

RELEASE DATE: OCTOBER 24, 2025

**State of Hawaii  
Department of Transportation**

**Request for Proposals  
Project No. HWY-C-22-26**

**OPERATION AND MAINTENANCE SERVICES  
FOR THE H-1 ZIPPER LANE AND TRAFFIC  
CONTROL FOR THE NIMITZ HIGHWAY  
CONTRAFLOW LANES**

OFFERS ARE DUE NO LATER THAN 2:00 P.M., HAWAII STANDARD TIME (HST), ON

**DECEMBER 8, 2025**

(or on such later date as may be established by the State of Hawaii by Addenda to this RFP) BY  
SUBMISSION TO THE STATE OF HAWAII ePROCUREMENT SYSTEM

**ALL QUESTIONS REGARDING THIS RFP, QUESTIONS OR ISSUES RELATING TO THE  
ACCESSIBILITY OF THIS RFP (INCLUDING THE ATTACHMENTS AND EXHIBITS AND ANY  
OTHER DOCUMENT RELATED TO THIS RFP) AND REQUESTS FOR ACCOMMODATIONS  
FOR PERSONS WITH DISABILITIES IN CONNECTION WITH THIS RFP, SHALL BE  
SUBMITTED IN HIEPRO NO LATER THAN 2:00 PM ON NOVEMBER 17, 2025.**

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

Sealed proposals will be received by the State of Hawaii Department of Transportation online at the Hawaii Electronic Procurement System (HlePRO) website at <https://hiepro.ehawaii.gov> no later than **2:00 PM, HST, on December 8, 2025**, for **PROJECT NO. HWY-C-22-26, OPERATION AND MAINTENANCE SERVICES FOR THE H-1 ZIPPER LANE AND TRAFFIC CONTROL FOR THE NIMITZ HIGHWAY CONTRAFLOW LANE.**

Beginning on the HlePRO release date, the Request for Proposals (RFP) will be available on the HlePRO website. Registration on HlePRO is required for Offerors to submit a proposal. Refer to the following HlePRO link for important information on Vendor Registration: <https://hiepro.ehawaii.gov/welcome.html>.

**Offerors shall submit and upload their complete proposals to HlePRO no later than the offer due date and time above, as may be amended. Late proposals shall not be considered. FAILURE TO UPLOAD THE PROPOSAL TO HlePRO SHALL BE GROUNDS FOR REJECTION.**

A virtual pre-proposal conference is scheduled for November 10, 2025, at 11:00 a.m., HST. Interested Offerors shall contact Maaza C Mekuria, Acting Construction & Maintenance Engineering Program Manager, directly at [maaza.c.mekuria@hawaii.gov](mailto:maaza.c.mekuria@hawaii.gov) , no later than five working days prior to the scheduled pre-proposal conference to receive the meeting invitation and link. All prospective Offerors and/or their respective representatives are encouraged to attend, however, attendance is not mandatory. All information presented at the pre-proposal conference will be provided for clarification and informational purposes only. Any amendments to the solicitation shall be made by

formal addendum and posted on HlePRO.

All Requests for Information (RFI), which includes any questions or clarification requests relating to this RFP, shall be submitted via the *Questions & Answers* tab in HlePRO **no later than 2:00 p.m., HST, on November 17, 2025.** RFI received after the stated deadline, and verbal RFI, shall not be addressed. All responses to RFI shall be issued by formal addendum and posted on HlePRO. Any amendments to the solicitation shall be made by formal addendum and posted on HlePRO.

If there is a conflict between the solicitation and information stated in the pre-proposal conference, the meeting minutes, and/or the responses to RFI questions, the solicitation shall govern and control, unless amended by formal addendum.

The Point of Contact for this RFP is Maaza Mekuria, Acting Construction & Maintenance Engineering Program Manager, available by phone at (808) 587-2332 or email at [maaza.c.mekuria@hawaii.gov](mailto:maaza.c.mekuria@hawaii.gov).

The State reserves the right to cancel this request for proposals, to postpone or continue same from time to time, as it deems necessary, or reject any or all offers and to waive any defects in said offers for the best interest of the State.



---

ROBIN K. SHISHIDO

Deputy Director of Transportation for Highways

HlePRO RELEASE DATE: October 24, 2025

# Table of Contents

Offer Checklist.....	5
Section 1: General Information.....	6
1.1 Purpose.....	6
1.2 Background and Scope Summary.....	6
1.3 Schedule and Significant Dates .....	7
1.4 Contract Type.....	8
1.5 Period of Performance .....	8
1.6 Point of Contact.....	8
1.7 Definitions .....	9
Section 2: Solicitation Information .....	12
2.1 Electronic Procurement.....	12
2.2 RFP Addenda.....	12
2.3 Pre-Proposal Conference (if required).....	13
2.4 Questions Regarding RFP Contents .....	13
2.5 Electronic Submission of Questions.....	13
2.6 Proposal Due Date.....	13
2.7 Cancellation of Procurement and Proposal Rejection.....	13
2.8 Firm Offers .....	13
2.9 Right to Accept All or Portion of Proposal .....	13
2.10 Ownership or Disposition of Proposals and other Materials Submitted .....	14
2.11 Additional Information .....	14
Section 3: Scope of Work .....	15
3.1 H-1 Contraflow Zipper Lane .....	15
3.2 Traffic Control on Nimitz Highway Contraflow Lane (Waikiki Bound, Sand Island Access Road to Pacific Street).....	16
3.3 Days and Hours of Operation.....	17
3.4 Materials, Supplies and Facilities .....	19
Section 4: Proposal Requirements and Submittal Instructions.....	21
4.1 Proposal Objectives .....	21
4.2 Proposal Structure and Labeling.....	21
4.3 Proposal Submission Instructions .....	21
4.4 Electronic Submission of Proposals.....	21
4.5 Required Format and Content.....	21

4.6 Each Offeror to Bear its Own Costs .....	23
4.7 Contractor Responsibility for Subcontractors .....	23
4.8 Removal of Subcontractors .....	23
4.9 Right to Retain Subcontractors .....	23
4.10 Contractor Requirements .....	23
4.11 Payment.....	24
4.12 Payment to Hawaii Information Consortium, LLC dba Tyler Hawaii .....	24
Section 5: Evaluation Criteria .....	26
5.1 Evaluation Criteria 1: Management Approach.....	27
5.2 Evaluation Criteria 2: Technical Approach .....	28
5.3 Evaluation Criteria 3: Past Performance .....	28
5.4 Evaluation Criteria 4: Price.....	29
Section 6: Evaluation and Award .....	30
6.1 Evaluation of Proposals .....	30
6.2 Right to Waive Minor Irregularities .....	30
6.3 Initial Review and Award without Discussions.....	30
6.4 Discussion with Priority Listed Offerors .....	30
6.5 Best and Final Offers .....	32
6.6 Award of Contract .....	32
6.7 Responsibility of Offeror.....	32
6.8 Scoring Process .....	32
6.9 Notice of Award.....	33
6.10 Debriefing.....	33
6.11 Protest.....	33
Section 7: Contract Management.....	34
7.1 Post-Award Communications: Contract Administrator .....	34
7.2 Contractor/State Meetings.....	34
7.3 Dispute Process and Escalation.....	34
7.4 Quality Control .....	34
7.5 Post Award Deliverables .....	35
Section 8: Special Provisions .....	36
8.1 Subcontractor Provisions .....	36
8.2 Reserved.....	37
8.3 Intellectual Property Rights .....	37
8.4 Warranties and Disclaimer of Implied Warranties .....	37

8.5 Termination for Convenience or Unavailability of Funds .....	37
8.6 Preferences.....	37
8.7 Certification of Offeror Concerning Wages, Hours and Working Condition of Employees Supplying Services .....	37
8.8 Responsibility of Offerors .....	38
8.9 Proposal Preparation .....	39
8.10 Confidentiality.....	39
8.11 Redaction by the State.....	41
8.12 Notice to Proceed.....	41
8.13 Contract Execution .....	41
8.14 Performance Bond and Payment Bond .....	41
8.15 Liability Insurance .....	42
8.16 Contract Invalidation .....	43
8.17 Mistakes in Proposals .....	43
8.18 Modification Prior to Submittal Deadline or Withdrawal of Offers .....	44
8.19 Contract Changes – Unanticipated Amendments.....	44
8.20 Re-execution of Work.....	44

Attachment A	Offer Form OF-1 – Offer
Attachment B	Offer Form OF-2 – Pricing
Attachment C	Offer Form OF-3 – Client References
Exhibit A	Contract Forms and AG General Condition
Exhibit B	Performance and Payment Bond Forms
Exhibit C	Project Location Maps

## Offer Checklist

Offeror must address ALL sections and attachments and provide the information and documentation as required in the table below.

No.	Description	Reference in RFP	Completed
1	Table of Contents	Table of Contents Section 4.5	
2	Offer Checklist – submittal of checklist with all items checked “Completed.”	Offer Checklist Section 4.5	<input type="checkbox"/>
3	Offer Forms OF-1, OF-2, and OF-3	Section 4.5 Attachment A Attachment B Attachment C	<input type="checkbox"/>
4	Executive Summary, not to exceed one (1) page	Section 4.5	<input type="checkbox"/>
5	Management Approach	Section 4.5 Section 5.1	<input type="checkbox"/>
6	Technical Approach	Section 4.5 Section 5.2	<input type="checkbox"/>
7	Past Performance	Section 4.5 Section 5.3	<input type="checkbox"/>
8	Price	Section 4.5 Section 5.4	<input type="checkbox"/>
9	Confidential, Protected or Proprietary Information Section	Section 4.5 Section 8.10	<input type="checkbox"/>

---

Authorized Offeror Signature

# Section 1

## General Information

---

### 1.1 Purpose

The State of Hawaii Department of Transportation (“State”) is seeking proposals for the operation and maintenance of the H-1 Zipper Lane and traffic control for the Nimitz Highway contraflow lane. The Contractor will be responsible for providing a turnkey service that includes the staffing, equipping, operating, maintaining, and managing of both programs.

