measures for the Oahu District landscape and maintenance crews and special projects, 24 hours a day, 7 days a week on an open end, as-needed basis on the island of Oahu.

All Request for Information (RFI) questions and Substitution Requests shall be submitted in HIePRO **no later than September 26, 2024, at 2:00 p.m., HST.** RFI questions received after the stated deadline shall not be addressed. Substitution Requests received after the stated deadline shall not be considered. Verbal RFI(s) shall not receive a response. All responses to RFI questions shall be provided for clarification and information only and issued by formal addendum. Any amendments to the solicitation shall be made by formal addendum and posted in HIePRO.

If there is a conflict between the solicitation and information stated in the responses to RFI questions, the solicitation shall govern and control, unless as amended by formal addendum.

Campaign contributions by State and County Contractors. Contractors are hereby notified of the applicability of HRS § 11-355 which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. For more information, contact the Campaign Spending Commission at (808) 586-0285.

Protests. Any protest of this solicitation shall be submitted in writing to the Director of Transportation, in accordance with HRS § 103D-701 and Hawaii Administrative Rules § 3-126.

The Equal Employment Opportunity Regulations of the Secretary of Labor implementing Executive Order 11246, as amended, shall be complied with on this project.

The U.S. Department of Transportation Regulation entitled “Nondiscrimination in Federally Assisted Programs of the U.S. Department of Transportation”, Title 49, Code of Federal Regulations (CFR), Part 21, is applicable to this project. Bidders are hereby notified that the Department of Transportation shall affirmatively ensure that the contract entered into pursuant to this advertisement shall be awarded to the lowest responsible bidder without discrimination on the grounds of race, color, national origin, or sex (as directed by 23 CFR Part 200).

For additional information, contact Jake Dickman, Project Manager, by phone at (808) 587-2189 or by email at jake.j.dickman@hawaii.gov.

The State reserves the right to reject any or all proposals and to waive any defects in said proposals in the best interest of the public.



ROBIN K. SHISHIDO
Deputy Director of Transportation for Highways

HIePRO RELEASE DATE: September 16, 2024

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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS
HONOLULU, HAWAII

SPECIAL PROVISIONS

SPECIAL PROVISIONS

The specifications contain herein are amended as follows:

(A) SECTION 1 – DEFINITIONS AND TERMS shall be amended as follows:

1. 1.33 SUBCONTRACTOR shall be amended in its entirety to read as follows:

“1.33 SUBCONTRACTOR – An individual, partnership, firm corporation, or joint venture, or other legal entity, as licensed or required to be licensed under Chapter 444, Hawaii Revised Statutes, as amended, which enters into an agreement with the Contractor to perform a portion of the work.”

2. 1.38 WORKING DAY shall be amended in its entirety to read as follows:

“1.38 WORKING DAY – Every day, except Saturdays, Sundays, State holidays as applicable and as observed.

Normal State holidays are as follows:

New Year's Day (The first day in January)
Dr. Martin Luther King, Jr. Day (The third Monday in January)
President's Day (The third Monday in February)
Prince Jonah Kuhio Kalaniana'ole Day (The twenty-sixth day in March)
Good Friday (The Friday preceding Easter Sunday)
Memorial Day (The last Monday in May)
King Kamehameha Day (The eleventh day in June)
Independence Day (The fourth day in July)
Statehood Day (The third Friday in August)
Labor Day (The first Monday in September)
General Election Day (The first Tuesday in November following the first Monday of even numbered years)
Veteran's Day (The eleventh day in November)
Thanksgiving Day (The fourth Thursday in November)
Christmas Day (The twenty-fifth day in December)

State Holiday schedules can be obtained online at:

<http://dhrd.hawaii.gov/state-observed-holidays/>”

3. Add the following new subsections:

“1.39 HAWAII ePROCUREMENT SYSTEM (HIePRO) – The State of Hawaii eProcurement System for issuing solicitations, receiving proposals and responses, and issuing notices of award.

1.40 ENGINEER– The respective District Engineer, acting directly or through his duly authorized representatives, who are responsible for the supervision of construction and other highway matters.

1.41 STANDARD SPECIFICATIONS – The Hawaii Standard Specifications for Road and Bridge Construction, 2005, Highways Division, Department of Transportation, including any amendments. To review the Standard Specifications, log on to:

<http://hidot.hawaii.gov/highways/s2005-standard-specifications/>

to review the 2005 Standard Specifications and their applicable amendments/Special Provisions.

The Contractor shall utilize the latest revision.

1.42 STANDARD PLANS – The Standard Plans, 2008, issued by the State of Hawaii, Department of Transportation, Highways Division, Design Branch, as amended, revised or updated, applies to these Specifications. The Standard Plans is available from the Department of Transportation, Highways Division. For information, log on to:

<http://hidot.hawaii.gov/highways/s2005-standard-specifications/>

The Contractor shall utilize the latest revision.

1.43 MUTCD – The Manual on Uniform Traffic Control Devices, **2009**, Federal Highway Administration, U.S. Department of Transportation, with revision numbers 1, 2, and 3 incorporated. To review this edition of the MUTCD, log on to:

https://mutcd.fhwa.dot.gov/previous_editions.htm

1.44 OSHA – The U.S. Department of Labor (DOL), Occupational Safety and Health Administration (OSHA). To review the OSHA, log on to:

<https://www.osha.gov/>

The Contractor shall utilize the latest revision.”

(B) SECTION 2 – PROPOSAL REQUIREMENTS AND CONDITIONS shall be amended as follows:

1. 2.3 PROPOSAL GUARANTY is deleted in its entirety.
2. 2.4 DELIVERY OF PROPOSALS shall be amended in its entirety to read as follows:

“2.4 DELIVERY OF PROPOSALS – Bidders shall submit and upload the complete proposal to HIePRO prior to the bid opening date and time. Proposals received after said due date and time shall not be considered. Any additional support documents explicitly designated as confidential and/or proprietary shall be uploaded as a separate file to HIePRO. Do not include confidential and/or proprietary documents with the proposal. The record of each bidder and respective bid shall be open to public inspection. Original (wet ink, hard copy) proposal documents are not required to be submitted. **Contract award shall be based on evaluation of proposals submitted and uploaded to HIePRO.**

FAILURE TO UPLOAD THE COMPLETE PROPOSAL TO HIePRO SHALL BE GROUNDS FOR REJECTION OF THE BID.

If there is a conflict between the specifications document and the HIePRO solicitation, the specifications shall govern and control, unless otherwise specified.”

3. 2.5 WITHDRAWAL OF PROPOSALS shall be amended by replacing the entire subsection with:

“2.5 WITHDRAWAL OF PROPOSALS – Bids may not be modified or withdrawn prior to the bid opening date and time. Withdrawal or revision of proposal shall be completed, and submitted and uploaded to HIePRO prior to the bid opening date and time.”

4. 2.6 PUBLIC OPENING OF PROPOSALS is not applicable.

Add the following new subsection:

“2.9 CERTIFICATE FOR PERFORMANCE OF SERVICES – Pursuant to Section 103-55, Hawaii Revised Statutes, and unless indicated otherwise, each bidder should submit the “Certificate for Performance of Services” in the event bids are more than \$25,000. The notarized certificate must be submitted to the Contracts Office, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813, before entering a contract to perform services. This form is available in the Forms section.

Effective July 1, 2024, salaries of State employees performing work similar to the work called for under this contract are as follows:

Class Title	Bargaining Unit (BU) Salary Schedule	Grade	Minimum Hourly Pay Rate
General Laborer I	BU 01	BC-02	\$ 24.35
General Laborer II	BU 01	BC-03	\$ 25.04
General Laborer III	BU 01	WS-03	\$ 26.80
Light Truck Driver	BU 01	BC-04	\$ 26.04
Truck Driver	BU 01	BC-06	\$ 28.17

The above information is provided to the bidder for guidance only and is subject to change in accordance with existing collective bargaining contracts or shall change as contracts are renegotiated.

It is the bidder's responsibility to verify the accuracy of the wage rates contained herein and to provide for changes in the minimum wages, which must be paid to personnel when work is done on this project. Information on the status of Bargaining Unit (BU) contracts, salary schedules, Class Specifications and minimum qualification requirements can be obtained from the State Department of Transportation, Highways Division, Personnel Management office (587-2229) or online at:

<http://dhrd.hawaii.gov/state-hr-professionals/class-and-comp/>

Bidders are further advised that they are not restricted to hiring only those classifications of employees as listed but are free to employ such other classifications of workers as the bidder deems proper and proposes to use on the project, as may be according to the bidder's common hiring practice.

However, the principal duties of employees other than those listed hereinabove working on the project will be matched against those of State workers to determine the closest equivalent State employee classification, and the bidder must compensate such employee(s) at a rate that is no less than that of the equivalent State employee."

(C) SECTION 3 – AWARD AND EXECUTION OF CONTRACT shall be amended as follows:

1. 3.4 REQUIREMENT OF CONTRACT BOND is amended deleting 3.4 Requirements for Contract Bonds in its entirety and replacing with the following:

“3.4 REQUIREMENT OF CONTRACT BOND – Prior to the execution of the contract, the successful bidder shall file good and sufficient performance bond on the forms furnished by the Department. In as much as the contract to be executed is a price-term, open-end, or requirements contract under which the contract price, or total amount to be paid to the Contractor cannot be determined at the time the contract is executed, the performance bond amount required shall be as follows:

Performance Bond\$2,500,000.00.”

The Contractor shall submit the required contract bond(s) together with the signed contract in accordance with Section 3.5 Execution of Contract.

The above amount represents the performance bond amount required for the initial term of the contract. If work orders issued during the initial contract term exceed the original bond requirements, the procurement officer shall require additional performance bonds to cover said work orders.

If the contract is extended beyond the initial term, the State shall require new bonds for each subsequent term. Such performance bond for each subsequent term, may be extensions of the original bond(s) by endorsements thereto, provided that, as to any claims which may have arisen or may arise while said bonds were in effect, said bonds shall remain in full force and effect.

The performance bond amount may be reduced upon written determination by the head of the purchasing agency, if it is deemed to be in the best interest of the State.

The bidder shall limit the acceptable performance bond to the following:

- (a) Legal tender; or
- (b) A valid surety bid bond, underwritten by a company licensed to issue bonds in the State of Hawaii, in the form and composed, substantially, with the same language as provided herewith and signed by both parties; or
- (c) A certificate of deposit; share certificate; cashier's check; treasurer's check; teller's check drawn by, or a certified check accepted by and payable on demand to the State by a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA).
 - 1. The bidder may use these instruments only to a maximum of one hundred thousand dollars (\$100,000.00).
 - 2. If the required security or bond amount totals over one hundred thousand dollars (\$100,000.00) more than one instrument not exceeding one hundred thousand dollars (\$100,000.00) each and issued by different financial institutions shall be acceptable.”

- 2. 3.5 EXECUTION OF CONTRACT is amended by deleting 3.5 EXECUTION OF CONTRACT in its entirety and replacing it with the following:
“3.5 Execution of Contract. The contract, contract performance bond, and the

“Certificate for Performance of Services”, similar to a copy of the same annexed hereto, shall be executed by the successful bidder and returned within ten (10) days after the award of the contract or within such further time as the Director may allow after the bidder has received the contract for execution.

Pursuant to Section 103D-309, H.R.S., the contract shall not bind the State in any way unless said contract has been fully and properly executed by all the parties thereto and the Comptroller has endorsed thereon a certificate that there is available an unexpended appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract.”

(D) SECTION 4 – SCOPE OF WORK shall be amended as follows:

1. 4.2 PERFORMANCE OF WORK is amended by adding the following paragraphs to the end of the subsection:

"The Contractor shall perform work satisfactorily in the judgment of the Director during the contract period. If it appears at any time that the work contracted to be performed is not satisfactory, the Director may require the Contractor to furnish and place in operation such additional force and equipment as the Director shall deem necessary to bring the work up to satisfactory status.

In case the Contractor fails to comply after ten (10) working days from the date of receipt of such a written order from the Director, the Director may employ a working force and equipment and charge the Contractor for the reasonable cost thereof including depreciation for equipment and or may terminate the contract."

2. 4.6 VARIATION IN QUANTITY shall be replaced in its entirety to read:

“By mutual agreement, the estimated quantity of goods as specified in this contract may be decreased or increased by the Engineer as necessary, provided the unit price remains the same specified by Section 10.13 Escalation Clause, of the Specifications.”

3. Add the following new subsection:

"4.7 CONTRACT TO BE INDEFINITE QUANTITY – The requirement for traffic control and safety measure services to be furnished by the Contractor will be on an indefinite quantity/ “as-needed” basis as called for in these specifications. Payment for services shall be paid by Purchase Order.”

(E) SECTION 5 – CONTROL OF WORK shall be amended as follows:

1. 5.3 COOPERATION OF CONTRACTOR AND STATE shall be amended by replacing the following to the end of the subsection:

“Before starting work on the project, the Contractor shall designate in writing an authorized representative (i.e., superintendent) who shall have complete authority to represent and to act for the Contractor.

The Contractor shall furnish the State with a telephone number and electronic mail (email) address where they can be reached, either by voice or text, at all times. The Contractor or their designated representative shall return phone calls from the Engineer within one (1) hour of receipt of the phone call or text. All emails from the Engineer shall receive a response within three (3) hours of receipt of the email. Refer to Subsection 1.40 Engineer of the Special Provisions for the definition of Engineer.”

2. 5.4 INSPECTION shall be amended by adding the following to the end of the subsection:

“The State reserves the right to have all work as specified by the contract documents to be inspected by a State Inspector or by a State-Contractor/ Consultant-provided inspector.

The Contractor shall maintain all books, documents, papers, records, and other evidence pertaining to payroll, employee’s name, wage rates and hours worked, and all materials shall be provided in 24 hours and information available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract, for inspection by the State. Failure to comply with the conditions of this Section during the contract period may result in cancellation of the contract.”

- (F) SECTION 6 – CONTROL OF MATERIAL AND EQUIPMENT is amended as follows:

1. The first paragraph of A. QUALIFICATION BEFORE BID OPENING shall be replaced with the following:

“A. QUALIFICATION BEFORE BID OPENING - When the specifications and/or plans specify one or more manufacturer's brand names of materials or equipment to indicate a quality, style, appearance, or performance, the bidder will be assumed to have based its bid on one of the specified named products, except where such proprietary product are specified, alternate brands may be qualified if found equal or better by the Department. The bidder shall submit a request to the Department for review and approval at the earliest date possible. Requests shall be submitted via email to the Contact person listed in HiePRO for the solicitation and also posted as a question in HiePRO under the question/answer tab referencing the email with the request. The request must be posted in HiePRO no later than fourteen (14) calendar days before the bid opening date.”

2. The first sentence of the second paragraph of A. QUALIFICATION BEFORE BID OPENING shall be replaced with the following:

“It shall be the responsibility of the bidder to submit sufficient evidence based upon which a determination can be made by the Department that the alternate brand is a qualified equivalent.”

(G) SECTION 7 – LEGAL RELATIONS AND RESPONSIBILITY shall be amended as follows:

1. 7.8 LABOR AND COMPENSATION REQUIREMENTS shall be amended by replacing the first two paragraphs with the following:

“7.8 LABOR AND COMPENSATION REQUIREMENTS – Pursuant to Section 103-55, H.R.S., Wages, Hours, Working Conditions of Employees of Contractor’s Supplying Services, 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. The Contractor shall submit certified payroll affidavits weekly in the form approved by the Department.

Additional information on the requirements of Section 103.55, H.R.S. may be obtained at:

https://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0103/HRS_0103-0055.htm.

The Contractor shall submit certified payroll report in the form approved by the Department, showing full information on the following:

- a. Name of each employee who worked during the reporting period,
- b. Their rates of pay,
- c. The number of hours worked,
- d. Gross earnings and
- e. Deductions made.

The Contractor shall be required to comply with the laws of the U.S. Citizenship and Immigration Services (USCIS). The Department reserves the right to periodically check the employable status of persons listed on the certified payroll certificates. Any person, who is found to be an illegal alien (undocumented alien) under the laws of the USCIS, shall be immediately dismissed from the project and not be rehired until he or she is properly cleared.”

2. Add the following new subsection:

“7.10 PUBLIC CONVENIENCE AND SAFETY

The Contractor shall always conduct traffic control operations with due regard to the convenience and safety of the public. The protection of persons and property shall be provided by the Contractor.

All work under this contract shall be in full compliance with Subsection 107.11, Safety: Accident Prevention and 107.12, Protection of Persons and Property of the Standard Specifications. The standard specification can be found online at:

<https://hidot.hawaii.gov/highways/s2005-standard-specifications/>

The Contractor shall take all necessary precautions to protect all personnel from hazards and injuries. The rules and regulations promulgated by the U.S. Department of Labor Occupational Safety and Health Acts (OSHA); the Hawaii Department of Labor and Industrial Relations (DLIR); the Hawaii Occupational Safety and Health Division (HIOSH) and any other applicable federal, state, and local rules and regulations are not included herein, but are applicable and made part of these specifications.”

(H) SECTION 8 PROSECUTION AND PROGRESS shall be amended as follows:

1. 8.6 LIQUIDATED DAMAGES shall be amended by adding the following to the end of the first paragraph:

“Liquidated Damages – Timely performance by the Contractor of all their duties is an essential part of this contract and in case of failure on the part of the Contractor to perform any of his/her duties in a timely manner, damages will be sustained by the State.