### 1.2 Background and Scope Summary

#### 1.2.1 Background

The primary goal of the H-1 Zipper Lane and Nimitz Highway contraflow lane is to create High-Occupancy Vehicle (HOV) lanes during the morning peak traffic period along the H-1 Freeway and Nimitz Highway project limits. The H-1 Zipper Lane contraflow is accomplished by using a moveable barrier transfer machine ("Zipper Machine") to reposition a string of connected concrete barriers on the westbound side of the highway to create an extra lane for vehicles traveling in the direction of the heaviest traffic flow (eastbound towards Honolulu) during the morning peak traffic period along the H-1 Freeway and Nimitz Highway project limits, from Manager's Drive through Sand Island Access Road. The H-1 Zipper Lane currently includes two lanes for HOV traffic through the busiest section of the eastbound H-1 Freeway.

The Zipper Lane opened in 1998 as a single lane, beginning near the Managers Drive Overpass and ending at the Pearl Harbor Interchange, where it connected to the H-1 Express Lane. In 2005, it was extended to link to the Nimitz Highway Contraflow Lane, and in 2016 it was widened to two lanes. The original two Zipper Machines have been in service since the 1998 opening, with replacements purchased in 2018 and 2024.

The Nimitz Highway Contraflow Lane is created by closing the far left, Westbound lane of Nimitz Highway from the vicinity of Pacific Street to the vicinity of Sand Island Access Road. The contraflow lane is connected to and is a continuation of the H-1 Zipper Lane that ends on the west side of the Sand Island Access Road. Only vehicles that are already in the H-1 Zipper Lane (vehicular traffic entering the H-1 Zipper Lane Crossover #1, 2 and 3, from the airport viaduct can continue onto the Nimitz contraflow lanes into town and continue all the way through the Kalihi area.

The State seeks an experienced Contractor that brings operational and planning expertise and will work jointly with the State to provide high-quality service in a manner that is beneficial to ensuring safe and dependable operations.

## 1.2.2 Scope Summary

### 1.2.2.1 H-1 Freeway Zipper Lane

The Contractor's primary duties will include:

- **Daily setup and removal:** Using the Zipper Machine to place and remove the movable concrete barriers for the morning peak traffic period to create contraflow lanes for HOV drivers. The Contractor will also be responsible for placing and removing flexible delineators, traffic cones, and portable signs.
- **Maintenance:** Regularly checking and replacing dislodged traffic control devices on the H-1 Freeway from the Manager's Drive Overcrossing to Sand Island Access Road.
- **Equipment and Barriers:** The Contractor must arrange for the Zipper Machine's manufacturer to provide bi-annual inspections and technical support. The Contractor is also responsible for replacing all damaged and worn-out barriers with new barriers provided by the Contractor, including those damaged by vehicular accidents, and for maintaining the Zipper Machines and the "Zipper Barn" storage facility. The Contractor is also responsible for disposing damaged and worn-out barriers.
- **Compliance:** All operations must adhere to the applicable Hawaii Administrative Rules and the Federal Highway Administration's *Manual on Uniform Traffic Control Devices* (MUTCD), as may be amended.

### 1.2.2.2 Nimitz Highway Contraflow Lane

The contractor's responsibilities for the Nimitz Highway Contraflow Lane include:

- **Daily setup and removal:** Placing and removing traffic cones, portable signs, and flexible delineator posts for the morning peak traffic period.
- **Maintenance and safety:** Maintaining traffic control devices, replacing any that are dislodged, and removing any debris or hazardous materials that might impede safe operations.
- **Compliance:** All traffic control and safety measures must conform to the current edition of the MUTCD.

## 1.3 Schedule and Significant Dates

The table below contains the State's current estimate of the schedule and significant dates. All times are Hawaii Standard Time (HST). If a component of this schedule, such as "Proposals Due Date and Time" is delayed, the rest of the schedule may likely

be shifted by the same number of days. Any change to the RFP Schedule and Significant Dates prior to the proposal due date shall be made by addendum.

Event	Date
Solicitation Release:	October 24, 2025
Virtual Pre-Proposal Conference:	November 10, 2025
Question Submittal Deadline:	November 17, 2025
Answers to Questions:	November 24, 2025
Proposal Due Date and Time:	December 8, 2025
Evaluations	December 15, 2025 – January 5, 2026
Date for Discussions (if necessary) with priority listed Offerors	January 12, 2026
Due Date for Best and Final Offer (BAFO), (if necessary)	January 22, 2026
Award Date:	February 12, 2026

#### 1.4 Contract Type

This solicitation will result in a fixed-price contract in accordance with section 3-122-136, Hawaii Administrative Rules (HAR).

#### 1.5 Period of Performance

The contract shall be for a period of 24 months beginning on the date specified in the Notice to Proceed. Unless terminated, the contract may be extended without re-solicitation, upon mutual agreement in writing between the State and the Contractor, prior to the expiration date, for not more than three (3) additional 12-month periods, or parts thereof. The entire term of contract, including extensions, shall not exceed 60 months.

#### 1.6 Point of Contact

The State of Hawaii, Department of Transportation, Highways is the issuing agency for this document and all subsequent addenda relating to it. The reference number for the transaction is Solicitation # RFP HWY-C-22-26. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

The person identified below is the single point of contact (POC) **during** this procurement process. Offerors must not communicate about this RFP with members of the Evaluation Committee or any State employee not specifically named in this RFP, except upon invitation by the State as part of discussions or best and final offers. Doing so may be cause for proposal rejection. The POC designated by the State of Hawaii, Department of Transportation, Highways is:

Maaza Mekuria  
Acting Engineering Program Manager  
Department of Transportation, Highways  
Email: maaza.c.mekuria@hawaii.gov  
Phone: (808) 587-2332

## 1.7 Definitions

The following definitions apply to this solicitation.

**Best and Final Offer (BAFO)** means the final offer provided prior to determining a contract award.

**Contract** means the written agreement between the Contractor and the State, by which the Contractor shall provide all labor, equipment, and materials and perform the specified work within the contract time stipulated, and by which the State of Hawaii is obligated to compensate the Contractor at the prices set forth in the contract documents.

**Contract Administrator** means the person designated to manage the various facets of the contract(s) to ensure the Contractor's total performance is in accordance with the contractual commitments and obligations are fulfilled.

**Contractor** means the individual, partnership, corporation or other legal entity, or combination thereof, contracting with the State for performance of the prescribed work.

**Evaluation Committee** means the committee of at least three (3) governmental employees with sufficient qualifications in the area of the goods, services, or construction to be procured, selected in writing by the procurement officer, whose purpose is to evaluate the proposals.

**HDOT** means the State of Hawaii Department of Transportation.

**Fixed-price basis** means an established price agreed upon by the Contractor and Purchasing Entity, by agreement or by authority, as the price to be charged for a specified amount of services.

**Goods** mean all property, including but not limited to equipment, equipment leases, materials, supplies, printing, insurance, and processes, including computer systems and software, excluding land or a permanent interest in land, leases of real property, and office rentals.

**Governmental body** means any department, commission, council, board, bureau, authority, committee, institution, legislative body, agency, Government Corporation, or other establishment or office of the executive, legislative, or judicial branch, city or county of any U.S. State, (including the Office of Hawaiian

Affairs for the State of Hawaii).

**Hawaii Administrative Rules (HAR)** means the adopted operating procedures for state agencies authorized by the laws of the State of Hawaii.

**Hawaii Compliance Express (HCE)** mean the State's electronic system that provides vendors, contractors and service providers doing business with state or county agencies a service to document that they are compliant with applicable laws.

**State of Hawaii eProcurement System (HlePRO)** is the State of Hawaii eProcurement System, a system for issuing solicitations, receiving responses, and issuing notices of award.

**Hawaii Revised Statutes (HRS)** means the laws that govern the State of Hawaii.

**Key Performance Indicator (KPI)** means how a quantifiable measure is utilized to assess the success of a Contractor in meeting strategic goals and objectives for performance.

**Offeror** means the company or firm that submits a proposal in response to this Request for Proposals.

**Proposal (or Offer)** means the official written response submitted by an Offeror in response to this Request for Proposals.

**Proposer** has the same meaning as Offeror.

**Request for Proposals or "RFP"** means the entire solicitation document, including all parts, sections, exhibits, attachments, and Addenda.

**Services** means the furnishing of labor, time, or effort by a contractor or Contractor, which involves the delivery or supply of products.

**Statement of Work** means the services to be delivered by the Contractor.

**Subcontractor** means 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.

## **1.8 Governing Laws and Regulations**

This RFP is issued under the provisions of the State of Hawaii, HRS Chapter 103D, and related HAR. All prospective Offerors are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed proposal by any Offeror shall constitute admission of such knowledge on the part of the Offeror.

Information about governing laws is available at: <http://spo.hawaii.gov/>

This procurement shall be governed by the regulations and laws of the State of Hawaii. Venue for any administrative or judicial action relating to this procurement, evaluation, and award shall be in the State of Hawaii.

**1.8.1 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.

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

**1.8.3 Nondiscrimination in Federally Assisted Programs.** 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. Offerors are hereby notified that the Department of Transportation will affirmatively ensure that the contract entered into pursuant to this advertisement will be awarded to the most qualified and responsible Offeror without discrimination on the grounds of race, color, national origin, or sex (as directed by 23 CFR Part 200).

## Section 2 Solicitation Information

---

### 2.1 Electronic Procurement

The State has established HlePRO to promote an open and transparent system for vendors to compete for state contracts electronically. Offerors interested in responding to this solicitation must be registered on HlePRO. Registration information is available at the State Procurement Office (SPO) website:

<https://hiepro.ehawaii.gov/welcome.html>, select HlePRO Vendor Registration and then Vendor Registration Guide.

The State will use HlePRO to issue the RFP, issue Addenda to the RFP, and receive Offers. Addenda and other information and materials shall be provided by the State through HlePRO, including additions or changes with respect to the dates in *Section 1.3 Schedule and Significant Dates*. The State shall not be responsible for any delay or failure of any Offeror to receive any materials updated through the RFP process on a timely basis.