The contractor shall be charged \$500.00 for every fifteen (15) minute increment of late service. The maximum amount that the State can charge the contractor for late service is \$10,000.00 per day. In the event that coverage is cancelled or not fulfilled, when scheduled and confirmed agreements with the Contractor and the State, the State will charge the contractor \$10,000.00. After ten (10) late or no coverage incidents, an additional \$1,000 per incident will be charged to the contractor.”

(I) SECTION 9 – PAYMENT shall be amended as follows:

1. 9.2 RETAINAGE/DEDUCTION FROM PAYMENT shall be amended by replacing the third paragraph:

“Retainage is deducted monthly starting on the first invoice of the applicable term and if contract performance is satisfactory, deduction will end after six months. The Contractor has **two options** to be paid the retainage amount:

- i. Submit the total retainage invoice at the end of the first term. Repeat the whole process of deducting retainage and submitting total retainage for payment for each contract term, or

- ii. Submit the total retainage invoice held during the first term at the end of the final term, as applicable (end of the final option term or when contract is not renewed, etc.).
2. 9.4 PROGRESS PAYMENTS shall be amended by replacing the entire subsection with:

“The Contractor shall bill the State once a month. All monthly payments are approximate only and shall be subject to correction at any time before or in the final estimate and payment.

To expedite the processing of all payments for services rendered, the Contractor shall forward copies of the invoice electronically, to the following address:

Department of Transportation - Highways c/o District Engineer - Oahu District 727 Kakoi Street, Honolulu, Hawaii 96819

Each invoice shall include but not be limited to the following information:

- a. Contractor's name, address, phone number and email address.
- b. Project title, project number, contract number and work order (work order only if open-ended contract).
- c. Bid item number, description of services, periods covered/date of service(s) performed, quantity, unit price, amount, subtotal, and total.
- d. Deductions, as applicable, shall be included in the invoices as separate subtotal(s) and labeled as either “Deductions”, “Liquidated Damages and/or “Retainage.”
 - i. Liquidated Damages – as specified in Section 8.6 Liquidated Damages, of the Special Provisions.
 - ii. Retainage as specified in Section 9.2 Retainage/Deduction from Payment, of the Special Provisions and the Specifications
 - iii. Certification by the Contractor that services as requested under the Contract have been performed.

Refer to the sample invoice in Appendix A – Sample Monthly Invoice.

Pursuant to Section 7.8 Labor and Compensation Requirements, of the Special Provisions, the Contractor shall submit certified copies of the payrolls with the monthly invoice within seven (7) days after the end of the month. The certification shall affirm that the payrolls are correct and complete. The certificates shall be forwarded to the same address as specified above.”

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

SPECIFICATIONS

SECTION 1 - DEFINITION AND TERMS

Whenever the following pronouns are used in these specifications, or in any documents or instruments where these specifications govern, the intent and meaning shall be interpreted as follows:

1.1 ADDENDA - A written document which may be issued by the Director during the bidding period involving changes to the specifications and plans, if any, which shall be considered and made a part of the contract.

1.2 AIRPORTS DIVISION - Airports Division, Department of Transportation, State of Hawaii.

1.3 AWARD - The written acceptance of a proposal by the State.

1.4 BIDDER - Any individual, partnership, corporation or other legal entity, or combination thereof, submitting a proposal for the work contemplated, acting either directly or through a duly authorized representative.

1.5 CALENDAR DAY - Every day shown on the calendar. If no designation of calendar or working day is made, "day" shall mean calendar day.

1.6 CHANGE ORDER - A written order issued by the Director to the Contractor requiring the contract work to be performed in accordance with a change or changes that may involve an adjustment in contract time and price or requiring performance of any unforeseen work essential to complete the contract.

1.7 CONTRACT - The written agreement between the State and the Contractor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the work, the furnishing of labor and materials, and the basis of payment.

The contract includes the (1) notice to bidders, (2) proposal, (3) contract form and contract bond, (4) specifications, (5) special provisions and plans, if any, (6) addenda, (7) notice to proceed, and (8) change orders and agreements that are required to complete the work, all of which constitute one instrument.

1.8 CONTRACT BOND - The approved form of security, executed by the Contractor and its Surety or Sureties, guaranteeing the completion of the work in accordance with the terms of the contract, and guaranteeing full payment of all claims for labor, materials, and supplies used or incorporated in the work.

1.9 CONTRACT TIME - The number of working days or calendar days allowed for completion of the contract, including authorized time extensions.

If a calendar date is specified as the date of completion in lieu of the number of working days or calendar days, the contract shall be completed by that date.

In case the contract is for a specified period of time, the contract time shall be for said specified period of time.

1.10 CONTRACTOR - The individual, partnership, corporation or other legal entity, or combination thereof, contracting with the State for performance of the prescribed work.

1.11 DEPARTMENT - The State Department of Transportation.

1.12 DIRECTOR - The Director of Transportation, acting either directly or through the Director's duly authorized representative.

1.13 EQUAL OR APPROVED EQUAL - Whenever this term is used in the specifications and plans, if any, it means a brand or article pre-qualified in accordance with Section 6.2 Trade Names and Alternates and which may be used in place of the one specified.

1.14 H.A.R. or HAR - Hawaii Administrative Rules.

1.15 H.R.S. or HRS - Hawaii Revised Statutes.

1.16 HARBORS DIVISION - Harbors Division, Department of Transportation, State of Hawaii.

1.17 HIGHWAYS DIVISION - Highways Division, Department of Transportation, State of Hawaii.

1.18 HOLIDAYS - The days which are set apart and established as State holidays pursuant to Section 8-1, H.R.S.

1.19 INSPECTOR - The Director's authorized representative assigned to make detailed inspections of contract performance and materials supplied.

1.20 NOTICE TO BIDDERS - The public announcement, as required by law, inviting proposals for the work to be performed or materials to be furnished.

1.21 NOTICE OF FINAL ACCEPTANCE - Written notice from the Director to the Contractor that the entire contract has been completed in all respects in accordance with the specifications and plans, if any, and any changes thereof previously approved by the Director.

1.22 NOTICE TO PROCEED - Written notice from the Director to the Contractor advising the Contractor of the date on which he is to begin the prosecution of the work.

1.23 PLANS - The contract drawings approved by the Director which show the location, character, dimensions and details of the work to be done and shall be a part of the contract.

1.24 PROCUREMENT OFFICER - The Director's duly authorized representative including project managers, project engineers and contract administrators assigned to prepare, evaluate and administer contracts for the purchasing of goods and services.

1.25 PROPOSAL (OR BID) - The offer of a bidder, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted.

1.26 PROPOSAL FORM - The approved format prepared by the Department or a facsimile thereof on which bids for the work must be prepared and submitted. (Reasonable facsimile acceptable for bidding.)

1.27 PROPOSAL GUARANTY - The security furnished with a proposal to guarantee that the bidder will enter into the contract and furnish all other requirements if the bidder's proposal is accepted.

1.28 QUALIFICATION QUESTIONNAIRE - The specified forms on which the bidder shall furnish required information as to the bidder's ability to perform and finance the work.

1.29 S.L.H. or SLH - Session Laws of Hawaii.

1.30 SPECIAL PROVISIONS - Revisions to the specifications. The specific clauses setting forth conditions or requirements peculiar to the project under consideration which are not thoroughly or satisfactorily stipulated in these specifications.

1.31 SPECIFICATIONS - The directions, provisions, and requirements pertaining to the method and manner of performing the work and to the quantities and qualities of materials to be furnished under the contract.

1.32 STATE - The State of Hawaii.

1.33 SUBCONTRACTOR - An individual, partnership, corporation, other legal entity, or any combination thereof, that enters into an agreement with the Contractor to perform a portion of the work for the Contractor.

1.34 SUPERINTENDENT - The Contractor's representative who is responsible for and in charge of the work.

1.35 SURETY - The corporation, partnership or individual, other than the Contractor, executing a bond furnished by the Contractor and guaranteeing performance by the Contractor.

1.36 TITLES (OR HEADINGS) - The titles or headings of the Sections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation. Unless otherwise indicated, whenever the word "Section" is used, reference is being made to a Section in these specifications.

1.37 WORK - The furnishing of all labor, materials, equipment, and other incidentals necessary or convenient for the successful completion of the project and the execution of all the duties and obligations imposed by the contract.

1.38 WORKING DAY - Any day, except Saturdays, Sundays and State holidays.

SECTION 2 - PROPOSAL REQUIREMENTS AND CONDITIONS

2.1 QUALIFICATION OF BIDDERS - Prospective bidders must be capable of performing the work for which bids are called.

In accordance with Section 103D-310, HRS, the Department may require any prospective bidder to submit answers to questions contained in the "Standard Qualification Questionnaire for Prospective Bidders on Public Works Contracts" on the form furnished by the Department, properly executed and notarized, setting forth a complete statement of the experience of such prospective bidder and its organization in performing similar work and a statement of the equipment proposed to be used, together with adequate proof of the availability of such equipment. Whenever it appears to the Department, from answers to the questionnaire or otherwise, that the prospective bidder is not fully qualified and able to perform the intended work, the Department will, after affording the prospective bidder an opportunity to be heard and if still of the opinion that the bidder is not fully qualified to perform the work, refuse to receive or consider any bid offered by the prospective bidder. All information contained in the answers to the questionnaire shall be kept confidential. Questionnaire so submitted shall be returned to the bidders after serving their purpose.

Failure to complete the qualification questionnaire will be sufficient cause for the Department to disqualify a prospective bidder.

No person, firm or corporation may bid where (1) the person, firm, or corporation, or (2) a corporation owned substantially by the person, firm, or corporation, or (3) a substantial stockholder or an officer of the corporation, or (4) a partner or substantial investor in the firm is in arrears in payments owed to the State of Hawaii or its political subdivisions or is in default as a surety or failure to do faithfully and diligently previous contracts with the State.

2.2 REJECTION OF PROPOSALS CONTAINING ALTERATIONS, ERASURES, OR IRREGULARITIES - Proposals may be rejected if they show any alterations of form, additions not called for, conditional bids, incomplete bids, erasures, or irregularities of any kind.

When proposals are signed by any agent, other than the officer or officers of a corporation authorized to sign contract on its behalf or a member of copartnership, a Power of Attorney must be on file with the Department prior to opening bids or shall be submitted with the proposal; otherwise, the proposal may be rejected as irregular and unauthorized.

Members of a joint venture may be requested to supply the Department with a copy of their joint venture agreement or each member of the joint venture may be required to sign the proposal.

2.3 PROPOSAL GUARANTY - A proposal guaranty (bid bond) is not required except when specifically noted in the proposal section of the bid document.

When a proposal guaranty is required with a bid, it will be specifically stated in the proposal; and no proposal totaling \$25,000 or more will be considered unless accompanied by one of the following forms of bidder's security:

- A. a deposit of legal tender; or
- B. a surety bid bond underwritten by a company licensed to issue bonds in the State of Hawaii and submitted on the standard form provided herewith; or
- C. 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 and payable on demand to the State by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA).
 - 1. The bidder may use these instruments only to a maximum of one hundred thousand dollars (\$100,000.00).
 - 2. If the required security or bond amount totals over one hundred thousand dollars (\$100,000.00), more than one instrument not exceeding one hundred thousand dollars (\$100,000.00) each and issued by different financial institutions shall be acceptable.
 - 3. The instrument shall be made payable at sight to the Department of Transportation, State of Hawaii.

According to Section 103D-323, HRS, the above shall be in a sum not less than five percent (5%) of the amount bid.

2.4 DELIVERY OF PROPOSALS - Each proposal shall be placed, together with the proposal guaranty when required, in an envelope and sealed and so marked as to indicate the identity of the project, the name and address of the bidder, and other required information and then delivered as indicated in the Notice to Bidders. Proposals will be received up to the time fixed in the Notice to Bidders for the opening of bids.

2.5 WITHDRAWAL OF PROPOSALS - Any proposal may be withdrawn at any time prior to the time fixed in the Notice to Bidders for the opening of proposals upon the filing of a written request therefore with the Department, executed by the bidder or a duly authorized representative. The withdrawal of a proposal shall not preclude a bidder from submitting a new proposal.

2.6 PUBLIC OPENING OF PROPOSALS - Proposals will be opened and read publicly at the time and place indicated in the Notice to Bidders. Bidders or their authorized agents are invited to be present.

2.7 DISQUALIFICATION OF BIDDERS - Any of the following reasons may be considered as being sufficient grounds for the disqualification of a bidder and the rejection of his proposal or proposals.

A. More than one proposal for the same work from an individual, firm, or corporation under the same or different name.

B. Evidence of collusion among bidders. Participants in such collusion will receive no recognition as bidders for any future work of the Department until such participant shall have been reinstated as a qualified bidder.

C. Evidence of assistance from 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, pursuant to Section 84-15, H.R.S.

D. Lack of proposal guaranty.

E. Unsigned proposal or proposal not signed in ink by person or persons legally authorized to submit a proposal on behalf of the bidder.

2.8 MATERIAL GUARANTY - The bidder may be required to furnish a complete statement of the origin, composition and manufacture of any or all materials to be used in the prosecution of the work, together with samples. Such samples may be subjected to tests to determine their quality and fitness for the work.

SECTION 3 - AWARD AND EXECUTION OF CONTRACT

3.1 AWARD OF CONTRACT - The State reserves the right to reject any and all proposals and to waive any defects as may be deemed to be in the best interest of the public.

The award of contract, if it be awarded, shall be made within sixty (60) calendar days after the opening of bids to the lowest responsive and responsible bidder whose proposal complies with all the prescribed requirements. The Department may request the bidders to allow the Department to consider the bids for the issuance of an award beyond the sixty (60) calendar day period. Agreement to such an extension shall be made by a bidder in writing. Only bidders who have agreed to such an extension shall be eligible for the award.

Requirement for award. The Bidder, as proof of compliance with the requirements of section 103D-310(c), HRS, upon award of a contract made pursuant to section 103D-302, HRS, shall provide the documents listed below. The documents shall be submitted promptly to the Department. If a valid certificate/clearance is not submitted on a timely basis upon award, the Bidder may be deemed non-responsible.

A. Tax Clearance.

Pursuant to section 103D-310(c), 103-53 and 103D-328, HRS, the bidder shall submit a tax clearance certificate from the State of Hawaii Department of Taxation (DOTAX) and the Internal Revenue Service (IRS), subject to section 103D-328, HRS, current within six months of issuance date.

FORM A6, TAX CLEARANCE CERTIFICATE, is available at the following website:

<https://tax.hawaii.gov/>

To receive DOTAX Forms by fax or mail, phone (808)587-4242 or 1-800-222-3229.

The application for the Tax Clearance Certificate is the responsibility of the bidder. Bidder shall submit directly to the DOTAX or IRS. The approved certificate may then be submitted to the Department.

B. Certificate of Compliance.

Pursuant to section 103D-310(c), HRS, the bidder shall submit a certificate of compliance for Hawaii Employment Security Law (Chapter 383, HRS), Workers' Compensation Law (Chapter 386, HRS), Temporary Disability Insurance (Chapter 392, HRS), and Prepaid Health Care Act (Chapter 393, HRS), from the State of Hawaii Department of Labor and Industrial Relations (DLIR), current within six months of issuance date.

Form LIR#27, Application for Certificate of Compliance with section 3-122-112, HAR, is available at the following website:

<https://labor.hawaii.gov/>

Contact the DLIR Unemployment Insurance Division at (808) 586-8926 for additional information.

Inquiries regarding the status of a LIR#27 Form are available from the DLIR Disability Compensation Division at (808)586-9200.

The application for the Certificate of Compliance is the responsibility of the bidder. Bidder shall submit directly to the DLIR. The approved certificate may then be submitted to the Department.

C. Certificate of Good Standing.

Pursuant to section 103D-310(c), HRS, the bidder shall submit a certificate of good standing from the business registration division (BREG) of the State of Hawaii Department of Commerce and Consumer Affairs (DCCA), current within six months of issuance date, to demonstrate it is either:

- (1) incorporated or organized under the laws of the State; or
- (2) registered to do business in the State as a separate branch or division that is capable of fully performing under the contract.

A Hawaii business that is a sole proprietorship, is not required to register with the BREG, and therefore not required to submit a certificate of good standing. Bidders are advised of costs associated

with registering and obtaining a Certificate of Good Standing from the DCCA.

To purchase a Certificate of Good Standing, go to On-Line Services at the following website:

<https://cca.hawaii.gov/>

The application for the Certificate of Good Standing is the responsibility of the bidder. Bidder shall submit directly to the DCCA. The approved certificate may then be submitted to the Department.

- D.** IN LIEU OF the certificates referenced in subsection A, B, and C, bidder may make available proof of compliance through a state procurement office designated certification process.

3.2 CANCELLATION OF AWARD - The State reserves the right to cancel the award of any contract any time before the execution of said contract by all parties without any liability to the successful bidder or any other bidder.

3.3 RETURN OF PROPOSAL GUARANTY - All proposal guaranties, except those of the lowest two (2) bidders, will be returned immediately following the opening and checking of the proposals. The retained proposal guaranty of the second lowest bidder, if not a bid bond, will be returned within ten (10) calendar days following execution of contract by the successful bidder. The successful bidder's proposal guaranty, if not a bid bond, will be returned after a satisfactory contract bond has been furnished and the contract has been executed.

3.4 REQUIREMENT OF CONTRACT BOND - Only when required by the proposal, the successful bidder at the time of the execution of the contract shall file good and sufficient performance and payment bonds on the forms furnished by the Department, or a facsimile thereof, conditioned for the full and faithful performance of the contract in accordance with the terms and intent thereof and also for the prompt payment to all others for all labor and materials furnished by them to it and use in the prosecution of the work provided for in such contract, in the manner, form and amount required by Section 3-122-224(b) (2), H.A.R., which bonds shall be in an amount equal to fifty per cent (50%) of the contract price, including amounts estimated to be required for extra work, or in the case of price-term, open-end, or requirements contract under which the total amount to be paid to the Contractor cannot be accurately estimated at the time the contract is to be awarded, the bond amounts shall be as designated in the bid documents. Such bonds shall also by

their terms inure to the benefit of any and all persons entitled to file claims for labor performed or materials furnished in the work so as to give them a right of action as contemplated by Section 103D-324, H.R.S.

The bidder shall limit the acceptable performance and payment bonds to the following:

- (a) Legal tender; or
- (b) Surety bond underwritten by a company licensed to issue bonds in the State of Hawaii; or
- (c) A certificate of deposit; share certificate,; cashier's check; treasurer's check; teller's check drawn by or a certified check accepted by and payable on demand to the State by a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA).

1. The bidder may use these instruments only to a maximum of one hundred thousand dollars (\$100,000.00).

2. If the required security or bond amount totals over one hundred thousand dollars (\$100,000.00) more than one instrument not exceeding one hundred thousand dollars (\$100,000.00) each and issued by different financial institutions shall be acceptable.

3.5 EXECUTION OF CONTRACT - The contract and the "Certificate for Performance of Services", similar to a copy of the same annexed hereto, shall be executed by the successful bidder and returned, together with the contract bonds, when required, within ten (10) days after the award of the contract or within such further time as the Director may allow after the bidder has received the contract for execution.

Pursuant to Section 103D-309, H.R.S., the contract shall not bind the State in any way unless said contract has been fully and properly executed by all the parties thereto and the Comptroller has endorsed thereon a certificate that there is available an unexpended appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract.

3.6 FAILURE TO EXECUTE CONTRACT - Failure to execute the contract, Certificate for Performance of Services and file acceptable bonds, when required, within ten (10) days after

the award of the contract, or within such further time as the Director may allow, shall be cause for the cancellation of the award and the forfeiture of the proposal guaranty. Award of the contract may then be made to the next lowest responsible bidder.

SECTION 4 - SCOPE OF WORK

4.1 WORK TO BE DONE - The work to be done is described in the Section(s) following Section 9 of these specifications.

4.2 PERFORMANCE OF WORK - The Contractor shall employ, so far as possible, such methods and means in carrying out his work so as not to cause any interruption, disturbance, or interference with the public.

In case the Contractor is performing work in a building, the Contractor shall conduct the work in such a manner so as not to cause any interruption, disturbance, or interference with the business activities of the tenants in the building.

4.3 EXTRA WORK - New and unforeseen items of work will be classed as extra work when they cannot be covered by any of the various items for which there is a bid price.

4.4 CHANGES AND CLAIMS FOR ADJUSTMENT

A. Change order. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

1. Drawings, designs, or specifications, if the goods to be furnished are to be specially manufactured for the State in accordance therewith;
2. Method of shipment or packing;
3. Place of delivery;
4. Changes in the work within the scope of the contract; or
5. Changes in the time of performance of the contract that do not alter the scope of work.

B. Adjustments of price or time for performance. If any change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the procurement officer promptly and duly make the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have

prejudiced any claim for additional compensation, or an extension of time for completion.

C. Time period for claim. Within thirty (30) days after receipt of a written change order under subsection (a) unless the period is extended by the procurement officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the State or county is prejudiced by the delay in notification.

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

E. Other claims not barred. In the absence of a change order, nothing in this clause shall be deemed to restrict the contractor's right to pursue a claim as under the contract or for breach of contract.

4.5 PRICE ADJUSTMENT

Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:

A. By agreement on a fixed price adjustment before commencement of the pertinent performance 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 of the Hawaii Administrative Rules.

4.6 VARIATION IN QUANTITY

Upon agreement of the parties, the quantity of goods or services or both specified in this contract may be increased by a maximum of ten (10) percent provided (1) the unit prices will remain the same except for any price adjustments otherwise applicable and (2) 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.

SECTION 5 - CONTROL OF WORK

5.1 AUTHORITY OF DIRECTOR - The Director shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed; the manner of performance and rate of progress of the work; the compensation for work performed; the interpretation of the contract and the fulfillment of the contract on the part of the Contractor. The Director's decision shall be final and the Director shall have the authority to enforce any such decision and order which the Contractor fails to carry out promptly and diligently. The Director shall have the following powers in the way of enforcement:

- A. The right to suspend the work.
- B. The right to withhold payment due the Contractor.

5.2 COORDINATION OF PLANS, SPECIFICATIONS AND SPECIAL PROVISIONS - These specifications, the plans, special provisions, and all supplementary documents are essential parts of the contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to describe and provide for the complete work.

5.3 COOPERATION OF CONTRACTOR AND DIRECTOR - The Contractor shall have available at the work site at all times, a copy of the specifications, special provisions and plans. The Contractor shall give the work constant attention to facilitate the progress thereof and shall cooperate with the Director in every way possible.

Before starting work on the project, the Contractor shall designate in writing a superintendent who shall have complete authority to represent and to act for the Contractor.

5.4 INSPECTION - The Director at all times shall have access to the work during its prosecution and shall be furnished with every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements and intentions of these specifications and special provisions. All work done and all materials furnished shall be subject to the Director's inspection and approval.

The inspection of the work shall not relieve the Contractor of any of its obligations to fulfill its contract as prescribed, and defective work shall be made good and unsuitable materials may be rejected, notwithstanding that such defective work and materials may have been previously overlooked by the Director and accepted or included in an estimate for payment.

Projects financed in whole or in part with Federal funds shall be subject to inspection at all times by representatives of the Federal agency involved.

5.5 REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK - All work which has been rejected shall be corrected or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed the Contractor for such correction or removal and replacement. Upon failure on the part of the Contractor to comply promptly with any order of the Director, the Director may cause any rejected work to be corrected or removed and replaced and to deduct the costs thereof from any monies due or to become due the Contractor.

5.6 CLAIMS AND DISPUTES - The Contractor may give notice in writing to the Director for claims that extra compensation, damages, or an extension of time for completion is due the Contractor for one or more of the following reasons:

- A. Requirements not clearly covered in the contract, or not ordered by the Director as extra work;
- B. Failure between the State and the Contractor to agree to an adjustment in price for a contract change order issued by the State; or
- C. An action or omission on the part of the Director requiring performance changes within the scope of the contract.

The Contractor shall continue with performance of the contract in compliance with the directions or orders of the procurement officer, but by so doing, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- A. The notice in writing be given:
 - 1. Before the commencement of the work involved, if at that time the Contractor knows of such requirements or the occurrence of such actions or omissions; or
 - 2. Within thirty (30) calendar days after the Contractor knows of such requirements or the occurrence of such action or omission if the Contractor did not have such knowledge before the commencement of the work; or
 - 3. Within thirty (30) calendar days after receipt of the written contract change order that was not

agreed upon by both parties; or

4. Within such further time as may be allowed by the Director in writing.

B. The notice shall clearly state the Contractor's intention to make claim and the reasons why the Contractor believes that additional compensation, changes or an extension of time may be remedies to which the Contractor is entitled; and afford the Director every facility for keeping records of the actual cost of work. Failure on the part of the Contractor to give such notification or to afford the procurement officer proper facilities for keeping strict account of actual cost shall constitute waiver of the claim for such extra compensation. The filing of such notice by the Contractor and the keeping of costs by the procurement officer shall not in any way be construed to prove the validity of the claim.

The Director will review the notice and render a decision. The Director's decision shall be final and conclusive unless, within thirty (30) calendar days from the date of the decision, the Contractor mails or otherwise furnishes a written appeal to the Director. The decision of the Director shall be final. Later notification of such claims shall not bar the Contractor's claim unless the State is prejudiced by the delay in notification. No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given before final payment under this contract. Any adjustment in the contract price made pursuant to this clause shall be determined according to Section 4.5 - Price Adjustment.

The provisions of this Section shall not be construed as establishing any claims contrary to the terms of Section 4.4 - Changes and Claims for Adjustment.

Nothing herein contained, however, shall excuse the Contractor from compliance with any rules of law precluding any state officers and any Contractors from acting in collusion or bad faith in issuing or performing contract change orders which are clearly not within the scope of the contract.

SECTION 6 - CONTROL OF MATERIAL AND EQUIPMENT

6.1 DEFECTIVE MATERIALS - All materials not conforming to the requirements of these specifications or the special provisions shall be considered defective and all such materials, whether in place or not, shall be rejected. They shall be removed immediately from the site of the work, unless otherwise permitted by the Director. No rejected materials, the defects of which have been subsequently corrected, shall be used until approval in writing has been given by the Director. Upon failure on the part of the Contractor to comply promptly with any order to remove and replace defective materials, the Director may remove and replace defective material and to deduct the cost of removal and replacement from any monies due or to become due the Contractor.

6.2 TRADE NAMES AND ALTERNATES - For convenience in designation on the plans or in the specifications, certain equipment or articles or materials may be designated under a trade name or the name of a manufacturer and its information catalogue. The use of alternate equipment or an article or material which is of equal quality and of the required characteristics for the purposes intended will be permitted, subject to the written approval of the Director, in accordance with the following requirements:

A. QUALIFICATION BEFORE BID OPENING - When the specifications and/or plans specify one or more manufacturer's brand names of materials or equipment to indicate a quality, style, appearance, or performance, the bidder will be assumed to have based its bid on one of the specified named products, except where such proprietary product are specified, alternate brands may be qualified if found equal or better by the Director. Bidders requesting qualification of alternate proprietary products must submit a request to the Director for review and approval at the earliest date possible, but in any event, such request must be received at the Contracts office not later than ten (10) days before the bid opening date, not including the bid opening date.

It shall be the responsibility of the bidder to submit sufficient evidence based upon which a determination can be made by the Director that the alternate brand is qualified. The evidence shall be transmitted with a covering letter which shall list the evidence submitted and the items for which the substitution is requested.

If the evidence accompanying a request for substitution is insufficient to qualify a particular

model, the request shall be denied provided that further evidence may be submitted to qualify the item five (5) days prior to the bid opening date if the initial request was made prior to the deadline set above.

B. SUBSTITUTION AFTER BID OPENING - Substitution of material or equipment will not be allowed after the bid opening date except under the following unforeseen circumstances:

1. If a specified or pre qualified item is delayed by a lengthy strike in the factory or other unforeseeable contingency beyond the control of the Contractor which would cause an abnormal delay in the project completion.
2. If a specified or pre qualified item is found to be unusable due to change or other circumstances.
3. If the Contractor is willing to provide a more recently developed or manufactured item of material or equipment of the same manufacturer which the Director determines to be equal or better than the one specified or pre-qualified.

A substitution request, regardless of reason, shall be fully explained in writing by the Contractor and shall include its justification for said request, the quantities and unit prices involved, quotations and such other documents as are deemed necessary to support the request. Any savings in cost will accrue to the State and any additional cost for the substituted items will be paid by the Contractor.

The burden of proof as to the comparative quality and suitability of alternate equipment, articles, or materials shall be upon the bidder or Contractor and bidder or Contractor shall furnish, at its own expense, all information necessary or related thereto as required by the Director. The Director shall be the sole judge as to the comparative quality and suitability of alternate equipment, articles or materials and the Director's decisions shall be final.

The above shall not be construed to mean that substitution for brand name specified materials and equipment will be allowed; the Director reserves the right to deny any request he deems irregular or not in the best interest of the State.

6.3 ASSIGNMENT OF ANTITRUST CLAIMS FOR OVERCHARGES FOR GOODS AND MATERIALS PURCHASED

A. 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 escalation clause.

B. Contractor and owner recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the owner. Therefore, contractor hereby assigns to owner 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 any change order. In addition, contractor warrants and represents that each of its first tier suppliers and subcontractors shall assign any and all such claims to owner, subject to the aforementioned exception.

SECTION 7 - LEGAL RELATIONS AND RESPONSIBILITY

7.1 LAWS TO BE OBSERVED - The Contractor shall comply with all federal, state, city and county laws, ordinances, rules and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, and the conduct of the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto effective as of the date of the call for sealed proposals.

The Contractor shall hold harmless, indemnify, defend and where appropriate, insure the State, its officers, agents and employees against any claim or liability arising from or based on the violation of any such laws, ordinances, rules or regulations. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any law, ordinance, rule, regulation, order or decree, the Contractor shall forthwith report the same to the Director in writing.

7.2 PERMITS AND LICENSES - The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work.

7.3 PATENTS - The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the work, and shall hold harmless, indemnify, defend and where appropriate, insure the State, its officers, agents and employees from all suits at law or actions of every nature, for or on account of the use of any patented materials, equipment, devices or processes.

7.4 RESPONSIBILITY FOR INJURY AND DAMAGE - The State, its officers, agents and employees shall not be held accountable in any manner for any loss or damage to the work or any part thereof, or for any of the materials and equipment used or employed in performing the work, or for any injury to any person or persons either workers or the public, or for any damage to property caused by the Contractor or its workers or any one employed by the Contractor. The Contractor shall be responsible for any liability imposed by law for any injury to any person or any damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the work or at any time before its completion and final acceptance. The acceptance of the completed work of the Contractor by the Director shall not relieve the Contractor from any liability which may have accrued or may accrue as a result of the performance of the work by the Contractor. The Contractor shall hold harmless, indemnify, defend and where appropriate, insure the State, its officers, agents and employees, from all suits or actions of every name, kind and description, brought for or on account of

any injuries or damages sustained by any persons or property caused by the Contractor, its servants or agents, or by or on account of any act or omission of the Contractor or its servants or agents, regardless of whether such actions or any claim is brought against them or any one of them before or after the final acceptance of the work. In addition to any remedy authorized by law, the State may withhold payment of any money due to Contractor as shall be reasonable until disposition has been made of any suits or claims for injuries or damages.

It is not the intention of the parties to this contract to make the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party hereto to maintain a suit for personal injuries or property damage based on a contract theory of liability. In any event, the Contractor shall hold harmless, indemnify, defend and where appropriate, insure the State from suits and claims for personal injuries or property damage where such injuries or damage are caused by the negligent acts or omissions of the Contractor, its agents or employees.

7.5 COOPERATION BETWEEN CONTRACTORS - Where two or more Contractors are employed on related or adjacent work, each shall conduct its operations in such a manner as not to cause any unnecessary delay or hindrance to the other.

7.6 CONTRACTOR'S RESPONSIBILITY FOR WORK - Until the acceptance of the contract, the Contractor shall have the charge and care thereof and shall bear the risk of injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all damages to any portion of the work occasioned by any of the above causes before its completion and acceptance and shall bear the expenses thereof.

7.7 NO PERSONAL LIABILITY - Neither the Director nor any other officer or authorized employee of the Department shall be personally responsible for any liability arising under the contract.

7.8 LABOR AND COMPENSATION REQUIREMENTS - Wages paid each laborer employed by the Contractor or any subcontractor shall not be less than the prevailing minimum wage rate prescribed by law.

Every laborer employed by the Contractor or any subcontractor whose rate of compensation is Five Dollars (\$5.00) or less per day shall be paid his wages weekly pursuant to Section 103-54, H.R.S.

The Contractor's attention is directed to Chapter 377, H.R.S., Hawaii Employment Relations Act; Chapter 378, H.R.S., Employment Practices; Chapter 383, H.R.S., Hawaii Employment Security Law; Chapter 386, H.R.S., Workers' Compensation Law; Chapter 387, H.R.S., Wage and Hour Law; Chapter 392, H.R.S., Temporary Disability Insurance; Chapter 393, H.R.S., Prepared Health Care Act; Chapter 396, H.R.S., Occupational Safety and Health; and Section 103-55, H.R.S., Wages, Hours, Working Conditions of Employees of Contractor's Supplying Services.

7.9 INSURANCE - Prior to commencing with the work, the Contractor shall, at its own expense, obtain and submit to the Department, Certificate of Insurance from an insurance company authorized by the laws of the State to issue such insurance in the State of Hawaii showing full policy coverage of the Contractor.

TYPES OF INSURANCE:

A. Workers' Compensation:

The Contractor shall obtain worker's compensation insurance for all persons whom they employ in carrying out the work under this contract. This insurance shall be in strict conformity with the requirements of the most current and applicable State of Hawaii Worker's Compensation Insurance laws in effect on the date of the execution of this contract and as modified during the duration of the contract. The minimum limit of liability for workers compensation is the HRS 386 statutory limit.

B. Comprehensive Automobile Liability:

The Contractor shall obtain Auto Liability Insurance covering all owned, non-owned and hired autos with a combined single Limit of not less than \$1,000,000 per accident for bodily injury and property damage with the State of Hawaii named as additional insured. The required limit of insurance may be provided by a single policy or with a combination of primary and excess

policies.

C. Commercial General Liability:

The Contractor shall obtain General Liability insurance with a limit of not less than \$1,000,000 per occurrence and in the aggregates. The General liability insurance shall include the State of Hawaii as an additional insured. The required limit of insurance may be provided by a single policy or with a combination of primary and excess policies.

All policies must provide that 30 days prior written notice of cancellation or material change in coverage be given to certificate holders stated above.

Such insurance when accepted by the Director in writing shall become applicable and shall remain unmodified throughout the entire term of the contract and in no event shall be terminated or otherwise allowed to lapse prior to written certification of final acceptance of the work by the State. Such insurance aforementioned shall cover the State for all work performed under the contract, all work performed incidental thereto or directly or indirectly connected therewith, including other work performed outside of the work area, and all change orders.