Offerors are advised that they should not wait until the last minute to submit their proposal on HlePRO. Offerors should allow ample time to review their submitted proposal, including attachments, prior to the proposal deadline.

As part of this procurement process, Offerors are informed that awards made for this solicitation, if any, shall be done through HlePRO and shall, therefore, be subject to a mandatory .75% (.0075) transaction fee, not to exceed \$5,000 for the total contract term.

**2.1.1 HlePRO Special Instructions.** Offeror shall review all special instructions located in HlePRO. Offerors are responsible for ensuring that all necessary files are attached to their offer prior to the proposal deadline.

### 2.2 RFP Addenda

Addenda shall be issued for amendments and clarifications to the solicitation prior to submission of offers, and as allowed and provided for in the Competitive Sealed Proposals method of procurement.

Changes to this RFP, including but not limited to contractual terms and procurement requirements, shall only be modified via formal written addenda issued by the HDOT.

The State accepts no responsibility for a prospective Offeror not receiving solicitation documents and/or revisions to the solicitation. It is the responsibility of the prospective Offeror to monitor HlePRO to obtain RFP addenda or other information relating to the RFP.

### **2.3 Pre-Proposal Conference**

A virtual pre-proposal conference is planned. will be held on the date and time indicated in the Notice to Proposers. Refer to the notice for more information. Attendance at the conference is optional. A summary of the pre-proposal conference will be provided via an addendum posted in HlePRO.

### **2.4 Questions Regarding RFP Contents**

If a prospective Offeror believes that any provision of the RFP is unclear, potentially defective, or would prevent the Offeror from providing a meaningful Offer, the Offeror shall submit questions to the State POC through HlePRO, as detailed in the following section. Each question shall identify the page, section number, paragraph, and line or sentence of such provision(s) of the RFP to which the question applies. The State POC will respond on HlePRO by the date for the same in *Section 1.3 Schedule and Significant Dates*. The State may issue Addenda in response to written questions received regarding the RFP.

### **2.5 Electronic Submission of Questions**

All questions must be submitted on HlePRO using the *Questions & Answers* tab. Questions must be submitted by the question deadline date and time shown in *Section 1.3 Schedule and Significant Dates*. Answers will be issued on HlePRO as stated in *Section 1.3 Schedule and Significant Dates*.

Offerors are cautioned about including context in questions that may reveal the source of questions. The identity of potential Offerors will not be published with the answers, but the text of questions will be restated, to the extent possible, to exclude information identifying potential Offerors.

### **2.6 Proposal Due Date**

Proposals must be received by the Proposal Due Date and Time stated in *Section 1.3 Schedule and Significant Dates* of this RFP.

### **2.7 Cancellation of Procurement and Proposal Rejection**

The State reserves the right to cancel this RFP and to reject any and all proposals in whole or in part and waive any defects when it is determined to be in the best interest of the State, pursuant to HRS §103D-308.

### **2.8 Firm Offers**

Responses to this RFP, including proposed costs and/or fees will be considered firm for ninety (90) days after the proposal due date.

### **2.9 Right to Accept All or Portion of Proposal**

Unless otherwise specified in the solicitation, the State may accept any item or a combination of items as specified in the solicitation or of any proposal unless the Offeror expressly restricts an item or combination of items in its Proposal and conditions its

response on receiving all items for which it provided a proposal. If the Offeror so restricts its Proposal, the State may consider the Offeror's restriction and evaluate whether the award on such basis will result in the best value to the State. The State may otherwise determine at its sole discretion that such restriction is non-responsive and renders the Offeror ineligible for further evaluation.

#### **2.10 Ownership or Disposition of Proposals and other Materials Submitted**

All costs incurred by the Offeror in preparing or submitting a proposal shall be the Offeror's sole responsibility whether any award results from this RFP. The State shall not reimburse such costs. All proposals become the property of the State of Hawaii.

#### **2.11 Additional Information**

The Offeror shall provide additional information regarding aspects of an Offeror's Proposal within five (5) business days of the State's request unless the State specifies another period. As noted, each Offeror shall submit only one Proposal. If an Offeror submits more than one Proposal, then the State reserves the right to reject and/or dismiss the Offeror from the RFP process.

## Section 3 Scope of Work

---

### General Description

The scope of work is to provide comprehensive operation and maintenance services for the H-1 Contraflow Zipper Lane and the Nimitz Highway Contraflow Lane. This includes the setup and removal of all necessary traffic control devices, daily monitoring, and the ongoing maintenance and repair of equipment and facilities. All work must adhere to strict safety standards and operational schedules to ensure the safe and efficient flow of traffic during peak morning hours. Location maps are provided in Exhibit C.

### Statement of Work

The scope of work includes operation and maintenance services for the following:

#### 3.1 H-1 Contraflow Zipper Lane

- A. The Contractor shall place and remove flexible delineators, traffic cones, barricades, install portable traffic signs and with the use of a Zipper Machine, place and reinstall the moveable barriers along the alignment for the morning peak traffic period only.
- B. The Contractor shall check the traffic control devices during working hours and replace any traffic control devices dislodged from their proper positions on the H-1 Freeway from the Manager's Drive Overcrossing to Sand Island Access Road. The added lanes will be used to allow eastbound HOVs to travel in the contraflow direction on the freeway by using lanes from the non-peak direction of traffic and separating it from general traffic by a moveable barrier.
- C. The contraflow traffic control shall be in accordance with Hawaii Administrative Rules (H.A.R.) Chapter 19-127.1 Design, Construction, and Maintenance of Public Streets and Highways, H.A.R. Chapter 19-129 Use of Traffic Control Devices at Work Sites on or Adjacent to Public Streets and Highway, and the current adopted version of the *Manual on Uniform Traffic Control Devices for Streets and Highways* (MUTCD), published by the Federal Highway Administration (FHWA) and any amendments or revisions thereof as may be made from time to time.
- D. The Contractor shall have the manufacturer of the Zipper Machine provide inspection services for the Zipper Machine as well review the operation of the whole system at six (6) month intervals. Technical support and repair guidance from the manufacturer shall also be provided as needed.

- E. The Contractor shall be responsible for the replacement of damaged and worn-out barriers with new barriers supplied by the Contractor. Barriers shall be maintained so that it does not hinder the operation of the Zipper machine or create a safety hazard to the public. The Contractor shall have equipment and personnel capable of replacing the barriers. The Contractor is responsible for the transportation of new and used barriers to/from various storage locations around the island. The Contractor shall be responsible for the replacing damaged barriers caused by vehicular accident. The Contractor is responsible for disposing damaged and worn-out barriers.
- F. In addition to the work performed during the Hours of Operation, the Contractor is responsible for the maintenance and general repairs to the Movable Barrier Transfer Vehicles (Zipper Machines). The Contractor shall be responsible for all routine maintenance and other general repairs recommended by Lindsay Transportation Solutions to the Zipper Machines. The Contractor shall supply equipment, tools, and labor required to perform routine maintenance and all other repairs to the Zipper Machines. The Contractor shall have a heavy equipment mechanic qualified to perform repairs to electrical systems, hydraulic systems and diesel engines. The heavy equipment mechanic shall be certified by an accredited program and employed by the Contractor on a full-time basis. The Contractor is expected to make all repairs to the Zipper Machines. Contractor shall supply fuel for the Zipper Machines and all of the Contractor's vehicles and equipment.
- G. The Contractor shall provide a minimum of four (4) Zipper Machine Operators. All Zipper Machine Operators shall be trained to operate a Zipper Machine by the manufacturer, Lindsay Transportation Solutions.
- H. The Contractor is responsible for: the repair and maintenance of overhead signs and gates; the repair and maintenance of the Zipper Barn; the disposal of obsolete/used parts and equipment; the proper disposal of hazardous materials; and the rental cost of a portable toilet.
- I. An allowance will be provided for specialized parts and repairs that are not considered routine maintenance and service.
- J. The Contractor shall develop an operations plan/procedure for the contraflow utilizing the information in the contract documents and submit to the State as a part of their proposal. Include sequence of actions with timeline for deploying and removing the traffic control devices.
- K. The Contractor shall submit Daily Traffic Control Log and Monthly Report. The report shall consist of a daily log which includes, but not limited to the following information:

- Equipment Usage & Damage Report.
- Equipment Maintenance & Service Report.
- Motor vehicle incidents in the contraflow lane.
- Motor vehicles which needed to be towed.
- Debris or foreign objects in the contraflow lane.
- Other observations and remarks.

L. The Contractor shall furnish and maintain their own cellular phones at the Contractor's expense for communication to the Engineer and for emergency purposes.

### **3.2 Traffic Control on Nimitz Highway Contraflow Lane (Waikiki Bound, Sand Island Access Road to Pacific Street)**

A. The Contractor shall place and remove traffic cones, delineator posts, install portable traffic signs for the morning peak traffic period, maintain the traffic control devices during hours of contraflow operation, replace any traffic control devices dislodged from their proper positions and remove any debris and/or hazardous materials that might hinder safe operations of the contraflow lane, remove and/or reposition the flexible delineator posts with base in accordance with the Installation and Removal Schedule and Timetable. Traffic control devices must be in place and removed promptly.

B. The Contractor shall develop an operations plan/procedure for the contraflow utilizing the information in the contract documents and submit to the State as part of their proposal. Include sequence of actions with timeline for deploying and removing the traffic control devices.

C. The Contractor shall submit Daily Traffic Control Log and Monthly Report. The report shall consist of a daily log which includes, but not limited to the following information:

- Equipment Usage & Damage Report.
- Equipment Maintenance & Service Report.
- Motor vehicle incidents in the contraflow lane.
- Motor vehicles which needed to be towed.
- Debris or foreign objects in the contraflow lane.
- Other observations and remarks.

D. All closing of lanes and traffic control and safety measures shall be performed in conformance with the current edition of the MUTCD.

### 3.3 Days and Hours of Operation

#### A. Hours of Operation

The Zipper Lane shall be operational during the working days specified below. The Zipper Machine shall promptly start at 12:30 a.m. and all barriers and delineators and other traffic devices shall remain in place for the morning peak traffic period during the following hours of operation and be removed promptly as indicated below:

<b>ZIPPER LANE</b>			
Installation		Removal	
Will Start At:	Installed By:	Will Start At:	Removed By:
12:30 A.M.	5:30 A.M.	9:00 A.M.	12:30 P.M.

For the Nimitz Highway Contraflow Lanes, the devices will be installed and remain in place for the peak traffic period during the following hours of operation and removed promptly as indicated below.

<b>NIMITZ CONTRAFLOW</b>			
Installation		Removal	
Will Start At:	Installed By:	Will Start At:	Removed By:
3:15 A.M.	4:00 A.M.	9:30 A.M.	10:00 A.M.

The hours of operation are subject to changes upon seven (7) days' notice from the Engineer.

#### B. Working Days

Every day, except Saturdays, Sundays, and holidays as applicable and observed. Note that State-observed holidays noted below with (\*) are not Federal holidays and operations must be performed on those days. Normal State holidays are as follows:

- First day of January (New Year's Day)
- Third Monday in January (Dr. Martin Luther King, Jr. Day)
- Third Monday in February (President's Day)
- \*Twenty-sixth day of March (Prince Jonah Kuhio Kalaniana'ole Day)
- \*Friday before Easter (Good Friday)
- Last Monday in May (Memorial Day)
- \*Eleventh day in June (King Kamehameha Day)
- Fourth day in July (Independence Day)

- \*Third Friday in August (Statehood Day)
- First Monday in September (Labor Day)
- \*First Tuesday in November in even-numbered years (Election Day)
- Eleventh Day in November (Veteran's Day)
- Fourth Thursday in November (Thanksgiving Day)
- Twenty-fifth day in December (Christmas Day)

State holiday schedules can be obtained online at <http://dhrd.hawaii.gov/state-observed-holidays/>

The Contractor may choose to hold annual training and re-certifications on non-operational days.

### **C. Inclement Weather**

When requested by the Engineer, the Contractor shall provide services in all weather conditions unless there is a warning during hurricane, tsunami, or flash flood conditions. Normal maintenance operations shall resume within twenty-four (24) hours after the threat has ended, and roads have been cleared.

### **D. Hurricane Conditions/Tsunami/Flash Flood Warnings**

Hurricane season occurs during the time period of June 1 through November 30 of each year. When State Civil Defense issues a Hurricane, Tsunami, or Flash Flood Warning, the Engineer shall immediately notify the Contractor with instructions.

## **3.4 Materials, Supplies and Facilities**

### **A. Contractor-Furnished Supplies, Materials, and Facilities**

#### **1. Zipper Lane**

Contractor's vehicles must be equipped with headlights, taillights, red reflectors, stop lights, revolving amber light(s) on cab roof, warning lights, one utility light (white, portable or adjustable), etc., as required by City, State, Federal and OSHA requirements. The Contractor's vehicles may be equipped with any other lighting as the owner may desire which are not prohibited by City, State, Federal and OSHA requirements. An arrow board shall be installed on the truck to warn traffic. Two trucks shall be equipped with a modified front bumper to receive roller wheel manufactured by Lindsay Transportation Solutions to realign movable barriers when displaced due to motor vehicle accidents.

The vehicles must be equipped to allow safe and convenient deployment and recovery of flexible delineators and/or traffic cones with minimal effort.

The Contractor shall provide two large message boards within the Zipper Lane. One message board to be located before crossover three and other to be located before the airport exit. Message boards shall comply with MUTCD Chapter 2L, Changeable Message Signs.

## **2. Nimitz Highway Contraflow Lane**

The Contractor shall furnish and maintain its own 28-inch traffic cones (reflectorized with 6-inch-wide white band placed 3-inches from the top supplemented with an additional 4-inch band).

The Contractor shall maintain its own storage facilities between the hours of operation and all necessary equipment and labor to perform the work. Cost for the Contractor's-furnished supplies, material and maintenance of facilities as mentioned above, shall be considered as incidental cost for furnishing and maintaining traffic control services

## **B. State-Furnished Supplies, Materials, and Facilities**

### **1. Zipper Lane**

The State will furnish the Contractor with two (2) Zipper Machines and an equipment storage site near the Pearl Harbor Interchange area. Any State supplied traffic signs, concrete zipper barrier and individual sections, barricades with flasher and sandbags necessary for the contraflow operation will be maintained to be in good condition at all times and replaced, if necessary, at the Contractor's expense. The Zipper Machines shall also be maintained to be in good condition at all times at the Contractor's expense. They shall be returned to the State at the end of the contract in good working condition to be made available for future contracts. The Contractor shall maintain the State's equipment storage facility and furnish all necessary equipment and labor to perform the work.

### **2. Nimitz Highway Contraflow Lane**

The State will furnish the Contractor all traffic signs (including drop-in signs), permanent median separator ("Qwick Kurb" or equivalent) and delineator posts and with base. These will be always maintained in good condition, or replaced, if necessary, at the Contractor's expense. They will be returned to the State at the end of the contract.

**C. Safety**

The Contractor shall conduct its work to assure the least possible obstruction to public traffic at all times. The safety and convenience of the general public and the protection of persons and property shall be provided for by the Contractor.

**D. Transition Period**

A transition period of one month is expected, during which the State's current Contractor and the new Contractor will both be under contract to the State. During this period, the new Contractor shall be responsible for transitioning from the current Contractor and taking over day-to-day operations and maintenance per the Transition Plan proposed by the new Contractor and approved by the State Engineer.

There shall be no disruption to existing service during the transition. The current Contractor has no obligation to modify their operation or schedule because of the transition. If there are any actions or participation that the Offeror wants from the current Contractor, it must be included in the Transition Plan. HDOT will not require the current Contractor to participate in the transition beyond providing program information and participation in meetings scheduled for the existing program.

## Section 4

# Proposal Requirements and Submittal Instructions

---

### 4.1 Proposal Objectives

Proposal shall be a complete plan for accomplishing the tasks described in this RFP and shall describe in detail the Offeror's ability and availability to meet the goals and objectives of this RFP. Proposals shall be prepared straightforwardly and concisely, with emphasis on completeness, clarity, and content.

Submission of a proposal shall constitute an incontrovertible representation by the Offeror that the Offeror agrees to comply with every requirement of this RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey a reasonable understanding of all terms and conditions of performance of the work.

### 4.2 Proposal Structure and Labeling

Each Proposal shall be labeled and organized as outlined in this RFP and shall include a point-by-point response addressing all requirements.

### 4.3 Proposal Submission Instructions

Proposals shall be submitted and received electronically through HlePRO by the date and time stated in *Section 1.3 Schedule and Significant Dates*. Failure to upload the Proposal to HlePRO shall be grounds for rejection.

### 4.4 Electronic Submission of Proposals

This electronically submitted Proposal shall be considered the original. Any Proposals not uploaded to HlePRO shall be rejected. See *Section 2.1 Electronic Procurement* for further information. **The maximum file size that HlePRO can accept is 100MB. Files larger than 100MB must be reduced into two or more files.**

### 4.5 Required Format and Content

All Proposals must be submitted in the following format. Detailed information on submitting each of these sections is contained in later sections of this RFP. Proposal shall be submitted in size 12 Arial font or equivalent.

1. **Table of Contents.** A Table of Contents must be included with each proposal. All major parts of the proposal shall be identified by referencing page numbers.
2. **Offer Checklist.** Complete and submit all items noted on the Offer Checklist. Include checklist with all submitted items marked "Completed".
3. **Attachments 1, 2, and 3: Offer Forms OF-1, OF-2, and OF-3.** Offeror shall complete and sign Offer Forms OF-1, OF-2, and OF-3.
  - a. **Offer Form, OF-1.** Offer Form OF-1 is required to be completed using Offeror's exact legal name as registered with the Department of



furnished with justification for confidential status. Price is not considered confidential and shall not be withheld.

Information included in the Confidential, Protected or Proprietary Information section of an Offeror's proposal is not automatically accepted as protected. All information identified in the section will be subject to review by the State in accordance with the procedures prescribed by the State's open records statute, freedom of information act, or similar law.

#### **4.6 Each Offeror to Bear its Own Costs**

Each Offeror shall be responsible for all costs incurred by it prior to the Notice of Award, including, without limitation, its costs of preparing and submitting its Offer, responding to notices or requests, making Priority-Listed Offeror presentations, demonstrations, and discussions, and otherwise participating in the RFP process.

#### **4.7 Contractor Responsibility for Subcontractors**

The Subcontractors providing services shall meet the same service requirements and provide the same quality of service required of the Contractor and in a timely manner. No subcontract shall relieve the Contractor of its responsibilities for the Services it provides. The Contractor shall manage the quality and performance, project management and schedules, and timely start and completion of services performed by each of its Subcontractors. The Contractor shall be solely responsible and accountable for the completion of all Services it has subcontracted.

#### **4.8 Removal of Subcontractors**

In addition to any rights the State has under Law, the State shall have the right to require the removal of a Subcontractor or any of its personnel providing or supporting services for a good cause. In such a case, the State shall specify the deadline for such removal after consultation with the applicable Contractor. A Subcontractor proposed by the Contractor to replace the removed Subcontractor shall be subject to the approval of the State.

#### **4.9 Right to Retain Subcontractors**

The State shall have the right to directly retain any Subcontractor after the expiration, termination, or suspension of the Contract under which it is retained, including any Subcontractor providing services subject to any part of a Contract that is terminated or suspended.

#### **4.10 Contractor Requirements**

Each Contractor shall:

1. Adhere to its Contract with the State;
2. Provide all labor, materials, and equipment necessary to meet the RFP Requirements;

3. Communicate contract requirements to its Subcontractors' personnel and direct and coordinate project activities to ensure that the services progress efficiently and are completed on schedule;
4. Ensure that all its and its Subcontractors' employees can communicate effectively with State employees;
5. Ensure that it is current with all payments and registration fees and similar financial obligations owed to the State during the term of its Contract with the State;
6. Fully cooperate and maintain effective communication with the State and cooperate in the resolution of problems, suspected problems, or potential problems.