Any delay in the submission and approval of insurance certificates shall not be justification of or grounds for a request by the Contractor postponing the issuance of a notice to proceed notwithstanding the fact that the Contractor shall not be allowed to proceed with the work until said certificates are submitted and approved.

Failure to obtain insurance in accordance with the Section, on the part of the Contractor, shall be considered a major breach of the contract; and should the State be forced to expend funds which would have been covered under the insurance, the Contractor agrees to assume the liability for such funds and to indemnify and hold the State harmless.

SECTION 8 - PROSECUTION AND PROGRESS

8.1 NOTICE TO PROCEED - A "Notice to Proceed" letter will be written to the Contractor by the Director. Such letter will indicate the date the Contractor is to begin work and from which date the contract time will commence to run.

The Contractor shall diligently perform the required duties during the term of the contract, or if the work is to be completed within a specified time limit, the Contractor shall diligently prosecute the work to completion within the specified time limit.

8.2 SUBCONTRACTING - The Contractor shall give its personal attention to the fulfillment of the contract and shall keep the work under its control.

Subject to Section 103D-302, H.R.S., the Contractor may subcontract a portion of the work pursuant to the provisions of this section, but the Contractor shall be primarily responsible for the work so subcontracted. The Contractor shall not subcontract any work to any subcontractor who has been suspended by the State.

Before any work is started under a subcontract, the Contractor shall have the written approval of the Director on a written statement on forms furnished by the Department, indicating the work to be subcontracted, the names of the subcontractors and the description of each portion of the work to be so subcontracted and showing that the subcontractors are particularly experienced and equipped to do the work subcontracted. The Contractor shall give assurance that the minimum wage rate schedule as stated in the contract shall apply to labor performed on the work so subcontracted. Consent of the Director to the subcontracting of work shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the contract.

When any portion of the work which has been subcontracted by the Contractor is not prosecuted in a manner satisfactory to the Director, the Contractor, upon receipt of a notice thereof in writing from the Director, shall remove the subcontractor immediately from the project and the subcontractor shall not again be employed on the work.

8.3 ASSIGNMENT OF CONTRACT - The performance of the contract may be assigned only with the prior written consent of the Director and when applicable, the Contractor's surety. Consent to any assignment shall not relieve the Contractor or the Contractor's surety of any obligations of the contract.

8.4 INSUBORDINATION - If any subcontractor or person employed by the Contractor shall fail or refuse to carry out the directions of the Director or shall appear to the Director to be incompetent or to act in a disorderly or improper manner, the subcontractor or person shall be removed immediately upon request by the Director and shall not again be employed on the work, nor shall it be employed upon any other Department project currently under contract to the same Contractor or subcontractor.

8.5 TEMPORARY SUSPENSION OF WORK

A. Order to stop work. The Director, may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this section. Upon receipt of 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 Director 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 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 (30) days after the end of the period of work stoppage; provided that, if the Director 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.

8.6 LIQUIDATED DAMAGES - It is mutually understood and agreed by and between the parties to the contract that the performance by the Contractor of its duties every calendar/working day is an essential part of the contract and in case of failure on the part of the Contractor to perform its duties for the time specified in the contract, the State will be damaged thereby and the amounts of said damages being difficult, if not impossible of definite ascertainment and proof, shall be estimated, agreed upon and fixed at the sum shown in the proposal for each and every calendar/working day that the Contractor fails to perform its duties during the period the contract is in effect; and the Contractor shall pay the liquidated damages as provided for in the proposal and, in case the same are not paid, the Department may deduct the amount thereof from any monies due or that may become due the Contractor under the contract.

8.7 DEFAULT AND TERMINATION OF CONTRACT

A. Termination by 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 Director may notify the contractor in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Director, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the Director may procure similar goods or services in the manner and upon terms deemed appropriate by the Director. 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.

1. Contractor's duties. Notwithstanding termination of the contract and subject to any directions from the Director, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the State or county has an interest.

2. Compensation. Payment for completed goods delivered and accepted by the State 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 Director; if the parties fail to agree, the Director shall set an amount subject to the contractor's rights under chapter 3-126, HAR. The State may withhold from amounts due the contractor such sums as the Director deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.

3. 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 Director within fifteen (15) 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. 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 unreasonably obtained from other sources in sufficient time to permit the contractor to meet the contract requirements. Upon request of the contractor, the Director shall ascertain the facts and extent of such failure, and if such officer determines that any failure to perform was

occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled "Termination for Convenience". As used in this paragraph of this clause, the term "subcontractor" means subcontractor at any tier.

4. Erroneous termination for default. If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of the clause, or that the delay was excusable under the provisions of paragraph 3 above, Excuse for nonperformance or delayed performance of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

5. 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.

B. Termination for convenience. The Director may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Director shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

1. Contractor's obligation. 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. The Director may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

2. Right to goods. The Director may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Director:

- a. Any completed goods; and
- b. The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights hereinafter called "manufacturing material," as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

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

3. Compensation:

- a. The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, bearing on such claim. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Director may pay the Contractor, if at all, an amount set in accordance with subparagraph c. below.
- b. The Director 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 State, the proceeds of any sales of goods and manufacturing materials under paragraph (2) of this clause, and the contract price of the work not terminated.

c. Absent complete agreement under subparagraph b above, the Director shall pay the Contractor the following amounts, provided payments agreed to under subparagraph b shall not duplicate payments under this subparagraph for the following:

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

(ii) Costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(iii) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph 1 of this clause. These costs must not include costs paid in accordance with subparagraph (ii) above.

(iv) The reasonable settlement costs of the Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the Contractor under this subparagraph shall not exceed the total contract price plus the reasonable settlement cost of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph b of this paragraph, and the contract price of work not terminated.

d. Cost claimed, agreed to, or established under subparagraphs b and c shall be in accordance with chapter 3-123, HAR. bearing on such claim.

8.8 FINAL INSPECTION - Upon notice from the Contractor of the completion of the work or contract, the Director shall make an inspection. If the contract is found completed to the Director's satisfaction, such inspection shall constitute the final inspection and acceptance of the work.

If the work is unsatisfactory in whole or in part, the Director shall notify the Contractor of the work necessary for final completion and acceptance and the Contractor shall forthwith perform the work required by the Director. Upon performance of such required work by the Contractor, another inspection shall be made which shall constitute the final inspection if the work is completed satisfactorily.

Within ten (10) days after final inspection and acceptance of the work, or as soon thereafter as is practicable, the Contractor shall be notified by the Director in writing of such acceptance.

8.9 TERMINATION OF CONTRACTOR'S RESPONSIBILITY - The contract will be considered complete when all work has been completed, the final inspection made, the work accepted by the Director, and the final estimate paid. The Contractor will then be released from further obligation except as set forth in the contract and bond, when applicable.

SECTION 9 - PAYMENT

9.1 SCOPE OF PAYMENT - The Contractor's bid price shall be inclusive of all costs, direct or indirect, including all taxes, required for the fulfillment of the contract.

Contract payments to the Contractor by the State shall be full payment for the furnishing of all labor, tools, equipment, and other incidentals, including all taxes, necessary for performing all work and services contemplated and embraced under the contract.

9.2 RETAINAGE/DEDUCTION FROM PAYMENT - The Director may at any time retain or deduct out of any sums due the Contractor to cover claims of the State against the Contractor, or such sums sufficient to cover any unpaid claims of others supported by sworn statements filed in the office of the Director, without any liability for damages, interest or otherwise to the Contractor for such retention or deduction.

Provided the work of the Contractor is progressing satisfactorily in the judgment of the Director and in accordance with the provisions of this contract, monthly payments, less five percent (5%), will be made to the Contractor. The amount of such monthly payments shall be determined by the Director based on the Director's estimate of the items of work performed and materials incorporated in the work and the value therefor at the unit prices or lump sum prices set forth in the contract. All monthly payments are shall be subject to correction at any time prior to or in the final payment.

At any time after fifty per cent (50%) of the work has been completed, if the State determines that the work contracted to be performed is progressing satisfactorily, the State may make any of the remaining monthly payments in full.

If the Director finds that unsatisfactory progress is being made, the State may, from the beginning of such unsatisfactory progress, withhold any amount up to five per cent (5%) of any subsequent monthly payment.

9.3 ASSIGNMENT OF PAYMENTS - All monies payable under the contract, or any part thereof, shall be paid to the Contractor in accordance with the provisions of this Section and no assignment or order executed by the Contractor directing payment of any portion or all of such funds to any other person or persons shall be recognized by the State unless such assignment or order specifies the amounts to be so paid and the purposes for which the assignment or order is given. Such assignment or order shall have attached thereto, by endorsement or otherwise, the consent of the surety, when

applicable. No such assignment or order shall be binding on the State.

Any assignment of money shall, however, be subject to all proper set-offs in favor of the State, to all deductions provided for in the contract and to all liens and rights conferred by law on the State. All money withheld, whether assigned or not, shall be subject to being used by the State for the completion of the work in the event of the Contractor's default.

9.4 PROGRESS PAYMENTS - Payments under this contract shall be made only upon submission by the Contractor of an original invoice and 2 copies. The invoice shall specify the amount due less retainage and shall also certify that services requested under the contract have been performed by the Contractor according to the contract.

9.5 FINAL PAYMENT - Final payment will only be made after the Contractor receives final acceptance by the Director as provided in Section 8.8, and until the Contractor has filed with the Department the following:

A. Consent of the surety, when applicable, to payment of the final estimate;

B. Satisfactory evidence by affidavit that all debts resulting from the contract have been fully paid or satisfactorily secured;

C. A current "Certificate of Vendor Compliance" issued by the Hawaii Compliance Express (HCE). The Certificate of Vendor Compliance is used to certify the Contractor's compliance with (a) Section 103D-328, HRS (for all contracts \$25,000 or more) which requires a current tax clearance certificate issued by the Hawaii State Department of Taxation and the Internal Revenue Service; (b) Chapters 383, 386, 392, and 393, HRS; and (c) Subsection 103D-310(c), HRS. The State reserves the right to verify that compliance is current prior to the issuance of final payment. Contractors are advised that non-compliance status will result in final payment being withheld until compliance is attained.

The filing of willfully false affidavits will disqualify the Contractor from bidding on future work of the Department.

**SECTION 10 – FURNISHING OF HIGHWAY TRAFFIC CONTROL AND SAFETY
MEASURES AT VARIOUS LOCATIONS**

10.1 DESCRIPTION

The Contractor shall, upon the request by the State, furnish all labor, necessary traffic control signs, devices and equipment to provide traffic control and safety measures and subsequent removal of such traffic control signs, devices, and equipment on an “as-needed” basis during the contract period in such quantities as may be required at various locations for the landscape and maintenance crews and special projects on the Island of Oahu.

The Contractor shall ensure that the services are performed in a manner that provides outstanding customer service and presents a comfortable, healthy, and safe environment.

The Contractor is responsible for providing the specified services, 24-hours a day, 7-days a week when and as directed by the respective District Engineer, Maintenance Engineer, Maintenance Superintendent, Project Manager or their designated representatives.

All traffic control shall be done in conformance with the latest revisions of the following:

- Manual on Uniform Traffic Control Devices (MUTCD) standards;
- Hawaii Standard Specifications for Road and Bridge Construction;
- Standard Plans;
- Hawaii Administrative Rules, Title 19, Subtitle 5, Chapter 128 (HAR §19-128), Design, Placement, and Maintenance of Traffic Control Devices, HAR §19-129, Use of Traffic Control Devices at Work Sites on or Adjacent to Public Streets and Highways; and any other applicable Federal, State and local rules and regulations, as amended, revised or updated.

10.2 COORDINATION OF WORK

- A. All work under this contract shall be coordinated with the State. Contact information is as follows:

Engineer Mr. Ryan Nakata District Engineer (DE) – Oahu District Phone: 808-831-6700 x128 Fax: 808-831-6725 Email: ryan.a.nakata@hawaii.gov	Point of Contact Melanie Barroga Project Manager – Oahu District Phone: 808-831-6700 x110 Fax: 808-831-6725 Email: Melanie.j.barroga@hawaii.gov
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- B. The Contractor shall furnish the State with a telephone number and email address where the State can call for service every calendar day of the year to perform work under this contract.

1. The Contractor or designated qualified personnel shall return phone calls from the State within one (1) hour of receipt of the phone call. All electronic mails from the State shall be replied to within two (2) hours of receipt of the electronic mail.
2. The Contractor is required to provide on-site service within one (1) hour of the verbal request from the State during normal work hours and off call hours.
3. Removal of required signs and traffic control devices and or equipment. The Contractor is required to remove all traffic control signs and devices, including variable message boards, and/ or equipment within two (2) hours of verbal notification by the State.

10.3 QUALIFICATION OF BIDDERS

All bidders will be provided a standard pre-qualification questionnaire after bid opening to complete and return electronically. Bids will be evaluated based upon the completed pre-questionnaire and submitted certificates. Requested documents and standard pre-qualification questionnaire shall be received by the Project Manager no later than five (5) working days from the receipt of the written request from the State.

(A) Contractor Qualifications

1. **Work Experience.** At the time of bidding, the Contractor shall have a minimum of two (2) consecutive years of furnishing traffic control experience similar to this project in size and scope. The State may require the successful bidder to submit the list of projects for verification prior to the contract award. The list shall contain a minimum of three (3) different projects which includes the name of the company that the project was for previously or currently, the company address, point of contact, phone number, description of traffic control work performed and size of the project (cost wise). The minimum of three (3) different projects' experience shall be positive on the performance evaluation by the respective agency. The State reserves the right to contact the listed companies to verify the quality of the Contractor's work experience.
2. Have all required traffic control signs, devices, daily personnel and equipment as specified in the Proposal Schedule including supporting vehicles (e.g., coning trucks, etc.) necessary to perform the specified services in this contract and in sufficient quantity to meet the estimated quantities in the Proposal Schedule.
 - a. The Contractor shall provide essential equipment and personnel daily to support critical State Maintenance operations. This includes maintaining the following minimum daily inventory and available personnel:
 - i. Four (4) Truck Mounted Attenuators (TMAs)
 - ii. Twenty-one (21) Trucks

- iii. Twenty-nine (29) Technicians
- iv. One (1) Special Duty officer

The Contractor shall provide proof of the availability of the resources (equipment & personnel list) upon request from the State. Failure to provide proof of resources shall result in rejection of bid.

- b. Required equipment may be owned or leased. To show availability of equipment, the bidder shall provide a list of equipment owned and leased. Lease agreements for each leased equipment shall be submitted to the State upon request. This list shall be verified and approved by the Engineer or Project Manager prior to the Notice to Proceed date and throughout the term of the contract. The Contractor shall bear the cost of the lease.
- c. The following is required on all equipment/vehicle, as applicable:
 - i. Contractor's vehicles shall have the Contractor's company name and/or logo displayed on doors or side panels and shall be in letters large enough to be easily legible from a distance of one hundred (100) feet. Magnetic signs with the Contractor's company name and/or logo are acceptable. Cost of the logo/contractor's company name shall be considered as incidental cost of traffic control services.
 - ii. All vehicles and equipment shall be kept in good condition and appearance.
 - iii. All vehicles shall meet State and County licensing and registration and safety requirements and shall be equipped properly in accordance with City, State, Federal and OSHA requirements.
 - iv. The Contractor shall obtain insurance coverages as specified by Section 7.9 Insurance of this specification.
 - v. Operation of all equipment shall be in accordance with all applicable OSHA, other Federal, State, and local regulations and laws and the equipment operator's manual.
- 3. The Contractor shall have an administrative resource to facilitate monthly estimates and payment request.
- 4. The Contractor shall possess the required business and tax license to conduct business in the State of Hawaii during any period of the contract.

5. Be familiar with working on State Highways preferably on the Island of Oahu.
6. The Contractor's office, maintenance crew, and equipment shall be located and available for use on the Island of Oahu.
7. Be experience on establishing required traffic control per the current U.S. Federal Highway Administration's Manual of Uniform Traffic Control Devices (MUTCD).

(B) Contractor or Contractor's Personnel Qualification.

The Contractor shall have their personnel trained/certified/licensed/experienced on the following:

1. Traffic Control Personnel:

- a. **Certification** – At the time of bidding, the Contractor or personnel shall possess a valid certificate of training completion respectively. As a minimum, the Contractor or personnel shall be trained and certified on the following American Traffic Safety Service Association (ATSSA) courses or approved equivalent train course.

- i. Flagger
- ii. Traffic Control Technician (TCT)
- iii. Traffic Control Supervisor (TCS)

For more information on the above courses, log on to:

<http://www.atssa.com/training>

- iv. The contractor shall submit the following acceptable documentation or certificate of training completion:

1. American Traffic Safety Services Association (ATSSA).
2. Equivalent documentation to the above.

- b. **Work experience.** At the time of bidding, the Contractor or Contractor's traffic control personnel shall have a minimum of one (1) year of furnishing traffic control services experience as a flagger, Traffic Control Technician (TCT) and Traffic Control Supervisor (TCS), as applicable, or their respective equivalent.

2. **Equipment Operator Requirements.** Contractor's personnel who operate motorized equipment (trucks, etc.) shall have required experience, training, valid State of Hawaii motor vehicle operator's license. The personnel shall meet all

physical and medical requirements and be able to operate the motorized equipment that is representative of the class.