#### **4.11 Payment**

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

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

#### **4.12 Payment to Hawaii Information Consortium, LLC dba Tyler Hawaii**

HlePRO is administered by Hawaii Information Consortium, LLC dba Tyler Hawaii. Tyler Hawaii shall invoice the Contractor(s) directly for payment of transaction fees. Payment must be made to Tyler Hawaii within thirty (30) days from receipt of invoice. Tyler Hawaii is an intended third-party beneficiary of transaction fees, which are used to fund the operation, maintenance, and future enhancements of the HlePRO system.

## Section 5 Evaluation Criteria

The following criteria shall be used in evaluating the Offerors:

Evaluation Category	Maximum Points
A. Management Approach	30
<p>This criterion evaluates the proposer's ability to manage the contract and communicate effectively. The State will assess the degree to which the Offeror's proposed organization, personnel, and approach for managing the contract and delivery of services meet the requirements identified in the Scope of Work.</p> <ul style="list-style-type: none"> <li>• Experience and Qualifications</li> <li>• Management Plan</li> <li>• Quality Control</li> <li>• Transition Plan</li> <li>• Emergency Response Plan</li> <li>• Risk Assessment and Mitigation Plan</li> </ul>	
B. Technical Approach	30
<p>This criterion evaluates the Offeror's plan for performing the required services and fulfilling the Scope of Work requirements.</p> <ul style="list-style-type: none"> <li>• Methodology and Work Plan</li> <li>• Equipment and Resources</li> <li>• Risk Assessment and Mitigation Plan</li> </ul>	
C. Past Performance	20
<p>This criterion evaluates the Offeror's track record for reliability, communication, and overall performance on similar projects.</p>	
D. Price Proposal	20
<p>Points for costs will be scored as follows:  <math>(\text{Lowest-Offeror's Cost} \times 20) / \text{Offeror's Cost} = \text{Offeror's Points}</math></p>	
<b>TOTAL</b>	<b>100</b>

**Table 1**

## 5.1 Evaluation Criterion 1: Management Approach

Offeror shall submit a narrative of a maximum of fifteen (15) pages addressing the components below. Narratives to be submitted in size 12 Arial font or equivalent.

- **Experience and Qualifications:** Describe Offeror's organizational experience, focusing on its capabilities, resources, and direct experience in furnishing similar maintenance and operation work.
  - Explain prior experience providing the types of services requested by this RFP.
  - Describe at least three (3) major projects or contracts Offeror worked on during the past five (5) years that involved the same or similar work. Explain the type of work performed, the duration, number of employees assigned to the work, and significant tasks that were completed.
  - Does Offeror and proposed personnel have the requisite knowledge and experience to furnish the required services? Does Offeror have direct experience performing the same or similar work?
  - If required, are proposed staff appropriately licensed and/or certified?
- **Management Plan:** Describe the proposed organizational structure, roles, and responsibilities of the team and personnel assigned to perform the work.
  - The management plan should include a staffing plan and subcontractor management plan.
  - The management plan should show a clear chain of command.
  - It should also describe how the Offeror will coordinate with government agencies and other stakeholders.
- **Quality Control:** Detail Offeror's quality assurance and quality control plan.
  - Proposal should explain how Offeror will ensure consistent, high-quality service and compliance with the contract requirements.
  - Proposal should also address implementation of quality and cost controls, with effective project and financial tracking and reporting.
- **Transition Plan:** This plan focuses on Offeror's ability to take over the contract without disrupting a critical, public service.
  - The plan should be clear, comprehensive, and practical.
  - It should demonstrate Offeror's understanding of the challenges and risks involved and propose mitigation strategies.
  - It should show a commitment to collaboration and communication with all stakeholders.
- **Emergency Response Plan:** Describe Offeror's ability to respond to and

manage incidents (e.g., accidents, equipment failure). The plan should include specific response times and communication protocols.

- **Risk Assessment and Mitigation Plan:** Describe Offeror's strategy for identifying, analyzing, and mitigating risks associated with the management approach, including, but not limited to operational risks, financial risks, and contractual risks.

## 5.2 Evaluation Criteria 2: Technical Approach

Offeror shall submit a narrative of a maximum of ten (10) pages addressing the components below. Narratives to be submitted in size 12 Arial font or equivalent.

- **Methodology and Work Plan:** Describe Offeror's plan for performing the scope of work. This criterion assesses the clarity, logic, and completeness of the proposed work plan.
  - It should demonstrate that Offeror has a clear understanding of the statement of work in this RFP and a viable work plan that will ensure the satisfactory completion of all required services.
  - Does the plan detail procedures for daily operations, including set-up, tear-down, and traffic control?
  - Does it show a clear understanding of the unique challenges of the H-1 and Nimitz contraflow lanes?
  - Does it include a viable transition plan with contingency planning and established milestones?
  - Does it describe Offeror's approach to tracking and achieving completion of the required services?
  - The plan should also show that Offeror has a clear understanding of state laws and regulations and a viable plan for implementing these requirements.
- **Equipment and Resources:** Describe all equipment and resources that Offeror plans to deploy to fulfill the Scope of Work (e.g., zipper trucks, traffic cones, signage, communication systems).
  - The proposal should demonstrate that the Offeror has a plan to ensure adequate equipment and resources are available, as well as sufficient backup equipment.
  - It should also address a maintenance plan.
- **Risk Assessment and Mitigation Plan:** Describe Offeror's strategy for identifying, analyzing, and mitigating various types of technical risks that could impact performance, including, but not limited to operational risks, safety and collision risks, equipment and infrastructure risks, and environmental and external risks.

## 5.3 Evaluation Criteria 3: Past Performance

Offeror shall submit a narrative of a maximum of ten (10) pages not including references. Narratives to be submitted in size 12 Arial font or equivalent.

Describe Offeror's past performance on contracts providing similar services to other public agencies or private sector organizations. Specifically, address the following questions related to past performance:

- Who was the client?
- What was the scope of work?
- What was the contract amount?
- When was the work completed? (Provide start and end dates.)
- Was the work completed on time and within budget? If not, explain why.
- Were there any problems that arose in performance of the work? What was the cause of the problems? How were the problems resolved?

### **Attachment C, Offer Form OF-3, Client References.**

- **Section 1.** Offeror shall complete Section 1 of Attachment C with the names and contact information for at least three (3) clients, preferably government agencies, that received similar goods and services from Offeror to those required in this RFP's Statement of Work. Offeror shall submit Section 1 with their Proposal.
- **Sections 2 and 3.** Offeror shall complete Section 2 of Attachment C for each reference listed in Section 1. Then Offeror must send Section 2 and Section 3 to the reference to complete and return to the DOT Point of Contact.

The State reserves the right to conduct reference checks beyond what was provided by references. The results of the reference checks will be reflected in the evaluation score for this criterion. **Offerors are encouraged to notify references with due notice.**

### **5.4 Evaluation Criteria 4: Price**

Offeror shall complete and submit Attachment 2, Offer Form OF-2, Pricing.

Offerors shall be evaluated on the total sum price of the contract, including the cost of the initial term plus any additional extension periods. While evaluation will be based on the total cost for the entire contract term, including extensions, the award amount will be the cost for the initial term only.

#### **5.4.1 Price Points Conversion**

In converting price to points, the Offeror submitting the lowest total price will automatically receive the maximum number of points allocated to price as shown in Table 1 above. The point allocations for price on the other Offers will be determined through the method set out in the following formula:

$$\frac{\text{Lowest Total Price} \times \text{Maximum Points}}{\text{Offeror's Proposed Price}} = \text{Price Points Awarded}$$

For example, if the maximum points for the price are 30 of the total points and Offeror A submitted a price for \$200,000; Offeror B submitted a price of \$250,000; Offeror C submitted a price of \$300,000.

Offeror A would receive the maximum points based on the lowest offer of \$200,000.

Offeror B would not receive the maximum points based on the lowest offer of \$200,000 x 30 points / \$250,000 = 24 points.

Offeror C would not receive the maximum points based on the lowest offer of \$200,000 x 30 points / \$300,000 = 20 points.

## **Section 6 Evaluation and Award**

---

### **6.1 Evaluation of Proposals**

An evaluation committee of at least three (3) qualified State employees selected by the HDOT Procurement Officer, shall evaluate proposals for the contract. The evaluation will be based solely on *Section 5 Evaluation Criteria* and the process described in this section.

### **6.2 Right to Waive Minor Irregularities**

The State in its sole discretion reserves the right to waive minor irregularities in the Proposal, which include but are not limited to, corrections of deficiencies or clarification of ambiguities that in the judgment of the State do not require a comprehensive proposal rewrite. The State also reserves the right in its sole discretion to waive certain minimum requirements provided that all of the otherwise acceptable proposals fail to meet the same minimum requirements and the failure to do so does not materially affect the procurement.

### **6.3 Initial Review and Award without Discussions**

In the initial phase of the evaluation process, the State will review all proposals timely received. Unacceptable proposals (non-responsive proposals not conforming to RFP requirements) will be eliminated from further consideration.

The State reserves the right to award on receipt of initial proposals without an opportunity for discussion or proposal revision, so Offerors are encouraged to submit their most favorable proposal at the time established for receipt of proposals. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of proposals.

### **6.4 Discussion with Priority Listed Offerors**

Prior to holding any discussions, a priority list shall be generated consisting of proposals determined to be acceptable or potentially acceptable.

If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may limit the priority list to three (3) highest ranked, responsible Offerors.

The State may invite priority listed Offerors to discuss their proposals to ensure thorough, mutual understanding. The State in its sole discretion shall schedule the time and location for these discussions, generally within the timeframe indicated in *Section 1.3 Schedule and Significant Dates*. The State may also conduct discussions with priority listed Offerors to clarify issues regarding the proposals before requesting Best and Final Offers, if necessary.

In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing Offerors.

### **6.5 Best and Final Offers**

If deemed appropriate by the State in its sole discretion, the State may request each Offeror to submit its BAFO. The request shall be issued via formal written Addenda, which will provide guidance and additional instructions. Offeror's BAFO shall be submitted to the State through HlePRO on or before the deadline called for. If an Offeror fails to do so, its last submitted Offer shall be deemed its BAFO.