3. Supplementary Contractor Personnel Requirement.

- a. Uniforms. Contractor employees on the job site shall be easily identified as Contractor's employees by wearing a shirt, T-shirt or coverall with the company name or logo. Contractor's employees shall always present a neat and clean appearance. One color and style of uniform shirt shall be selected which will be worn by all Contractor personnel.
- b. For security and safety reasons, the Contractor shall prohibit personal vehicles from parking within the State highway right-of-way area.
- c. The State reserves the right to disqualify the Contractor's personnel from this contract and the Contractor shall replace the disqualified personnel within (10) working days. Qualifications of the replacement shall be reviewed and approved by the Engineer.
- d. Special Duty Police Officer Premium Rate – ordered less than 48 hours to start time

(C) Availability

1. The Contractor is required to provide the State with telephone numbers for their place of business on the island of Oahu where the State can call, email or text regarding services every calendar day of the year.
2. Personnel assigned to this job shall be available to respond to service calls, emails or text within the parameters of these Specifications.

(D) Falsification of Personnel Qualifications. The inability to successfully perform the work, or excessively high turnover of personnel assigned to this work, shall constitute a major breach of this contract and the contract shall be subject to termination.

(E) Submitting Required and Requested Documentations.

1. Failure to submit required or requested documentation may result in rejection of bid or termination of contract by the State.

10.4 SCOPE OF WORK

The Contractor, upon request by the State, shall furnish the following services on an "as-needed" basis. The State gives no assurance to any Contractor that any specific quantity of services will be purchased.

(A) Furnishing traffic control signs, devices, and equipment.

1. The Contractor shall furnish and deliver Bid Item Nos. 1 through 6, and Bid Item No. 8 through 11, as applicable, to the jobsite as rentals and as specified in the Proposal Schedule.
2. All traffic control signs, devices, and equipment shall remain the property of the Contractor and shall be in compliance with the Standard Specifications, the MUTCD and this specification. The Contractor shall consult the State when there is a conflict between the Standard Specifications, the MUTCD, and this specification.
 - a. The flasher (Bid Item No. 2), arrow board (Bid Item No. 4), and the variable message board (Bid Item No. 5) deployed to the jobsite shall function properly throughout the entire duration of the project.
 - b. The Contractor shall furnish the truck driver(s) for Bid Item No. 6, Truck-mounted Attenuator (TMA) with arrow board and truck and shall be paid man-hour rate as listed in bid Item No. 8.
3. The Contractor shall be paid the Contractor's applicable unit bid price for a one-day rental as specified in the Proposal Schedule.
 - a. The Contractor shall be paid the full unit bid price if the traffic control signs, devices and equipment were used in the same calendar day. For example, the Contractor shall be compensated for the one-day rental unit bid price if traffic control signs, devices and equipment that were used on the jobsite from 7:00 A.M. to 9:00 A.M., Monday.
 - b. The Contractor shall be compensated for two one-day rental unit bid price if traffic control signs, devices and equipment were used over the next calendar day. For example, the Contractor shall be compensated for the two one-day rental unit bid price if the traffic control signs, devices and equipment were used on the jobsite from 4:00 P.M., Thursday through 7:00 A.M. Friday.

(B) Furnishing traffic control personnel and labor for traffic control.

1. Requests are classified as follows:
 - a. **During normal working hours.**
 - i. The Contractor shall respond within one (1) hour to the job site. Liquidate Damages shall be applied if the contractor fails to respond within the specified time.

- ii. Labor hours shall be paid based on the hourly bid price (Bid Item No. 8) multiplied by the time specified by the Department of Transportation (DOT).
 - iii. Job site is defined at from the baseyard or requested site
- b. **During off-hours.** The definition of “off-hours” as used in this specification shall mean midnight to 6:30 A.M. and 3:15 P.M. to midnight, Monday to Friday, and all hours on Saturday, Sunday, and State Holidays.
- i. The Contractor shall respond within one (1) hour to the job site. Liquidated Damages shall be applied if the contractor fails to respond within the specified time.
 - ii. The off-hours hourly labor rate of pay shall be based on the hourly bid price (Bid Item No. 9) multiplied by the time specified by the Department of Transportation (DOT).

2. **Closing of Lanes/Traffic Control.**

- a. The Contractor shall furnish traffic control and closing of lanes as requested and shall be in accordance with Section 10.7 Safety, of the Specifications and shall be performed by trained and certified personnel only. Costs for traffic control shall include preparation of the traffic control plan, rentals, and labor hours as specified.
- b. The Contractor shall make all necessary coordination with the State prior to the lane closure/traffic control.
- c. Traffic Control Plan.
 - i. All lane closures shall require a traffic control plan which shall be in accordance with this specification. The traffic control plan shall be prepared and developed by a knowledgeable and qualified individual on the fundamentals and principles of traffic control and the working activities being performed. The individual shall be trained and certified.
 - ii. The traffic control plan shall be submitted to the Engineer or Project Manager.
- d. Permit for the Occupancy & Use of State Highway Right-of-Way.

The State shall initiate the permit request, and the Contractor shall be responsible to coordinate with the State to ensure and verify the proper

permit has been approved prior to closing lanes or controlling traffic.

3. Furnishing traffic control or escort services of Special Duty Police Officer(s).

- a. Bid Item No. 10, Special Duty Police Officers and Bid Item No. 11, Special Duty Police Officers Premium Rate will be paid based on the actual costs incurred by the Contractor from the allowance provided.

The Contractor shall be responsible for paying the Special Duty Police Officers(s), at a minimum, the applicable required wage rate, vehicle rates, milage, administrative fees, workers compensation insurance fee, cancellation fee, and others.

- b. At the request of the Engineer or Project Manager, the Contractor shall hire the services of an off-duty police officer(s) to implement traffic control or as a police escort for mobile highway maintenance operations.
- c. Labor hours for Special Duty Police Officer(s) requests during regular working hours shall be paid for by Bid Item #10 Allowance. Requests made from the State less than 48 hours can be billed at the Special Duty Police Officer(s) premium rate and shall be paid for by the Bid Item #11 Allowance.
- d. The Contractor is responsible for attaching all receipts in the invoice and breakdown of additional charges.

4. Removal of required signs and traffic control devices and/or equipment.

The Contractor is required to remove all traffic control signs and devices and/or equipment within two (2) hours of notification by the Engineer or Project Manager.

(C) Extra Work or Miscellaneous Work.

1. Extra work or miscellaneous work is defined in Section 4.3 of the Specifications and shall be used only for at the discretion of the Engineer or Project Manager. The amount shall be negotiated in a manner similar to Section 4.5, Price Adjustment of the Specifications. A Change Order shall be processed and approved by the State and the Contractor prior to commencement of the required work.
2. The Engineer or Project Manager may require the Contractor to furnish and deliver traffic control signs, devices and equipment to the jobsite not mentioned in the proposal schedule. These items are unusually used by the State such as

portable floodlight equipment, water filled barriers, trench steel plate, safety barricade type one (1) with flasher, sandbag and sand bag holder, etc.

3. The allowance amount in the Proposal Schedule is provide for estimating purposes only.

10.5 HOURS OF OPERATION

- (A) The Contractor shall be available to provide the specified services 24-hours a day, seven days a week, including State Holidays.
- (B) Regular working days and hours for the project are define as Monday through Friday, 6:30 A.M. to 3:15 P.M., except for State Holidays.
- (C) The State shall contact the Contractor to request for services on as-needed basis.
- (D) Inclement Weather. The Contractor shall provide services during all weather conditions. Should the State Civil Defense issue a warning during a severe weather conditions including Hurricanes, Tsunami, or Flash Flood, the State shall notify the Contractor. Hurricane Season occurs during the months of June through November. Work shall resume to normal within twenty-four (24) hours after the all clear.

10.6 ORDER TO STOP WORK

- (A) Order to stop work shall be in accordance with Section 8.5.A Order to Stop Work, of the Specifications.
- (B) The State reserves the right to stop work at anytime, including but not limited to hazardous condition or unsafe acts as a result of the Contractor's traffic control and safety measure operation or failure to follow a contractual requirement e.g., failure to have trained/certified/licensed traffic control personnel as specified with this Specifications.
- (C) Upon receipt of either a written or verbal notification from the State, the Contractor shall immediately stop any practice or work as determined by the State as an obvious hazard or for failing to follow a contractual requirement. The State shall document the safety or hazardous incidents and/or contractual violation.
- (D) Work may continue when the hazard has been rectified, removed and/or the contractual deficiency have been resolved. The Contractor shall obtain written approval from the State prior to resuming work.
- (E) The Contractor may not be given additional time past the completion date of the Work Order for time that is lost during the "stop work".

10.7 SAFETY

The Contractor shall conduct operations with due regard to the convenience and safety of the public. The protection of persons and property shall be provided by the Contractor.

(A) Safety Concerns.

1. The Contractor shall observe safety concerns that are mentioned in Section 7.10, Public Convenience and Safety, of the Special Provisions, to the fullest during performance of work.
2. The Contractor and Contractor's employees shall exercise due care in performing any work. The Contractor and Contractor's employees may be subject to slip, trip, fall, vehicular hazards, chemical hazards, noise hazards and other workplace hazards. The Contractor shall maintain an aggressive safety program.
3. All Contractor's methods and practices shall be in accordance with the U.S. Department of Labor (DOL) Occupational Safety and Health Acts (OSHA); the Hawaii Department of Labor and Industrial Relations (DLIR); Hawaii Occupational Safety and Health Division (HIOSH), American National Standard Institute (ANSI) Z133.1-2012. Local and State occupational safety, health standards, and health programs required by the Hawaii Administrative Rules §12-110 and Hawaii Revised Statutes §396, any other applicable federal, state, and local rules and regulations specified in Section 7.10 Public Convenience and Safety.
4. The Contractor is responsible for the work site and the work practices of all employees on the project site and is the controlling, exposing, correcting as well as the creating employer for purposes of this scope of work. The State of Hawaii, Department of Transportation, monitoring the work in progress is not a representative or responsible to control the employer workplace and work practice and health compliance.
5. All closing of lanes and traffic control and safety measures shall be performed in conformance with the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways.
6. Contractor shall at all times conduct work to assure the least possible obstruction to public traffic. The Safety and convenience of the general public and the protection of persons and property is of utmost importance, and the Contractor shall provide appropriate traffic control and safety measures. The Contractor and its employees shall treat members of the public in a fair and polite manner. All Contractor's personnel shall present a professional appearance and always conduct themselves in a professional manner.

7. While working in the right-of-way areas, all employees under control of the Contractor shall wear OSHA-compliant personal protective equipment (PPE) appropriate to the hazards, including, but not limited to: head protection, safety hard hats, hearing protection, safety vest, safety belts, lanyards, fall arrest system, goggles, gloves, chemical gloves, safety shoes, chain-saw-resistant leg protection, clothing and footwear appropriate to the known hazard and other equipment as required. As a minimum, vest shall be the appropriate safety apparel that meets the current ANSI/ISEA 107 and the U.S. Department of Transportation's MUTCD High-visibility Safety Apparel Standards.

(B) Hazardous Materials / Environmental Protection

1. The Contractor shall comply with all Federal, State, and local environmental laws and regulations when handling hazardous materials.
2. All work shall be performed in strict compliance with the manufacturer's label and or Safety Data Sheet (SDS) as applicable and in accordance with State, Federal and local regulations, and laws. A copy of the SDS shall be submitted to the State two days prior to the scheduled use for approval prior to use or immediately notify the Engineer by phone or fax for his verbal approval in cases of emergency situations which occur during off hours. A copy of the SDS shall be submitted to the State by close of business the following working day. Contractor's employees who are involved in the application of pesticides and herbicides shall complete a video training as specified in Section 10.7(C)1 of the Specifications. The Contractor at the jobsite shall maintain a copy while handling chemicals. The Contractor is responsible in notifying everyone the existence of hazardous chemicals within the project area.
3. The Contractor shall immediately contain and clean up the release or spill of hazardous material and shall report the incident to the State.
4. The Contractor shall not allow debris from the traffic control operation to get into irrigation canals, rivers, or any stream.
5. Work shall not cause air or storm water pollution. The Contractor shall be responsible for all hauling and lawful disposal of debris. Any unauthorized or illegal disposal is grounds for termination of the contract.

(C) Safety Plan

1. As a minimum and as applicable, the Safety Plan shall contain the following information: Project Number, Project Title, Contract Number, Activity description, hazard, action required to mitigate the hazard, special training requirements, engineering controls (i.e., guardrails, barricades, etc.),

administrative controls (Standard Operating Procedures, signs, etc.), emergency information, safety equipment checklist, and required PPE.

2. The safety plan shall be prepared/developed by a qualified individual who is trained and knowledgeable of the current standard practice and principles of occupational safety, health, and the related work activities within this project. The credentials of the responsible person preparing the safety plan shall be submitted to the Engineer or Project Manager.
3. This plan shall be available upon request by the State. The Contractor shall discuss and submit safety plans at the Pre-start Meeting.
4. The safety plan shall be prepared/developed by a person who is knowledgeable (i.e., trained and certified) about the fundamental principles of occupational safety and health and work activities to be performed.

The certificate of training of the person who prepared the Safety Plan shall be available upon request by the State.

The following certificates from the following training sources or equivalent are acceptable:

- a. Construction Health and Safety Technician from the Board of Safety Professionals.
 - b. Specialist in Safety and Health from the OSHA Training Institute.
5. The Contractor shall notify the State of any revisions to the Safety Plan at least seven (7) working days prior to commencement of the work.
 6. Cost involved in the development of the Safety Plan shall be incidental to the cost of furnishing of highway traffic control and safety measures services.

10.8 AREA OF COVERAGE

The project requires the Contractor to furnish highway traffic control and safety measures on various areas along the State Highways right-of-way on the island of Oahu for trade crews and special projects.

10.9 SUBMITTALS/REPORTS SUMMARY

The Contractor shall submit the following reports before the award of the contract and/or notice proceed date to the State. The State shall verify and approval of all submittals.

Item	Submittal/Reports	Reference	Required	Frequency	Submit to
1	Equipment List/Lease Agreement, as applicable.	Section 10.3(A)2.b	Three (3) working days prior to the Notice to Proceed.	As revised.	Engineer – Oahu District’s representative (Point of Contact).
2	Names, Telephone Number(s) and Addressee(s) of Contact for Contractual issues.	Section 10.2(B) & 10.3(C)	Prior to award and three (3) working days prior to the Notice to Proceed.	As revised.	Project Manager, Construction and Maintenance Branch, Highways Division and the Engineer – Oahu District’s representative (Point of Contact).
3	List of personnel employed under the contract along with individual qualifications.	Section 10.3(B).	Prior to award and three (3) working days prior to the Notice to Proceed.	As revised.	Project Manager, Construction and Maintenance Branch, Highways Division and the Engineer – Oahu District’s representative (Point of Contact).
4	Safety Plan.	Section 10.7(C).	During the pre-start meeting	As needed/as revised.	Engineer – Oahu District’s representative (Point of Contact).
5	Traffic Control Plan	Section 10.4(B)2.	As required.	As needed/as revised	Engineer – Oahu District’s representative (Point of Contact).
6	Safety Data Sheet.	Section 10.7(B)2.	As required.	As needed.	Engineer – Oahu District’s representative (Point of Contact).
7	Certified Payroll Affidavit.	Section 7.8 Labor and Compensation Requirements.	Within seven (7) days after the end of each month. Submitted with the monthly invoice.	Monthly.	Engineer – Oahu District’s representative (Point of Contact).

10.10 PRE-START MEETING

The Pre-start Meeting shall be done at the request of the District Engineer or his authorized representative. The Contractor shall contact the Engineer to schedule the pre-start meeting no later than three (3) working days prior to the Notice to Proceed date. This meeting will include the Engineer, his authorized representative and other personnel as deemed necessary by the Engineer. The Contractor shall introduce the main contact person or Crew Supervisor for this project. The Contractor shall be prepared to discuss and submit the following.

- (A) Equipment quantities and location.
- (B) Coordination of access to the working areas as applicable.
- (C) List of required and applicable equipment, vehicles, materials, and supplies.
- (D) Personnel employed under this contract with applicable license and certification.
- (E) Point of Contact phone number and email address.
- (F) Verification of quantities in the Proposal Schedule and boundaries of right-of-way areas.

10.11 TERM OF CONTRACT

The term of this contract shall be for twelve (12) months from the date indicated in the Notice to Proceed from the Department than succeeding contract extension amendments.

10.12 OPTION TO EXTEND TERM

This contract may be extended to TWO (2) additional twelve (12) month term or parts thereof without the necessity for re-bidding upon mutual agreement between the State and the Contractor. The entire term of contract, including extensions, shall not exceed THIRTY-SIX (36) months.

10.13 ESCALATION CLAUSE

If the State and Contractor mutually agree to extend the contract in accordance with Section 10.12 Option to Extend Term, the Contractor shall be given a price escalation, effective at the start of each extension term, **not to exceed a maximum of TWO (2) percent** over the previous term's unit price(s). The agreement to extend shall be a formal written agreement by the State and Contractor.

10.14 BASIS FOR PAYMENT

The Contractor's bid price shall be full compensation for furnishing tools, traffic control signs, devices and equipment including support vehicles (coning trucks, etc.) fuel, mileage, labor, technical knowledge and skills, material, lubricants, communication costs, taxes, insurance, overhead, travel, and incidental costs necessary to furnish traffic control and safety measures as specified in this contract.

Incidental costs include, but are not limited to the following:

- Vehicle logo
- Employee shirt or T-shirt
- Personnel Protective Equipment (PPE)
- Development of traffic control plan
- Development and certification of safety plan

(A) Monthly Earnings

1. Monthly Earnings will be made on the basis of actual number of services performed as specified by each request and the applicable unit bid prices in the Proposal Schedule.
2. Extra/Miscellaneous Work

(B) Call-Off Charges. “Call-off” shall mean cancellation by the State to a request for services. The State will provide the Contractor the notification as early as possible as time and State resources permit. When the State cancels the request, the Contractor will be compensated as follows:

1. Charges when the cancellation notice (verbal or written) was received by the Contractor prior to the grouping of applicable traffic control signs, devices, equipment and traffic control personnel including truck driver leaving the Contractor’s baseyard - the State shall not be charged the daily rate of the applicable traffic control signs, devices and equipment and labor for traffic control personnel.
2. Charges when cancellation notice (verbal or written) was received by the Contractor after the grouping of applicable traffic control signs, devices, equipment, traffic control personnel including truck driver have left the Contractor’s baseyard or have arrived at the jobsite – the Contractor may charge the State the man-hours expended for the mobilization/load up of specified traffic control signs, devices, equipment including travel time to the jobsite, as applicable.
3. Charges when cancellation notice (verbal or written) was received by the Contractor when the applicable traffic control signs, devices, equipment and traffic control personnel including truck driver have left the Contractor’s baseyard, have arrived at the jobsite, and have already installed the applicable traffic control signs, devices and equipment - the Contractor may additionally charge the State the man-hours expended for installing, programming and or removing the traffic control signs, devices, equipment as applicable plus the daily rate of the traffic control signs, devices and equipment. However, this amount shall not be paid to the Contractor if cancellation is due to the fault of the Contractor.

The State shall not compensate the Contractor for lost time due to misdirection or mistakes by the Contractor's crew.

4. Charges for Special duty Police Officers - the minimum charges for Special Duty Police Officers will be based on HPD's current job cancelation policy.

(C) Deductions (as applicable).

1. Liquidated Damages – Computed as specified in Section 8.6 of the Special Provisions. This amount if any, shall be retained by the State and shall not be paid to the Contractor.
2. Retainage – computed as specified in Section 9.2 Retainage of the Specifications. Refer to Section 9.2 Retainage /Deduction from Payment, of the Special Provisions for retainage invoicing procedures.

(D) Monthly Payments – Total monthly payments payable to the Contractor will be the applicable monthly payments in Section 10.14(A) Monthly Earnings, 1 through 3 above, minus applicable Deductions in Section 10.14(B) Deductions above.

**SECTION 10 – FURNISHING OF HIGHWAY TRAFFIC CONTROL AND SAFETY
MEASURES AT VARIOUS LOCATIONS**

10.1 DESCRIPTION

The Contractor shall, upon the request by the State, furnish all labor, necessary traffic control signs, devices and equipment to provide traffic control and safety measures and subsequent removal of such traffic control signs, devices, and equipment on an “as-needed” basis during the contract period in such quantities as may be required at various locations for the landscape and maintenance crews and special projects on the Island of Oahu.

The Contractor shall ensure that the services are performed in a manner that provides outstanding customer service and presents a comfortable, healthy, and safe environment.

The Contractor is responsible for providing the specified services, 24-hours a day, 7-days a week when and as directed by the respective District Engineer, Maintenance Engineer, Maintenance Superintendent, Project Manager or their designated representatives.

All traffic control shall be done in conformance with the latest revisions of the following:

- Manual on Uniform Traffic Control Devices (MUTCD) standards;
- Hawaii Standard Specifications for Road and Bridge Construction;
- Standard Plans;
- Hawaii Administrative Rules, Title 19, Subtitle 5, Chapter 128 (HAR §19-128), Design, Placement, and Maintenance of Traffic Control Devices, HAR §19-129, Use of Traffic Control Devices at Work Sites on or Adjacent to Public Streets and Highways; and any other applicable Federal, State and local rules and regulations, as amended, revised or updated.

10.2 COORDINATION OF WORK

- A. All work under this contract shall be coordinated with the State. Contact information is as follows:

Engineer Mr. Ryan Nakata District Engineer (DE) – Oahu District Phone: 808-831-6700 x128 Fax: 808-831-6725 Email: ryan.a.nakata@hawaii.gov	Point of Contact Melanie Barroga Project Manager – Oahu District Phone: 808-831-6700 x110 Fax: 808-831-6725 Email: Melanie.j.barroga@hawaii.gov
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- B. The Contractor shall furnish the State with a telephone number and email address where the State can call for service every calendar day of the year to perform work under this contract.

1. The Contractor or designated qualified personnel shall return phone calls from the State within one (1) hour of receipt of the phone call. All electronic mails from the State shall be replied to within two (2) hours of receipt of the electronic mail.
2. The Contractor is required to provide on-site service within one (1) hour of the verbal request from the State during normal work hours and off call hours.
3. Removal of required signs and traffic control devices and or equipment. The Contractor is required to remove all traffic control signs and devices, including variable message boards, and/ or equipment within two (2) hours of verbal notification by the State.

10.3 QUALIFICATION OF BIDDERS

All bidders will be provided a standard pre-qualification questionnaire after bid opening to complete and return electronically. Bids will be evaluated based upon the completed pre-questionnaire and submitted certificates. Requested documents and standard pre-qualification questionnaire shall be received by the Project Manager no later than five (5) working days from the receipt of the written request from the State.

(A) Contractor Qualifications

1. **Work Experience.** At the time of bidding, the Contractor shall have a minimum of two (2) consecutive years of furnishing traffic control experience similar to this project in size and scope. The State may require the successful bidder to submit the list of projects for verification prior to the contract award. The list shall contain a minimum of three (3) different projects which includes the name of the company that the project was for previously or currently, the company address, point of contact, phone number, description of traffic control work performed and size of the project (cost wise). The minimum of three (3) different projects' experience shall be positive on the performance evaluation by the respective agency. The State reserves the right to contact the listed companies to verify the quality of the Contractor's work experience.
2. Have all required traffic control signs, devices, daily personnel and equipment as specified in the Proposal Schedule including supporting vehicles (e.g., coning trucks, etc.) necessary to perform the specified services in this contract and in sufficient quantity to meet the estimated quantities in the Proposal Schedule.
 - a. The Contractor shall provide essential equipment and personnel daily to support critical State Maintenance operations. This includes maintaining the following minimum daily inventory and available personnel:
 - i. Four (4) Truck Mounted Attenuators (TMAs)
 - ii. Twenty-one (21) Trucks

- iii. Twenty-nine (29) Technicians
- iv. One (1) Special Duty officer

The Contractor shall provide proof of the availability of the resources (equipment & personnel list) upon request from the State. Failure to provide proof of resources shall result in rejection of bid.

- b. Required equipment may be owned or leased. To show availability of equipment, the bidder shall provide a list of equipment owned and leased. Lease agreements for each leased equipment shall be submitted to the State upon request. This list shall be verified and approved by the Engineer or Project Manager prior to the Notice to Proceed date and throughout the term of the contract. The Contractor shall bear the cost of the lease.
- c. The following is required on all equipment/vehicle, as applicable:
 - i. Contractor's vehicles shall have the Contractor's company name and/or logo displayed on doors or side panels and shall be in letters large enough to be easily legible from a distance of one hundred (100) feet. Magnetic signs with the Contractor's company name and/or logo are acceptable. Cost of the logo/contractor's company name shall be considered as incidental cost of traffic control services.
 - ii. All vehicles and equipment shall be kept in good condition and appearance.
 - iii. All vehicles shall meet State and County licensing and registration and safety requirements and shall be equipped properly in accordance with City, State, Federal and OSHA requirements.
 - iv. The Contractor shall obtain insurance coverages as specified by Section 7.9 Insurance of this specification.
 - v. Operation of all equipment shall be in accordance with all applicable OSHA, other Federal, State, and local regulations and laws and the equipment operator's manual.
- 3. The Contractor shall have an administrative resource to facilitate monthly estimates and payment request.
- 4. The Contractor shall possess the required business and tax license to conduct business in the State of Hawaii during any period of the contract.

5. Be familiar with working on State Highways preferably on the Island of Oahu.
6. The Contractor's office, maintenance crew, and equipment shall be located and available for use on the Island of Oahu.
7. Be experience on establishing required traffic control per the current U.S. Federal Highway Administration's Manual of Uniform Traffic Control Devices (MUTCD).

(B) Contractor or Contractor's Personnel Qualification.

The Contractor shall have their personnel trained/certified/licensed/experienced on the following:

1. Traffic Control Personnel:

- a. **Certification** – At the time of bidding, the Contractor or personnel shall possess a valid certificate of training completion respectively. As a minimum, the Contractor or personnel shall be trained and certified on the following American Traffic Safety Service Association (ATSSA) courses or approved equivalent train course.

- i. Flagger
- ii. Traffic Control Technician (TCT)
- iii. Traffic Control Supervisor (TCS)

For more information on the above courses, log on to:

<http://www.atssa.com/training>

- iv. The contractor shall submit the following acceptable documentation or certificate of training completion:

1. American Traffic Safety Services Association (ATSSA).
2. Equivalent documentation to the above.

- b. **Work experience.** At the time of bidding, the Contractor or Contractor's traffic control personnel shall have a minimum of one (1) year of furnishing traffic control services experience as a flagger, Traffic Control Technician (TCT) and Traffic Control Supervisor (TCS), as applicable, or their respective equivalent.

2. **Equipment Operator Requirements.** Contractor's personnel who operate motorized equipment (trucks, etc.) shall have required experience, training, valid State of Hawaii motor vehicle operator's license. The personnel shall meet all

physical and medical requirements and be able to operate the motorized equipment that is representative of the class.

3. Supplementary Contractor Personnel Requirement.

- a. Uniforms. Contractor employees on the job site shall be easily identified as Contractor's employees by wearing a shirt, T-shirt or coverall with the company name or logo. Contractor's employees shall always present a neat and clean appearance. One color and style of uniform shirt shall be selected which will be worn by all Contractor personnel.
- b. For security and safety reasons, the Contractor shall prohibit personal vehicles from parking within the State highway right-of-way area.
- c. The State reserves the right to disqualify the Contractor's personnel from this contract and the Contractor shall replace the disqualified personnel within (10) working days. Qualifications of the replacement shall be reviewed and approved by the Engineer.
- d. Special Duty Police Officer Premium Rate – ordered less than 48 hours to start time

(C) Availability

1. The Contractor is required to provide the State with telephone numbers for their place of business on the island of Oahu where the State can call, email or text regarding services every calendar day of the year.
2. Personnel assigned to this job shall be available to respond to service calls, emails or text within the parameters of these Specifications.

(D) Falsification of Personnel Qualifications. The inability to successfully perform the work, or excessively high turnover of personnel assigned to this work, shall constitute a major breach of this contract and the contract shall be subject to termination.

(E) Submitting Required and Requested Documentations.

1. Failure to submit required or requested documentation may result in rejection of bid or termination of contract by the State.

10.4 SCOPE OF WORK

The Contractor, upon request by the State, shall furnish the following services on an "as-needed" basis. The State gives no assurance to any Contractor that any specific quantity of services will be purchased.

(A) Furnishing traffic control signs, devices, and equipment.

1. The Contractor shall furnish and deliver Bid Item Nos. 1 through 6, and Bid Item No. 8 through 11, as applicable, to the jobsite as rentals and as specified in the Proposal Schedule.
2. All traffic control signs, devices, and equipment shall remain the property of the Contractor and shall be in compliance with the Standard Specifications, the MUTCD and this specification. The Contractor shall consult the State when there is a conflict between the Standard Specifications, the MUTCD, and this specification.
 - a. The flasher (Bid Item No. 2), arrow board (Bid Item No. 4), and the variable message board (Bid Item No. 5) deployed to the jobsite shall function properly throughout the entire duration of the project.
 - b. The Contractor shall furnish the truck driver(s) for Bid Item No. 6, Truck-mounted Attenuator (TMA) with arrow board and truck, and shall be paid man-hour rate as listed in bid Item No. 8.
3. The Contractor shall be paid the Contractor's applicable unit bid price for a one-day rental as specified in the Proposal Schedule.
 - a. The Contractor shall be paid the full unit bid price if the traffic control signs, devices and equipment were used in the same calendar day. For example, the Contractor shall be compensated for the one-day rental unit bid price if traffic control signs, devices and equipment that were used on the jobsite from 7:00 A.M. to 9:00 A.M., Monday.
 - b. The Contractor shall be compensated for two one-day rental unit bid price if traffic control signs, devices and equipment were used over the next calendar day. For example, the Contractor shall be compensated for the two one-day rental unit bid price if the traffic control signs, devices and equipment were used on the jobsite from 4:00 P.M., Thursday through 7:00 A.M. Friday.

(B) Furnishing traffic control personnel and labor for traffic control.

1. Requests are classified as follows:
 - a. **During normal working hours.**
 - i. The Contractor shall respond within one (1) hour to the job site. Liquidate Damages shall be applied if the contractor fails to respond within the specified time.

- ii. Labor hours shall be paid based on the hourly bid price (Bid Item No. 8) multiplied by the time specified by the Department of Transportation (DOT).
 - iii. Job site is defined at from the baseyard or requested site
- b. **During off-hours.** The definition of “off-hours” as used in this specification shall mean midnight to 6:30 A.M. and 3:15 P.M. to midnight, Monday to Friday, and all hours on Saturday, Sunday, and State Holidays.
- i. The Contractor shall respond within one (1) hour to the job site. Liquidated Damages shall be applied if the contractor fails to respond within the specified time.
 - ii. The off-hours hourly labor rate of pay shall be based on the hourly bid price (Bid Item No. 9) multiplied by the time specified by the Department of Transportation (DOT).

2. **Closing of Lanes/Traffic Control.**

- a. The Contractor shall furnish traffic control and closing of lanes as requested and shall be in accordance with Section 10.7 Safety, of the Specifications and shall be performed by trained and certified personnel only. Costs for traffic control shall include preparation of the traffic control plan, rentals, and labor hours as specified.
- b. The Contractor shall make all necessary coordination with the State prior to the lane closure/traffic control.
- c. Traffic Control Plan.
 - i. All lane closures shall require a traffic control plan which shall be in accordance with this specification. The traffic control plan shall be prepared and developed by a knowledgeable and qualified individual on the fundamentals and principles of traffic control and the working activities being performed. The individual shall be trained and certified.
 - ii. The traffic control plan shall be submitted to the Engineer or Project Manager.
- d. Permit for the Occupancy & Use of State Highway Right-of-Way.

The State shall initiate the permit request, and the Contractor shall be responsible to coordinate with the State to ensure and verify the proper

permit has been approved prior to closing lanes or controlling traffic.

3. Furnishing traffic control or escort services of Special Duty Police Officer(s).

- a. Bid Item No. 10, Special Duty Police Officers and Bid Item No. 11, Special Duty Police Officers Premium Rate will be paid based on the actual costs incurred by the Contractor from the allowance provided.

The Contractor shall be responsible for paying the Special Duty Police Officers(s), at a minimum, the applicable required wage rate, vehicle rates, milage, administrative fees, workers compensation insurance fee, cancellation fee, and others.

- b. At the request of the Engineer or Project Manager, the Contractor shall hire the services of an off-duty police officer(s) to implement traffic control or as a police escort for mobile highway maintenance operations.
- c. Labor hours for Special Duty Police Officer(s) requests during regular working hours shall be paid for by Bid Item #10 Allowance. Requests made from the State less than 48 hours can be billed at the Special Duty Police Officer(s) premium rate and shall be paid for by the Bid Item #11 Allowance.
- d. The Contractor is responsible for attaching all receipts in the invoice and breakdown of additional charges.

4. Removal of required signs and traffic control devices and/or equipment.

The Contractor is required to remove all traffic control signs and devices and/or equipment within two (2) hours of notification by the Engineer or Project Manager.

(C) Extra Work or Miscellaneous Work.

1. Extra work or miscellaneous work is defined in Section 4.3 of the Specifications and shall be used only for at the discretion of the Engineer or Project Manager. The amount shall be negotiated in a manner similar to Section 4.5, Price Adjustment of the Specifications. A Change Order shall be processed and approved by the State and the Contractor prior to commencement of the required work.
2. The Engineer or Project Manager may require the Contractor to furnish and deliver traffic control signs, devices and equipment to the jobsite not mentioned in the proposal schedule. These items are unusually used by the State such as

portable floodlight equipment, water filled barriers, trench steel plate, safety barricade type one (1) with flasher, sandbag and sand bag holder, etc.

3. The allowance amount in the Proposal Schedule is provide for estimating purposes only.

10.5 HOURS OF OPERATION

- (A) The Contractor shall be available to provide the specified services 24-hours a day, seven days a week, including State Holidays.
- (B) Regular working days and hours for the project are define as Monday through Friday, 6:30 A.M. to 3:15 P.M., except for State Holidays.
- (C) The State shall contact the Contractor to request for services on as-needed basis.
- (D) Inclement Weather. The Contractor shall provide services during all weather conditions. Should the State Civil Defense issue a warning during a severe weather conditions including Hurricanes, Tsunami, or Flash Flood, the State shall notify the Contractor. Hurricane Season occurs during the months of June through November. Work shall resume to normal within twenty-four (24) hours after the all clear.

10.6 ORDER TO STOP WORK

- (A) Order to stop work shall be in accordance with Section 8.5.A Order to Stop Work, of the Specifications.
- (B) The State reserves the right to stop work at anytime, including but not limited to hazardous condition or unsafe acts as a result of the Contractor's traffic control and safety measure operation or failure to follow a contractual requirement e.g., failure to have trained/certified/licensed traffic control personnel as specified with this Specifications.
- (C) Upon receipt of either a written or verbal notification from the State, the Contractor shall immediately stop any practice or work as determined by the State as an obvious hazard or for failing to follow a contractual requirement. The State shall document the safety or hazardous incidents and/or contractual violation.
- (D) Work may continue when the hazard has been rectified, removed and/or the contractual deficiency have been resolved. The Contractor shall obtain written approval from the State prior to resuming work.
- (E) The Contractor may not be given additional time past the completion date of the Work Order for time that is lost during the "stop work".