The BAFOs will be evaluated by the Evaluation Committee taking into consideration the evaluation criteria set forth in *Section 5 Evaluation Criteria*.

### **6.6 Award of Contract**

Award shall be made to the responsible Offeror whose proposal is determined the most advantageous to the State of Hawaii, taking into consideration price and the other evaluation factors set forth in this request for proposals.

### **6.7 Responsibility of Offeror**

Pursuant to HRS §103D-310(c), the selected Offeror shall at the time of award be compliant with all laws governing entities doing business in the State of Hawaii. See *Special Provisions 8.8 Responsibility of Offerors*.

### **6.8 Scoring Process**

The evaluation committee shall score proposals by reviewing the narrative for each of the evaluation criteria in Section 5.

#### **6.8.1 Evaluation Criteria Ratings**

Evaluators shall use a rating of 0 to 5 for each evaluation criterion. Rating is defined as follows, unless otherwise stated in the RFP:

- 1- **Insufficient.** The Proposal fails to address the criterion or cannot be assessed due to missing or incomplete information. Offeror has not demonstrated sufficient knowledge of the subject matter or has grossly failed to explain how the requirement(s) is met.
- 2- **Poor.** The criterion is inadequately addressed, Offeror demonstrates only a slight ability to comply, or there are serious inherent weaknesses.
- 3- **Fair.** The Proposal broadly addresses the criterion, but there are significant weaknesses. May have one or more deficiencies, or Offeror has not adequately explained how its services fit the requirement.

- 3- **Good.** The Proposal addresses the criterion well; meets the requirement. Demonstrates knowledge and understanding of the subject matter, with no deficiencies noted regarding technical approach.
- 4- **Very Good.** The Proposal addresses the criterion very well, highly comprehensive. No deficiencies noted.
- 5- **Excellent.** The Proposal successfully addresses all relevant aspects of the criterion. Excellent reply that goes beyond the requirements listed in the RFP to provide added value. In addition, the response may cover areas not originally addressed within the RFP and/or include additional information and recommendations that would prove both valuable and beneficial to the agency. The response includes a full, clear, detailed explanation of how the requirement(s) are met. No errors in technical writing.

Evaluators may use decimal points in their ratings. The evaluators' rating for the evaluation criterion in Section 5 shall be converted to points based on the following formula:

<b>Rating Achieved</b>	X	Points Possible For that Criterion	= Points
Total Rating Achievable			

Example:

<b>4 Very Good</b>	X	25	= 20 points
5			

<b>1 Poor</b>	X	25	= 5 points
5			

### 6.9 Notice of Award

Upon award to selected Offeror, the HDOT shall publicly post a notice of award. The HDOT shall also provide written notification of non-selection to non-selected Offeror(s). The HDOT is not responsible for delays or non-receipt of such notification.

### 6.10 Debriefing

Any request for debriefing shall be submitted in writing to the Director of Transportation in accordance with HRS §103D-303 and HAR §3-122-60.

### 6.11 Protest

Any protest of this solicitation shall be submitted in writing to the Director of Transportation in accordance with HRS §103D-701 and HAR Chapter 3-126.

## Section 7 Contract Management

---

Contract management refers to post-award type activities, such as contract implementation, contract administration, measurement of work completion, and payment computation based on deliverables. Moreover, it involves the monitoring of a contract, making important changes and modifications to the contract, and dealing with related problems. Focused attention to contract management considerations facilitates a positive working relationship between the government customer, procurement staff, and the contractor for the successful implementation of the contract award.

### **7.1 Post-Award Communications: Contract Administrator**

The Contract Administrator identified below is the single point of contact (POC) **post-award**. The contractor shall direct to the Contract Administrator all questions concerning the post-award process and any other questions that may arise related to the resulting contract. The Contract Administrator designated by the State of Hawaii, Department of Transportation is:

John Williams  
Engineer  
Department of Transportation  
Email: [john.williams@hawaii.gov](mailto:john.williams@hawaii.gov)  
Phone: (808) 786-2264

### **7.2 Contractor/State Meetings**

The contractor shall participate in initial meetings with the State to discuss the contract, including but not limited to, an estimated timeline for transition and implementation, status reports of the transition and implementation, the expectation of deliverables, training sessions, and follow-up meetings.

### **7.3 Dispute Process and Escalation**

The contractor must have a written dispute process and escalation procedures to address any issues or concerns that may occur during the transition/implementation stage or at any time throughout the contract period.

### **7.4 Quality Control**

The Contractor shall provide quality services, products, and management oversight of all processes. The Contractor shall use key performance indicators (KPIs) that are acceptable within the specific market industry to manage and monitor quality performance. The Contractor shall provide accurate data and reports and meet deliverables, with emphasis on the overall success and positive impact on the operation and maintenance of the H-1 Zipper Lane and traffic control on the Nimitz Highway contraflow lane. The Contractor shall provide sufficient management, support, and qualified personnel to accomplish the objectives of this contract.

#### 7.4.1 Key Performance Indicators (KPIs)

As part of its proposal, the Offeror shall identify any KPIs to be utilized for determining contractor progress in performing this contract.

#### 7.5 Post Award Deliverables

The contractor shall provide, upon request of the State, the following, including but not limited to deliverable items:

<b>RFP Reference</b>	<b>Due Date</b>	<b>Deliverable</b>	<b>Action Required</b>
Section 8.8.2 Timely Registration with HCE	At time of contract award	Certificate of Vendor Compliance	Contractor shall submit to HDOT Contracts Office.
Section 8.14 Performance Bond and Payment Bond	At time of execution of the contract	Performance and payment bonds on forms furnished by the State	Contractor shall submit to HDOT Contracts Office.
Section 8.15 Liability Insurance	Prior to the start of the contract	Liability Insurance Certificates	Contractor shall furnish to Contract Administrator and maintain required coverage during the life of the contract.

## **Section 8 Special Provisions**

---

### **8.1 Subcontractor Provisions**

#### **8.1.1 Contractor Responsibility for Subcontractors**

The Subcontractors providing services shall meet the same service requirements and provide the same quality of service required of the Contractor and in a timely manner. No subcontract shall relieve the Contractor of its responsibilities for the Services it provides. The Contractor shall manage the quality and performance, project management and schedules, and timely start and completion of services performed by each of its Subcontractors. The Contractor shall be solely responsible and accountable for the completion of all Services it has subcontracted.

#### **8.1.2 Removal of Subcontractors**

In addition to any rights the State has under Law, the State shall have the right to require the removal of a Subcontractor or any of its personnel providing or supporting services for a good cause. In such a case, the State shall specify the deadline for such removal after consultation with the applicable Contractor. A Subcontractor proposed by the Contractor to replace the removed Subcontractor shall be subject to the approval of the State.

#### **8.1.3 Right to Retain Subcontractors**

The State shall have the right to directly retain any Subcontractor after the expiration, termination, or suspension of the Contract under which it is retained, including any Subcontractor providing services subject to any part of a Contract that is terminated or suspended.

#### **8.1.4 Additional Contractor Requirements**

Each Contractor shall:

1. Adhere to its Contract with the State;
2. Provide all labor, materials, and equipment necessary to meet the RFP Requirements;
3. Communicate contract requirements to its Subcontractors' personnel and direct and coordinate project activities to ensure that the services progress efficiently and are completed on schedule;
4. Ensure that all its and its Subcontractors' employees can communicate effectively with State employees;

5. Ensure that it is current with all payments and registration fees and similar financial obligations owed to the State during the term of its Contract with the State;
6. Fully cooperate and maintain effective communication with the State and cooperate in the resolution of problems, suspected problems, or potential problems.

## **8.2 Reserved**

## **8.3 Intellectual Property Rights**

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

## **8.4 Warranties and Disclaimer of Implied Warranties**

Warranty for work completed shall be for the period of the contract within which defects may be identified for time.

## **8.5 Termination for Convenience or Unavailability of Funds**

This contract is subject to the availability of funds. Pursuant to Section 103D-309, HRS, except in certain instances, no contract entered into between the State and the Offeror shall be binding or of any force unless the Comptroller certifies that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the contract.

If the contract calls for performance or payment in more than one fiscal year (July 1 to June 30), the Comptroller may certify only that portion of the total funds allocated to satisfy the State's obligations for payments in the current fiscal year. In that event, the State will not be liable for the unpaid balance beyond the end of the current fiscal year, and availability of funds in excess of the amount certified shall be contingent upon future appropriations or special fund revenues. All partially funded contracts shall be enforceable only to the extent that funds are certified as available. The State agrees to notify the Offeror of such non-allocation at the earliest possible time. The State shall not be penalized in the event this provision is exercised. This provision is not meant to permit the State to terminate the contract in order to acquire similar equipment or services from a third party

## **8.6 Preferences**

There are no applicable preferences that apply to this solicitation.

## **8.7 Certification of Offeror Concerning Wages, Hours and Working Condition of Employees Supplying Services**

All Offerors for service contracts shall comply with section HRS §103-55, related to *Wages, hours, and working conditions of employees of contractors performing*

*services.*

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

1. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.
2. All applicable laws of the Federal and State governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

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

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

This section shall not apply to:

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

### **8.8 Responsibility of Offerors**

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

1. Chapter 237, General Excise Tax Law;
2. Chapter 383, Hawaii Employment Security Law;

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

### **8.8.1 Hawaii Compliance Express**

Vendors may use the Hawaii Compliance Express (HCE) system to demonstrate compliance. HCE is an electronic system that allows vendors, contractors, or service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service, Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

### **8.8.2 Timely Registration on HCE**

Vendors, contractors, or service providers intending to use HCE to demonstrate compliance are advised to register on HCE as soon as possible at <https://vendors.ehawaii.gov>. The annual registration fee is \$12.00 and the 'Certificate of Vendor Compliance' is accepted for the execution of a contract and final payment. If a vendor, contractor, or service provider is not compliant on HCE at the time of award, the Offeror will not receive the award.