10.7 SAFETY

The Contractor shall conduct operations with due regard to the convenience and safety of the public. The protection of persons and property shall be provided by the Contractor.

(A) Safety Concerns.

1. The Contractor shall observe safety concerns that are mentioned in Section 7.10, Public Convenience and Safety, of the Special Provisions, to the fullest during performance of work.
2. The Contractor and Contractor's employees shall exercise due care in performing any work. The Contractor and Contractor's employees may be subject to slip, trip, fall, vehicular hazards, chemical hazards, noise hazards and other workplace hazards. The Contractor shall maintain an aggressive safety program.
3. All Contractor's methods and practices shall be in accordance with the U.S. Department of Labor (DOL) Occupational Safety and Health Acts (OSHA); the Hawaii Department of Labor and Industrial Relations (DLIR); Hawaii Occupational Safety and Health Division (HIOSH), American National Standard Institute (ANSI) Z133.1-2012. Local and State occupational safety, health standards, and health programs required by the Hawaii Administrative Rules §12-110 and Hawaii Revised Statutes §396, any other applicable federal, state, and local rules and regulations specified in Section 7.10 Public Convenience and Safety.
4. The Contractor is responsible for the work site and the work practices of all employees on the project site and is the controlling, exposing, correcting as well as the creating employer for purposes of this scope of work. The State of Hawaii, Department of Transportation, monitoring the work in progress is not a representative or responsible to control the employer workplace and work practice and health compliance.
5. All closing of lanes and traffic control and safety measures shall be performed in conformance with the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways.
6. Contractor shall at all times conduct work to assure the least possible obstruction to public traffic. The Safety and convenience of the general public and the protection of persons and property is of utmost importance, and the Contractor shall provide appropriate traffic control and safety measures. The Contractor and its employees shall treat members of the public in a fair and polite manner. All Contractor's personnel shall present a professional appearance and always conduct themselves in a professional manner.

7. While working in the right-of-way areas, all employees under control of the Contractor shall wear OSHA-compliant personal protective equipment (PPE) appropriate to the hazards, including, but not limited to: head protection, safety hard hats, hearing protection, safety vest, safety belts, lanyards, fall arrest system, goggles, gloves, chemical gloves, safety shoes, chain-saw-resistant leg protection, clothing and footwear appropriate to the known hazard and other equipment as required. As a minimum, vest shall be the appropriate safety apparel that meets the current ANSI/ISEA 107 and the U.S. Department of Transportation's MUTCD High-visibility Safety Apparel Standards.

(B) Hazardous Materials / Environmental Protection

1. The Contractor shall comply with all Federal, State, and local environmental laws and regulations when handling hazardous materials.
2. All work shall be performed in strict compliance with the manufacturer's label and or Safety Data Sheet (SDS) as applicable and in accordance with State, Federal and local regulations, and laws. A copy of the SDS shall be submitted to the State two days prior to the scheduled use for approval prior to use or immediately notify the Engineer by phone or fax for his verbal approval in cases of emergency situations which occur during off hours. A copy of the SDS shall be submitted to the State by close of business the following working day. Contractor's employees who are involved in the application of pesticides and herbicides shall complete a video training as specified in Section 10.7(C)1 of the Specifications. The Contractor at the jobsite shall maintain a copy while handling chemicals. The Contractor is responsible in notifying everyone the existence of hazardous chemicals within the project area.
3. The Contractor shall immediately contain and clean up the release or spill of hazardous material and shall report the incident to the State.
4. The Contractor shall not allow debris from the traffic control operation to get into irrigation canals, rivers, or any stream.
5. Work shall not cause air or storm water pollution. The Contractor shall be responsible for all hauling and lawful disposal of debris. Any unauthorized or illegal disposal is grounds for termination of the contract.

(C) Safety Plan

1. As a minimum and as applicable, the Safety Plan shall contain the following information: Project Number, Project Title, Contract Number, Activity description, hazard, action required to mitigate the hazard, special training requirements, engineering controls (i.e., guardrails, barricades, etc.),

administrative controls (Standard Operating Procedures, signs, etc.), emergency information, safety equipment checklist, and required PPE.

2. The safety plan shall be prepared/developed by a qualified individual who is trained and knowledgeable of the current standard practice and principles of occupational safety, health, and the related work activities within this project. The credentials of the responsible person preparing the safety plan shall be submitted to the Engineer or Project Manager.
3. This plan shall be available upon request by the State. The Contractor shall discuss and submit safety plans at the Pre-start Meeting.
4. The safety plan shall be prepared/developed by a person who is knowledgeable (i.e., trained and certified) about the fundamental principles of occupational safety and health and work activities to be performed.

The certificate of training of the person who prepared the Safety Plan shall be available upon request by the State.

The following certificates from the following training sources or equivalent are acceptable:

- a. Construction Health and Safety Technician from the Board of Safety Professionals.
 - b. Specialist in Safety and Health from the OSHA Training Institute.
5. The Contractor shall notify the State of any revisions to the Safety Plan at least seven (7) working days prior to commencement of the work.
 6. Cost involved in the development of the Safety Plan shall be incidental to the cost of furnishing of highway traffic control and safety measures services.

10.8 AREA OF COVERAGE

The project requires the Contractor to furnish highway traffic control and safety measures on various areas along the State Highways right-of-way on the island of Oahu for trade crews and special projects.

10.9 SUBMITTALS/REPORTS SUMMARY

The Contractor shall submit the following reports before the award of the contract and/or notice proceed date to the State. The State shall verify and approval of all submittals.

Item	Submittal/Reports	Reference	Required	Frequency	Submit to
1	Equipment List/Lease Agreement, as applicable.	Section 10.3(A)2.b	Three (3) working days prior to the Notice to Proceed.	As revised.	Engineer – Oahu District’s representative (Point of Contact).
2	Names, Telephone Number(s) and Addressee(s) of Contact for Contractual issues.	Section 10.2(B) & 10.3(C)	Prior to award and three (3) working days prior to the Notice to Proceed.	As revised.	Project Manager, Construction and Maintenance Branch, Highways Division and the Engineer – Oahu District’s representative (Point of Contact).
3	List of personnel employed under the contract along with individual qualifications.	Section 10.3(B).	Prior to award and three (3) working days prior to the Notice to Proceed.	As revised.	Project Manager, Construction and Maintenance Branch, Highways Division and the Engineer – Oahu District’s representative (Point of Contact).
4	Safety Plan.	Section 10.7(C).	During the pre-start meeting	As needed/as revised.	Engineer – Oahu District’s representative (Point of Contact).
5	Traffic Control Plan	Section 10.4(B)2.	As required.	As needed/as revised	Engineer – Oahu District’s representative (Point of Contact).
6	Safety Data Sheet.	Section 10.7(B)2.	As required.	As needed.	Engineer – Oahu District’s representative (Point of Contact).
7	Certified Payroll Affidavit.	Section 7.8 Labor and Compensation Requirements.	Within seven (7) days after the end of each month. Submitted with the monthly invoice.	Monthly.	Engineer – Oahu District’s representative (Point of Contact).

10.10 PRE-START MEETING

The Pre-start Meeting shall be done at the request of the District Engineer or his authorized representative. The Contractor shall contact the Engineer to schedule the pre-start meeting no later than three (3) working days prior to the Notice to Proceed date. This meeting will include the Engineer, his authorized representative and other personnel as deemed necessary by the Engineer. The Contractor shall introduce the main contact person or Crew Supervisor for this project. The Contractor shall be prepared to discuss and submit the following.

- (A) Equipment quantities and location.
- (B) Coordination of access to the working areas as applicable.
- (C) List of required and applicable equipment, vehicles, materials, and supplies.
- (D) Personnel employed under this contract with applicable license and certification.
- (E) Point of Contact phone number and email address.
- (F) Verification of quantities in the Proposal Schedule and boundaries of right-of-way areas.

10.11 TERM OF CONTRACT

The term of this contract shall be for twelve (12) months from the date indicated in the Notice to Proceed from the Department than succeeding contract extension amendments.

10.12 OPTION TO EXTEND TERM

This contract may be extended to TWO (2) additional twelve (12) month term or parts thereof without the necessity for re-bidding upon mutual agreement between the State and the Contractor. The entire term of contract, including extensions, shall not exceed THIRTY-SIX (36) months.

10.13 ESCALATION CLAUSE

If the State and Contractor mutually agree to extend the contract in accordance with Section 10.12 Option to Extend Term, the Contractor shall be given a price escalation, effective at the start of each extension term, **not to exceed a maximum of TWO (2) percent** over the previous term's unit price(s). The agreement to extend shall be a formal written agreement by the State and Contractor.

10.14 BASIS FOR PAYMENT

The Contractor's bid price shall be full compensation for furnishing tools, traffic control signs, devices and equipment including support vehicles (coning trucks, etc.) fuel, mileage, labor, technical knowledge and skills, material, lubricants, communication costs, taxes, insurance, overhead, travel, and incidental costs necessary to furnish traffic control and safety measures as specified in this contract.

Incidental costs include, but are not limited to the following:

- Vehicle logo
- Employee shirt or T-shirt
- Personnel Protective Equipment (PPE)
- Development of traffic control plan
- Development and certification of safety plan

(A) Monthly Earnings

1. Monthly Earnings will be made on the basis of actual number of services performed as specified by each request and the applicable unit bid prices in the Proposal Schedule.
2. Extra/Miscellaneous Work

(B) Call-Off Charges. “Call-off” shall mean cancellation by the State to a request for services. The State will provide the Contractor the notification as early as possible as time and State resources permit. When the State cancels the request, the Contractor will be compensated as follows:

1. Charges when the cancellation notice (verbal or written) was received by the Contractor prior to the grouping of applicable traffic control signs, devices, equipment and traffic control personnel including truck driver leaving the Contractor’s baseyard - the State shall not be charged the daily rate of the applicable traffic control signs, devices and equipment and labor for traffic control personnel.
2. Charges when cancellation notice (verbal or written) was received by the Contractor after the grouping of applicable traffic control signs, devices, equipment, traffic control personnel including truck driver have left the Contractor’s baseyard or have arrived at the jobsite – the Contractor may charge the State the man-hours expended for the mobilization/load up of specified traffic control signs, devices, equipment including travel time to the jobsite, as applicable.
3. Charges when cancellation notice (verbal or written) was received by the Contractor when the applicable traffic control signs, devices, equipment and traffic control personnel including truck driver have left the Contractor’s baseyard, have arrived at the jobsite, and have already installed the applicable traffic control signs, devices and equipment - the Contractor may additionally charge the State the man-hours expended for installing, programming and or removing the traffic control signs, devices, equipment as applicable plus the daily rate of the traffic control signs, devices and equipment. However, this amount shall not be paid to the Contractor if cancellation is due to the fault of the Contractor.

The State shall not compensate the Contractor for lost time due to misdirection or mistakes by the Contractor's crew.

4. Charges for Special duty Police Officers - the minimum charges for Special Duty Police Officers will be based on HPD's current job cancelation policy.

(C) Deductions (as applicable).

1. Liquidated Damages – Computed as specified in Section 8.6 of the Special Provisions. This amount if any, shall be retained by the State and shall not be paid to the Contractor.
2. Retainage – computed as specified in Section 9.2 Retainage of the Specifications. Refer to Section 9.2 Retainage /Deduction from Payment, of the Special Provisions for retainage invoicing procedures.

(D) Monthly Payments – Total monthly payments payable to the Contractor will be the applicable monthly payments in Section 10.14(A) Monthly Earnings, 1 through 3 above, minus applicable Deductions in Section 10.14(B) Deductions above.

STATE OF HAWAII
DEPARTEMENT OF TRANSPORTATION
HIGHWAYS
HONOLULU, HAWAII

APPENDICES

Contents:

- Appendix A Sample – Monthly Invoice
- Appendix B Sample – Certified Payroll Report
- Appendix C Sample – Satisfactory Evidence by Affidavit for Final Payment
- Appendix D Application & Permit for the Occupancy & Use of State Highway Right-Of-Way

Appendix A
SAMPLE - MONTHLY INVOICE

Traffic Control Service

1234 Any Street, Honolulu, Hawaii 12345 Phone (808) 123-1234 Fax (808)-123-1234 Email: name@email.com

Bill To: District Engineer – Oahu District
Highways
Department of Transportation
727 Kakoi Street
Honolulu, Hawaii 96819

Date: _____
Invoice No.: _____
Contract No.: _____
Purchase Order No.: _____
Project No.: **HWY-C-46-24**

Project Title: Furnishing of Highway Traffic Control and Safety Measures at Various Locations for the Oahu District Landscape & Maintenance Crews and Specials Projects, Island of Oahu

Periods Covered by this invoice: **June 1, 2024, through June 30, 2024** (full pay period, head-to-tail format, first pay period from the NTP date to following month similar to this sample)

Bid Item No.	Description	Qty	Unit	Unit Price	Amount
1	Traffic Cones Reflective, 700mm (28")	72,000	Each	\$ _____	\$ _____
2	Safety Barricade Type 2, with Flasher, Sandbag and Sandbag Holder	62,000	Each	\$ _____	\$ _____
3	Warning Signs w/ Stand and Two Flags	12,000	Each	\$ _____	\$ _____
4	Arrow Boards Assembly, Complete, Trailer-mounted	3,300	Each	\$ _____	\$ _____
5	Variable Message Board, Trailer-mounted	1,500	Each	\$ _____	\$ _____
6	Truck-mounted Attenuator (TMA) with arrow board and truck	700	Each	\$ _____	\$ _____
7	Miscellaneous	Allow	Allowance	Allowance	\$20,000.00
8	Traffic Control Service and Maintenance Per Person	75,000	Man-Hour	\$ _____	\$ _____
9	Traffic Control Service and Maintenance Per Person "off hours"	17,000	Man-Hour	\$ _____	\$ _____
10	Special Duty Officer Regular Rate	Allow	Allowance	Allowance	\$700,000.00
11	Special Duty Police Officer Premium Rate (Premium Rate = ordered less than 48 hours to start time)	Allow	Allowance	Allowance	\$370,000.00
Subtotal					\$ _____
Less Liquidated Damages per Section 8.6 of the Special Provisions					\$ _____
Subtotal					\$ _____
Less 5% retainage per Section 9.2 of the Specifications					\$ _____
Total Amount Due					\$ _____

I certify that services requested under the contract have been performed by Traffic Control Services in accordance to the contract.

Signature
First J. Name
Title: President
Traffic Control Services

**APPENDIX B
SAMPLE - CERTIFIED PAYROLL REPORT**

STATE OF HAWAII		CERTIFIED PAYROLL REPORT															DAGSECP v1.0_06/10							
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES																	REPORT SUBMISSION DATE: 26-Aug-05							
Public Works Division																								
Name is of: Contractor: <input type="checkbox"/>		Subcontractor: <input type="checkbox"/>		<input type="checkbox"/>		THIS IS AN AMENDED FORM PAYMENTS MADE ON SAME DAY TO ALL EMPLOYEES																		
NAME: <input type="text"/>																								
PAYROLL NO.	FOR WEEK ENDING	PROJECT AND LOCATION										PROJECT NO.	VENDOR CODE											
34	June 29, 2005	CHERRY COURTHOUSE, FIX ROTTEN TREES										99-99-9999	000003-98											
NAME, NO ADDRESS, AND LAST 4 DIGITS OF SOCIAL SECURITY NUMBER OF EMPLOYEE	NO. OF WITHHOLDING EXEMPTIONS	WORK CLASSIFICATION	OT ORIST.	DAY AND DATE							TOTAL HOURS	RATE OF PAY	GROSS AMOUNT EARNED	TOTAL DEDUCTIONS						NET WAGES PAID FOR WEEK	DATE PAID TO EMPLOYEE			
				S	M	T	W	TH	F	S				FICA	FED. WITH- HOLDING TAX	STATE WITH- HOLDING TAX	MEDICARE	OTHER DEDUC.	TOTAL DEDUCT					
				HOURS WORKED EACH DAY																				
Jack Sprat XXX-XX-9999		Runner	S	7.00	7.00	7.00	7.00	8.00	8.00	9.00	53.00	\$30.00	\$1,590,000	\$3.00	\$2.00	\$2.00	\$1.00	\$2.00	\$10.00	\$4,100.000	17-Jun-05			
				O	8.00	8.00	8.00	8.00	8.00	8.00	8.00	56.00	\$45.00	\$2,520,000										
				T	15.00	15.00	15.00	15.00	16.00	16.00	17.00	109.00		\$4,110,000										
Leap Frog xxx-xx-5678		Jumper	S	2.00			6.00			4.00	12	\$20.00	\$240,000	\$4.00	\$5.00	\$6.00	\$6.00	\$3.00	\$24.00	\$216.000				
				O								0	\$30.00	\$0,000										
				T	2.00	0.00	0.00	6.00	0.00	0.00	4.00	12.00		\$240,000										
			S								0		\$0,000						\$0.00	\$0,000				
				O									0	\$0.00	\$0,000									
				T	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		\$0,000										
			S								0		\$0,000						\$0.00	\$0,000				
				O									0	\$0.00	\$0,000									
				T	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		\$0,000										
			S								0		\$0,000						\$0.00	\$0,000	27-Jan-05			
				O									0	\$0.00	\$0,000									
				T	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		\$0,000										
			S								0		\$0,000						\$0.00	\$0,000				
				O									0	\$0.00	\$0,000									
				T	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		\$0,000										
			S								0		\$0,000						\$0.00	\$0,000				
				O									0	\$0.00	\$0,000									
				T	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		\$0,000										

Appendix C
Sample – Satisfactory Evidence by Affidavit for Final Payment

Traffic Control Services

1234 Any Street, Honolulu, Hawaii 12345

Phone: (808) 123-1235

Email: name@email.com

Date:

State of Hawaii
Department of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96819

Dear Sir/Madam:

Pursuant to Section 9.5.B, Final Payment of the Specifications, I hereby certify that all debts resulting from Contract No _____, Project No. HWY-C-46-24. Project Title: Furnishing of Highway Traffic Control and Safety Measures at Various Locations for the Oahu District Landscape and Maintenance Crews and Special Projects, Island of Oahu, have been fully paid or satisfactorily secured.

Cordially,

First J. Name
President
Custodial Services

Subscribed and sworn to me
This _____ day of _____, 202____.

Notary Public, First Judicial Circuit,
State of Hawaii

My Commission Expires: _____

APPENDIX D

APPLICATION & PERMIT FOR THE OCCUPANCY & USE OF STATE HIGHWAY RIGHT-OF-WAY

Application date _____, 20____

POLICE CHECKLIST: ITEMS 1 THRU 5.

Pursuant to the provisions of Chapter 264, Hawaii Revised Statutes as amended, application is hereby made to perform the following work, activity, or event, upon the state highway described below and at the location(s) specified below and at no other place.

1. Name of Highway _____ Route # /Section _____

2. Locations or limits on said highway _____

3. Description of work, activity, or event to be performed

- Engineering Survey
- Maintenance
- Inspection
- Landscaping
- Other

4. Dates between which work, activity, or event will be performed: _____

5. General Conditions

- a. No digging or disturbing of the highway will be permitted under this permit.
- b. The work, activity, or event may be performed only during off-peak hours unless otherwise approved in writing. Peak hours are from 6:00 AM to 8:30 AM and from 3:00 PM to 6:00 PM, Monday through Friday excluding State Holidays.
- c. All lanes shall be open to traffic during the hours from 6:00 AM to 8:30 AM, during the hours of 3:00 PM to 6:00 PM, and when no work is being done under this permit. Only one lane of traffic may be closed at any other time unless otherwise approved in writing.
- d. Parking permitted only in designated areas for vehicles actively engaged in, or loading or unloading materials for, the specified work, activity, or event. Unattended vehicles will not be permitted.

6. Special Conditions and/or Restrictions _____

7. Submittals Required

- a. Traffic Control Plan (whenever there are lane closures)
- b. Approved Landscaping Plan: It is agreed that upon final acceptance of the approved landscape work by the State, all improvements placed on said premises shall be and remain the property of the State and may be removed or otherwise disposed of by the State at any time.
- c. Proof of State Indemnity
 - Certificate of Insurance naming State of Hawaii as an additional insured, having minimum coverages for Bodily Injury or Death Per Person; Bodily Injury or Death Per Accident; and Property Damages Per Accident of:
 - \$100,000, \$300,000, and \$500,000 respectively; or
 - combined single limit of \$500,000
 - Certificate attached or with Permit No. _____
 - Federal Non-Liability Clause (See Item 11 on the back of this permit)
 - Waived
- d. Permit Fee \$_____ (make check payable to Dept. of Transportation, State of Hawaii)

The applicant hereby agrees that any agreement heretofore made or hereafter to be made, and the covenants and conditions stated on the reverse side hereof shall be binding upon him, his heirs, personal representatives, successors, contractors, and assigns.

APPLICANT: _____
(Name or owner, whether individual firm, partnership, corporation, governmental agency, etc)

ADDRESS: _____

TELEPHONE NUMBER: _____

(Print Name & Title of Applicant or Authorized Rep.)

(Signature)

PERMIT NO. _____ DATE _____, 20____

Permission to perform the above described work, activity, or event at the location(s) stated and between the dates set forth in said application is hereby granted. The applicant shall notify the issuing office in writing at least 24 hours before commencing work.

Director of Transportation or Authorized Representative

OAHU 831-6712 HAWAII 933-8866 MAUI 873-3535 KAUAI 274-3111

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS
HONOLULU, HAWAII

PROPOSAL

PROPOSAL TO THE STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS

PROJECT: FURNISHING OF HIGHWAY TRAFFIC CONTROL AND SAFETY MEASURES AT VARIOUS LOCATIONS FOR THE OAHU DISTRICT LANDSCAPE AND MAINTENANCE CREWS AND SPECIAL PROJECTS, ISLAND OF OAHU

PROJECT NO.: HWY-C-46-24

CONTRACT TIME: Twelve (12) months from date indicated in the Notice to Proceed from the Department with options to extend as specified in Section 10.12 Option to Extend Term, of the Specifications.

LIQUIDATED DAMAGES: Refer to Section 8.6 Liquidated Damages, of the Special Provisions in the Specifications.

PROJECT MANAGER CONTACT INFORMATION: Jake Dickman
869 Punchbowl Street, Room 404,
Honolulu, HI 96813
(808) 587-2189
jake.j.dickman@hawaii.gov

ELECTRONIC SUBMITTAL: **Bidders shall submit and upload the complete proposal to HiePRO prior to the bid opening date and time. Any additional support documents explicitly designated as confidential and/or proprietary shall be uploaded as a separate file to HiePRO. See SPECIAL PROVISIONS 2.4 DELIVERY OF PROPOSALS for complete details. FAILURE TO UPLOAD THE COMPLETE PROPOSAL TO HiePRO SHALL BE GROUNDS FOR REJECTION OF THE BID**

NOTE: **PERFORMANCE BOND IS REQUIRED FOR THE FIRST YEAR OF THIS PROJECT. PERFORMANCE BOND SHALL BE REQUIRED EACH ADDITIONAL EXTENSION.**

BID AND PAYMENT BONDS ARE NOT REQUIRED FOR THIS PROJECT.

Director of Transportation
AliiAIMoku Hale
869 Punchbowl Street
Honolulu, Hawaii 96813

Dear Sir:

The undersigned bidder declares the following:

1. It has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal.
2. It has not been assisted or represented on this matter by any individual who has, in a State capacity, been involved in the subject matter of this contract within the past two years.
3. It has not and will not, either directly or indirectly offered or given a gratuity (i.e. an entertainment or gift) to any State or County employee to obtain a contract or favorable treatment under a contract.

The undersigned bidder further agrees to the following:

1. If this proposal is accepted, it shall execute a contract with the Department to provide all necessary labor, machinery, tools, equipment, apparatus and any other means of construction, to do all the work and to furnish all the materials specified in the contract in the manner and within the time therein prescribed in the contract, and that it shall accept in full payment therefore the sum of the unit and/or lump sum prices as set forth in the attached proposal schedule for the actual quantities of work performed and materials furnished and furnish satisfactory security in accordance with Section 103D-324, Hawaii Revised Statutes, within 10 days after the award of the contract or within such time as the Director of Transportation may allow after the undersigned has received the contract documents for execution, and is fully aware that non-compliance with the aforementioned terms will result in the forfeiture of the full amount of the bid guarantee required under Section 103D-323, Hawaii Revised Statutes.

2. That the quantities given in the attached proposal schedule are approximate only and are intended principally to serve as a guide in determining and comparing the bids.
3. That the Department does not either expressly or by implication, agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work, or to omit portions of the work, as may be deemed necessary or advisable by the Director of Transportation, and that all increased or decreased quantities of work shall be performed at the unit prices set forth in the attached proposal schedule except as provided for in the specifications.
4. In case of a discrepancy between unit prices and the totals in said Proposal Schedule, the unit prices shall prevail.
5. Agrees to begin work within 10 working days after the date of notification to commence with the work, which date is in the notice to proceed, and shall finish the entire project within the time prescribed.
6. The Director of Transportation reserves the right to reject any or all bids and to waive any defects when in the Director's opinion such rejections or waiver will be for the best interest of the public.

Receipt is hereby acknowledged and complete examination is hereby expressly guaranteed of the following listed items: the specifications, the notice to bidders, the special provisions, if any, the proposal, the plans, if any, and the contract form.

The undersigned acknowledges receipt of any addendum, issued by recording in the space below the date of receipt.

Addendum No. 1 _____ Addendum No. 3 _____

Addendum No. 2 _____ Addendum No. 4 _____

The undersigned hereby certifies that the bid prices contained in the attached proposal schedule have been carefully checked and are submitted as correct, final and are net prices.

Bidder (Company Name)

By _____
Authorized Signature

Print Name and Title

Business Address

Business Telephone

Date

Contact Person (If different from above)

Phone: _____ Email: _____

NOTE:

If bidder is a CORPORATION, the legal name of the corporation shall be set forth above, the corporate seal affixed, together with the signature(s) of the officer(s) authorized to sign contracts on behalf of the corporation. Please attach to this page current (not more than six months old) evidence of the authority of the officer(s) to sign on behalf of the corporation.

If bidder is a PARTNERSHIP, the true name of the partnership shall be set forth above with the signature(s) of the general partner(s) authorized to sign contracts on behalf of the partnership. Please attach to this page current (not more than six months old) evidence of the authority of the partner(s) to sign on behalf of the partnership.

If bidder is an INDIVIDUAL, the bidder's signature shall be placed in the space provided therefore on page PF-4.

If signature is by an agent, other than an officer of a corporation or a partner of a partnership, a POWER OF ATTORNEY must be on file with the Department prior to the opening of bids or submitted with the bid; otherwise, the bid may be rejected as irregular and unauthorized.

PROPOSAL SCHEDULE
 FOR
 FURNISHING OF HIGHWAY TRAFFIC CONTROL AND SAFETY MEASURES AT VARIOUS LOCATIONS FOR
 THE OAHU DISTRICT LANDSCAPE AND MAINTENANCE CREWS AND SPECIAL PROJECTS, ISLAND OF
 OAHU,
 PROJECT NO. HWY-C-46-24

Bid Item No.	Description	Est. Maximum Yearly Quantity (A)	Unit (B)	Unit Price (per day rental, as applicable) (C)	Amount (A × C)
1	Traffic Cones Reflective, 700mm (28")	72,000	EACH	\$ _____	\$ _____
2	Safety Barricade Type 2, with Flasher, Sandbag and Sandbag Holder	62,000	EACH	\$ _____	\$ _____
3	Warning Signs w/ Stand and Two Flags	12,000	EACH	\$ _____	\$ _____
4	Arrow Boards Assembly, Complete, Trailer-mounted	3,300	EACH	\$ _____	\$ _____
5	Variable Message Board, Trailer-mounted	1,500	EACH	\$ _____	\$ _____
6	Truck-mounted Attenuator (TMA) with arrow board and truck	700	EACH	\$ _____	\$ _____
7	Miscellaneous	Allowance	Allowance	Allowance	\$20,000.00
8	Traffic Control Service and Maintenance Per Person	75,000	MAN- HOUR	\$ _____	\$ _____
9	Traffic Control Service and Maintenance Per Person "off hours"	17,000	MAN- HOUR	\$ _____	\$ _____
10	Special Duty Officer Regular Rate	Allowance	Allowance	Allowance	\$700,000.00
11	Special Duty Police Officer Premium Rate (<i>Refer to Section 10.3(B).3</i>)	Allowance	Allowance	Allowance	\$370,000.00
TOTAL AMOUNT FOR COMPARISON OF BIDS..... (Sum Bid Item Nos. 1 through 11)					\$ _____

PROPOSAL SCHEDULE
FOR
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Notes:

1. Bids shall include all Federal, State, County and other applicable taxes and fees.
2. The TOTAL AMOUNT FOR COMPARISON OF BIDS shall be used to determine the lowest responsible bidder.
3. In case of a discrepancy occurs between unit bid price and the bid price, the unit bid price shall govern.
4. The Bidder shall make no changes to the bid. Bid submitted with changes to the bid shall be rejected.
5. Performance bond is required for the term of the contract.
6. **By submitting a proposal, the bidder acknowledges he has read and understands all the provisions of the Special Provisions, Specifications and is fully aware of all the conditions to be encountered in performing the work.**
7. **Bidders shall submit and upload the complete proposal to HIePRO prior to the bid opening date and time. Proposals received after said due date and time shall not be considered. Any additional support documents explicitly designated as confidential and/or proprietary shall be uploaded as a separate file to HIePRO. Do not include confidential and/or proprietary documents with the proposal. The record of each bidder and respective bid shall be open to public inspection. Original (wet ink, hard copy) proposal documents are not required to be submitted. Contract award shall be based on evaluation of proposals submitted and uploaded to HIePRO.**

FAILURE TO UPLOAD THE COMPLETE PROPOSAL TO HIePRO SHALL BE GROUNDS FOR REJECTION OF THE BID.

If there is a conflict between the specification document and the HIePRO solicitation, the specifications shall govern and control, unless otherwise specified.

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HONOLULU, HAWAII

FORMS

Contents:

Sample Contract

Performance Bond (Surety)

Performance Bond

Certificate of Performance Services

C O N T R A C T

THIS AGREEMENT, made this day _____, by and between the STATE OF HAWAII, by its Director of Transportation, hereinafter referred to as "STATE", and «CONTRACTOR», «STATE OF INCORPORATION», whose business/post office address is «ADDRESS» hereinafter referred to as "CONTRACTOR";

WITNESSETH: That for and in consideration of the payments hereinafter mentioned, the CONTRACTOR hereby covenants and agrees with the STATE to furnish, perform and/or deliver and pay for all labor, supplies, materials, equipment and services called for in such quantities as requested by the STATE, and the STATE agrees to pay for same at the unit prices set forth in the attached proposal schedule for the project entitled:

“«PROJECT NAME AND NO»”

in lawful money, but not more than such sum as is actually earned according to STATE's determination of the actual quantities of work performed and materials furnished by CONTRACTOR at the unit prices set forth in said attached proposal schedule, for which payment shall be made by the STATE in accordance with Section 9.4 of the Special Provisions during the term of this contract since Section 103D-309, Hawaii Revised Statutes, as amended, does not require the State of Hawaii Comptroller's certificate for price-term, open-end, or requirements contracts under which the total amount to be paid CONTRACTOR cannot be accurately estimated at the time the contract is awarded.

All work to be performed and materials to be furnished shall be in accordance with the specifications, the special provisions and plans, if any, the notice to bidders, the instructions to bidders and proposal for «PROJECT_NO_ONLY», on file in the office of the Director of Transportation. These documents, together with all alterations, amendments, additions thereto and deductions therefrom, are attached hereto or incorporated herein by reference and made a part of this contract.

The CONTRACTOR hereby covenants and agrees to furnish, perform and/or deliver all labor, supplies, materials, equipment and services as provided herein for a period of

«WORKING_DAYS» from the date indicated in the notice to proceed from the STATE, with an option to extend for TWO (2) additional TWELVE (12) MONTH periods, subject to the terms specified in Section «SECTION_REFERENCING_OPTION_YEAR» of the specifications. The total term of this contract shall not exceed THIRTY-SIX (36) MONTHS.

All words used herein in the singular number shall extend to and include the plural. All words used in the plural number shall extend to and include the singular. The use of any gender shall extend to and include all genders.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed the day and year first above written.

STATE OF HAWAII

Director of Transportation

(Seal)

«CONTRACTOR»

Signature

Print name

Title

Date

PERFORMANCE BOND (SURETY)
(6/21/07)

KNOW TO ALL BY THESE PRESENTS:

That _____,
(Full Legal Name and Street Address of Contractor)

as Contractor, hereinafter called Principal, and _____

(Name and Street Address of Bonding Company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a
surety in the State of Hawaii, are held and firmly bound unto the _____,
(State/County Entity)

its successors and assigns, hereinafter called Obligee, in the amount of _____

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

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

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

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

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

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

In the event of Default by the Principal, of the obligations under the Contract, then after written Notice of Default from the Oblige 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 Oblige in satisfaction of the surety's performance obligation on this bond.

Signed this _____ day of _____, _____.

(Seal)

Name of Principal (Contractor)

*

Signature

Title

(Seal)

Name of Surety

*

Signature

Title

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

PERFORMANCE BOND

KNOW TO ALL BY THESE PRESENTS:

That we, _____
(full legal name and street address of Contractor)

as Contractor, hereinafter called Contractor, is held and firmly bound unto the

_____ *(State/County entity)*

its successors and assigns, as Obligee, hereinafter called Obligee, in the amount

_____ DOLLARS \$ _____),
(Dollar amount of Contract)

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 heir, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

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

WHEREAS:

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

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

NOW THEREFORE,

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

CERTIFICATE FOR PERFORMANCE OF SERVICES

The undersigned bidder does hereby certify that in performing the services required for FURNISHING OF HIGHWAY TRAFFIC CONTROL AND SAFETY MEASURES AT VARIOUS LOCATIONS FOR THE OAHU DISTRICT LANDSCAPE AND MAINTENANCE CREWS AND SPECIAL PROJECTS, ISLAND OF OAHU, PROJECT NO. HWY-C-46-24, it will fulfill the following conditions:

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

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

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

DATED at Honolulu, Hawaii, this _____ day of _____, 20_____.

Name of Corporation, Partnership, or Individual

Signature and Title of Signer

NOTARY ACKNOWLEDGEMENT

Subscribed and sworn before me this _____ day of _____

Notary signature
Notary public, State of _____
My Commission Expires: _____

Doc. Date: _____ #Pages: _____
Notary Name: _____ Circuit _____
Doc. Description: _____

Notary signature
Date _____

NOTARY CERTIFICATION