### **8.8.3 Verification of Vendor Compliance**

Prior to awarding this contract, the State shall verify Offeror's compliance with HRS §103D-310(c).

### **8.8.4 Required Review**

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

Should Offeror find defects and questionable or objectionable items in the RFP, Offeror shall notify the State in writing prior to the deadline for written questions as stated in the *Section 1.3 Schedule and Significant Dates*, as amended. This will allow the issuance of any necessary corrections and/or amendments to the RFP by addendum and mitigate reliance on a defective solicitation and exposure of proposal(s) upon which award could not be made.

## **8.9 Proposal Preparation**

### **8.9.1 Offer Guaranty**

A proposal security deposit shall not be required for this solicitation.

### **8.9.2 Tax Liability and County Surcharge**

Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Offerors are advised that they are liable for Hawaii GET at the current 4.0% rate for transactions made on Oahu, Hawaii, Maui, Kauai, Molokai, and Lanai or the applicable Use tax. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, the Offeror shall state its tax-exempt status and cite the HRS chapter or section allowing the exemption.

County surcharges on state general excise (GE) tax or Use tax may be visibly passed on but are not required. For more information on county surcharges and the max pass-on tax rate, please visit the Department of Taxation's website at <http://tax.hawaii.gov/geninfo/countysurcharge>.

### **8.9.3 Federal I.D. No. and Hawaii General Excise Tax License I.D.**

Offeror shall submit its current Federal I.D. No. and Hawaii General Excise Tax License I.D. number in the space provided on OFFER FORM, page OF-1, thereby attesting that the Offeror is doing business in the State and that Offeror will pay such taxes on all sales made to the State.

## **8.10 Confidentiality**

**8.10.1** If an Offeror in good faith considers a portion of an Offer, or correspondence with the State, to contain confidential information, it shall follow the procedures set forth in *Section 4.5 Required Format and Content*. Costs included or required to be included in an Offer cannot be confidential and will not be withheld from public access.

**8.10.2** Any Offeror may request the nondisclosure of designated trade secrets or other proprietary data it considers confidential. Such request shall be in writing specifically identifying the information or material asserted to be confidential and the justification for confidential treatment. The request shall be submitted with the submission of the Offer. The information or material asserted by the Offeror to be confidential to the Offeror shall be clearly marked and be submitted in or with the Offer in such manner as to be readily separable from the Offer (or remaining portion of the Offer) to facilitate public access to and inspection of the non-confidential portion of the Offer. Total Cost proposals cannot be marked confidential.

**8.10.3** Pursuant to HAR §3-122-58, the State will consult with the Attorney General regarding an Offerer's request for confidentiality of part of its Offer. The Attorney General shall determine what portions of the request are confidential under Law and what portions are not, in accordance with HRS Chapter 92F. The State shall communicate the Attorney General's determination to the Offeror in writing. If the request for confidentiality is denied in whole or in part, the information

or material deemed to be non-confidential shall be made available as public information unless the Offeror appeals pursuant to HRS § 92F-42(1).

#### **8.11 Redaction by the State**

If the State determines, pursuant to HRS §92F-13, that any information or material in an Offer, any written question or submission by a Prospective Offeror, an Offeror or a Contractor, any response to any question or submission from a Prospective Offeror, Offeror or Contractor, and/or any Contract document is not required to be disclosed, then the State shall segregate, or redact, or otherwise cause any such information or material to not be made available as public information.

#### **8.12 Notice to Proceed**

A Notice to Proceed (NTP) shall be issued to the Contractor by the State to officially begin performance under the Contract. The NTP shall establish the date the Contractor shall commence work, and from which the contract time shall commence.

No work shall be undertaken by the Contractor prior to the commencement date indicated in the formal NTP. The State of Hawaii is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official start date outlined in the formal NTP.

#### **8.13 Contract Execution**

The contract shall be executed by the awarded Offeror and returned within ten (10) days or within such further time as the Department may allow after the Offeror has received the contract for execution.

#### **8.14 Performance Bond and Payment Bond**

At the time of execution of the contract, the selected Offeror shall file a good and sufficient performance bond and payment bond on the forms furnished by the HDOT (see *Exhibit B*) conditioned for the full and faithful performance of the contract according to the terms and intent thereof and for the prompt payment to all others for all labor and material furnished by them to the Contractor and used in the prosecution of the work provided for in the contract. In accordance with HAR §103D-324 and §3-122-224, the performance and payment bond shall each be in an amount equal to 50 percent of the anticipated contract price for a 24-month term, If the Contract were to be extended for any of the additional 12-month term, the performance and payment bond shall each be in an amount equal to 50 percent for each term period. The Contractor shall limit the acceptable performance and payment bonds to the following:

- Legal tender;
- Surety bond underwritten by a company licensed to issue bonds in the State of Hawaii; or
- 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).

- The Offeror may use these instruments to a maximum of \$100,000.

If the required security or bond amount totals over \$100,000 more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be acceptable.

## **8.15 Liability Insurance**

Prior to commencing with the work, the Contractor shall, at its own expense, obtain and submit to HDOT, a Certificate of Insurance from an insurance company authorized by the laws of the State to issue such insurance in the State of Hawaii, as evidence of the existence of the insurance coverage required by State policy, in amounts not less than the amounts specified herein. The Contractor shall maintain and ensure all insurance policies are current for the full period of the contract until final acceptance of the work by the State.

### **8.15.1 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 worker's compensation is the HRS 386 statutory limit.

### **8.15.2 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. The STATE shall be 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.

### **8.15.3 Commercial General Liability**

The Contractor shall obtain General Liability insurance with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. The STATE shall be 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.

### **8.15.4 Professional Liability**

Not required.

It is the responsibility of the Contractor to notify the STATE of any changes to its

insurance policies or if the Contractor receives a notice of cancellation of any of its insurance policies. The Contractor will immediately provide written notice to the STATE should the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

In addition, Contractor's insurance policies with the exception of the Worker's Compensation and Professional Liability policies, shall contain the following clauses:

1. The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii.
2. It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy.

Nothing contained in these insurance requirements is to be construed as limiting the extent of Contractor's responsibility for payment of damages resulting from its operations under this contract, including the Contractor's obligation to pay liquidated damages, nor shall it affect the Contractor's separate and independent duty to defend, indemnify, and hold the State harmless pursuant to other provisions of this contract. In no instance will the State's exercise of an option to occupy and use completed portions of the work relieve the Contractor of its obligation to maintain the required insurance until the date of final acceptance of the work.

### **8.16 Contract Invalidation**

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

### **8.17 Mistakes in Proposals**

**8.17.1** Mistakes shall not be corrected after awarding of the contract.

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

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

**8.17.4** If discussions are not held, or if the best and final offers upon which award will be made have been received, an Offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal before award if the mistake is clearly evident on the face of the proposal but the intended correct offer is not, or the Offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

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

### **8.18 Modification Prior to Submittal Deadline or Withdrawal of Offers**

- 8.18.1** The Offeror may modify or withdraw a proposal before the proposal due date and time.
- 8.18.2** Withdrawal or revision of Offer shall be completed and submitted and uploaded to HlePRO prior to the Offer due date and time

### **8.19 Contract Changes – Unanticipated Amendments**

During the course of the contract, the Contractor may be required to perform additional work which shall be within the general scope of the initial contract. When additional work is required, the Contract Administrator will provide the Contractor a written description of the additional work and request the Contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work.

Contractor will not commence additional work until the Contract Administrator has secured the required State approvals necessary for the amendment and an executed written contract amendment has been issued.

### **8.20 Re-execution of Work**

The Contractor shall re-execute any work that fails to conform to the requirements of the contract which appear during the course of the work and shall immediately remedy any defects due to faulty work by the Contractor.

## ATTACHMENTS AND EXHIBITS

**ATTACHMENT A  
OFFER FORM OF-1**

**OFFER**

Project No. HWY-C-22-26  
Operation & Maintenance Services for the H-1 Contraflow Zipper Lane and for Traffic  
Control on Contraflow Lanes on Nimitz Highway

State of Hawaii Department of Transportation  
869 Punchbowl Street  
Honolulu, Hawaii 96813

Dear Procurement Officer:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and the AG General Conditions, Form AG-008 or as amended; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this bid, 1) Offeror is declaring this offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) Offeror is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Offeror is:

Sole Proprietor     Partnership     \*Corporation     Joint Venture

Other \_\_\_\_\_

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

Hawaii General Excise Tax License I.D. No. \_\_\_\_\_

Payment address

(other than street address below): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Business address (street address): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Respectfully submitted:

\_\_\_\_\_ (x) \_\_\_\_\_  
Date Authorized (Original) Signature

\_\_\_\_\_ \_\_\_\_\_  
Telephone No. Name and Title (Please Type or Print)

\_\_\_\_\_ \*\* \_\_\_\_\_  
Fax No. Exact Legal Name of Company (Bidder)

\_\_\_\_\_ \_\_\_\_\_  
E-mail Address

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

\_\_\_\_\_

## ATTACHMENT B OFFER FORM OF-2

INITIAL CONTRACT TERM 24 MONTHS							
<b>Instructions:</b> Complete the information for ALL tabs in this worksheet, including the Initial Term and Option Terms 1, 2, and 3. The Grand Total Amount for the Initial Term plus the Options Terms will auto-calculate. This Grand Total Amount will be used for scoring the Pricing criterion.							
Line Item No.	Item Description	Qty (a)	Unit	Cost Type	Unit Price (b)		Amount (a x b)
1	Operation, Maintenance, and Repair of Zipper Lane Equipment, Barriers and Facilities	24	Month	Fixed Fee	\$	- /month	\$ -
2	Furnishing and Maintaining Traffic Control, Nimitz Highway Contraflow	24	Month	Fixed Fee	\$	- /month	\$ -
3	Transition Services	1	Month	Fixed Fee	\$	- /month	\$ -
4	Allowance for Parts and Specialized Repairs not considered Routine Maintenance	Allowance		Reimbursable Cost	Allowance		\$ 800,000.00
5	Allowance for Additional Work	Allowance		Reimbursable Cost	Allowance		\$ 250,000.00
<b>TOTAL AMOUNT</b>							\$ -
Notes: 1. Proposals shall include all Federal, State, County, and other applicable taxes and fees. 2. The GRAND TOTAL AMOUNT, which is equal to the sum of the TOTAL AMOUNT for the Initial Term and all Option Terms, shall be used to evaluate the Pricing criterion. 3. Proposer shall complete all Unit Prices and amounts. 4. In case a discrepancy occurs between Unit Price and the Amount, the Unit Price shall govern. 5. Proposer shall not make any changes to the Line Items.							
<b>Grand Total Amount</b> (Sum of Initial Term plus Option Terms 1, 2, and 3)							
					\$	-	

**ATTACHMENT B  
OFFER FORM OF-2**

**OPTIONAL EXTENSION TERM 1  
12 MONTHS**

Line Item No.	Item Description	Qty (a)	Unit	Cost Type	Unit Price (b)		Amount (a x b)
1	Operation, Maintenance, and Repair of Zipper Lane Equipment, Barriers and Facilities	12	Month	Fixed Fee	\$ -	/month	\$ -
2	Furnishing and Maintaining Traffic Control, Nimitz Highway Contraflow	12	Month	Fixed Fee	\$ -	/month	\$ -
3	Allowance for Parts and Specialized Repairs not considered Routine Maintenance	Allowance		Reimbursable Cost	Allowance		\$ 408,000.00
4	Allowance for Additional Work	Allowance		Reimbursable Cost	Allowance		\$ 128,000.00
<b>TOTAL AMOUNT</b>							\$ -
	Notes: 1. Proposals shall include all Federal, State, County, and other applicable taxes and fees. 2. The GRAND TOTAL AMOUNT, which is equal to the sum of the TOTAL AMOUNT for the Initial Term and all Option Terms, shall be used to evaluate the Pricing criterion. 3. Proposer shall complete all Unit Prices and amounts. 4. In case a discrepancy occurs between Unit Price and the Amount, the Unit Price shall govern. 5. Proposer shall not make any changes to the Line Items.						

**ATTACHMENT B  
OFFER FORM OF-2**

**OPTIONAL EXTENSION TERM 2  
12 MONTHS**

Line Item No.	Item Description	Qty (a)	Unit	Cost Type	Unit Price (b)		Amount (a x b)
1	Operation, Maintenance, and Repair of Zipper Lane Equipment, Barriers and Facilities	12	Month	Fixed Fee	\$ -	/month	\$ -
2	Furnishing and Maintaining Traffic Control, Nimitz Highway Contraflow	12	Month	Fixed Fee	\$ -	/month	\$ -
3	Allowance for Parts and Specialized Repairs not considered Routine Maintenance	Allowance		Reimbursable Cost	Allowance		\$ 417,000.00
4	Allowance for Additional Work	Allowance		Reimbursable Cost	Allowance		\$ 131,000.00
<b>TOTAL AMOUNT</b>							\$ -
<p>Notes:</p> <ol style="list-style-type: none"> <li>Proposals shall include all Federal, State, County, and other applicable taxes and fees.</li> <li>The GRAND TOTAL AMOUNT, which is equal to the sum of the TOTAL AMOUNT for the Initial Term and all Option Terms, shall be used to evaluate the Pricing criterion.</li> <li>Proposer shall complete all Unit Prices and amounts.</li> <li>In case a discrepancy occurs between Unit Price and the Amount, the Unit Price shall govern.</li> <li>Proposer shall not make any changes to the Line Items.</li> </ol>							

**ATTACHMENT B  
OFFER FORM OF-2**

**OPTIONAL EXTENSION TERM 3  
12 MONTHS**

Line Item No.	Item Description	Qty (a)	Unit	Cost Type	Unit Price (b)		Amount (a x b)
1	Operation, Maintenance, and Repair of Zipper Lane Equipment, Barriers and Facilities	12	Month	Fixed Fee	\$ -	/month	\$ -
2	Furnishing and Maintaining Traffic Control, Nimitz Highway Contraflow	12	Month	Fixed Fee	\$ -	/month	\$ -
3	Allowance for Parts and Specialized Repairs not considered Routine Maintenance	Allowance		Reimbursable Cost	Allowance		\$ 426,000.00
4	Allowance for Additional Work	Allowance		Reimbursable Cost	Allowance		\$ 134,000.00
<b>TOTAL AMOUNT</b>							\$ -
Notes: 1. Proposals shall include all Federal, State, County, and other applicable taxes and fees. 2. The GRAND TOTAL AMOUNT, which is equal to the sum of the TOTAL AMOUNT for the Initial Term and all Option Terms, shall be used to evaluate the Pricing criterion. 3. Proposer shall complete all Unit Prices and amounts. 4. In case a discrepancy occurs between Unit Price and the Amount, the Unit Price shall govern. 5. Proposer shall not make any changes to the Line Items.							

**ATTACHMENT C  
OFFER FORM OF-3**

**CLIENT REFERENCES**

**Instructions:** Offeror is required to fill out Section 1 for a minimum of three (3) references to customers who received services similar to those called out in this RFP. Offeror shall then complete Section 2 for each reference and email to referenced customer for customer to complete Section 3.

**Section 1. To be completed by the offeror and submitted with offer.**

Customer Name #1: \_\_\_\_\_  
Address: \_\_\_\_\_  
Reference Name: \_\_\_\_\_  
Current Phone: \_\_\_\_\_

Customer Name #2: \_\_\_\_\_  
Address: \_\_\_\_\_  
Reference Name: \_\_\_\_\_  
Current Phone: \_\_\_\_\_

Customer Name #3: \_\_\_\_\_  
Address: \_\_\_\_\_  
Reference Name: \_\_\_\_\_  
Current Phone: \_\_\_\_\_

Customer Name #4: \_\_\_\_\_  
Address: \_\_\_\_\_  
Reference Name: \_\_\_\_\_  
Current Phone: \_\_\_\_\_

Customer Name #5: \_\_\_\_\_  
Address: \_\_\_\_\_  
Reference Name: \_\_\_\_\_  
Current Phone: \_\_\_\_\_

The State may contact all of the references listed to inquire about Offerer's equipment, services, performance, and degree of customer satisfaction. Full points for references will not be awarded unless Section 2 and 3 are emailed from referenced customers in accordance with *Section 5.3 Evaluation Criteria 3: Past Performance*.

**Section 2. To be completed by the Contractor - Offeror or Subcontractor**

Contractor Name:	Contractor Contact/Name:
Project Dates:	Contractor Contact Phone:
Customer Organization:	Customer Contact Name:
	Customer Phone:
Customer Address:	Customer Fax:
Operating Budget of Organization:	
<p>Project included implementation in which of the following procurement categories (Check all that apply):</p> <p><input type="checkbox"/> Acquisition Planning      <input type="checkbox"/> Market Research      <input type="checkbox"/> Solicitation and Award</p> <p><input type="checkbox"/> Contract Management      <input type="checkbox"/> Completion &amp; Closeout      <input type="checkbox"/> Other Services</p>	
<p>Project included implementation of procurement categories listed above in a government and/or education organization:</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>	
Scope of Project:	
Number of employees staffed for this project:	
Total One-Time Cost of Project (Estimated/Actual):	

Reason for Change in Total One-Time Cost of Project, if applicable:					
Scope of Contractor/Offeror's Involvement in this project:					
Number of employees Contractor/Offeror staffed for this project:					
Original Value of Contractor/Offeror's Contract:		Actual Total Contract Value:			
Reason(s) for Change in Value:					
Estimated Start & Completion Dates:		From:	Click here to enter a date.	To:	Click here to enter a date.
Actual Start & Completion Dates:		From:	Click here to enter a date.	To:	Click here to enter a date.
Reason(s) for Difference Between Estimated and Actual Dates:					

### Section 3. To be completed by the Customer Organization

Contractor Name (maybe subcontractor to Offeror):

Customer Organization:

Contractor Name:

Customer Organization:

#### A. Validation of Referenced Project Data Provided by Offeror in Section 2

Comments from the Customer Organization

#### B. Past Performance Reference

##### RATING GUIDELINES

Selection	Rating
5	Significantly exceeded your expectations.
4	Somewhat exceeded your expectations.
3	Met your expectations.
2	Somewhat below your expectations.
1	Significantly below your expectations.

Please explain ratings of 1, 2, or N/A in the Comments section below.

Criteria	Rating	Not Applicable
1. The Contractor provided sufficient project resources with appropriate skill sets to meet all project goals and objectives.	Choose an item.	<input type="checkbox"/>
2. The Contractor effectively managed its project staff to achieve project goals and objectives.	Choose an item.	<input type="checkbox"/>
3. The Contractor met all required tasks and deliverables timely and satisfactorily.	Choose an item.	<input type="checkbox"/>
4. The Contractor provided effective training and knowledge transfer to meet project goals.	Choose an item.	<input type="checkbox"/>
5. The Contractor satisfactorily managed project scope and risk to adhere to project schedule, control costs, and meet project goals.	Choose an item.	<input type="checkbox"/>
6. The Contractor provided effective post-implementation maintenance and operations support.	Choose an item.	<input type="checkbox"/>

<b>Comments:</b>
For Criteria with Ratings of 1, 2, or N/A:
General Comments:

As a representative of the Customer Organization listed above, I approved the responses to the previous statements about the performance of the Contractor listed above on the project identified in Section 2 of this Offeror Experience Reference Form.	
Printed Name:	Printed Title:
Signature:	Date:

**EXHIBIT A**  
**CONTRACT FORMS AND AG GENERAL CONDITIONS**



# EXHIBIT A

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

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the request for competitive sealed proposals number \_\_\_\_\_ ("RFP") and the CONTRACTOR'S accepted proposal ("Proposal"), both of which, even if not physically attached to this Contract, are made a part of this Contract, and in accordance with the Scope of Services, Attachment 1, which is attached to and made part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Contract in a total amount not to exceed \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), including approved costs incurred and taxes, at the time and in the manner set forth in the RFP and CONTRACTOR'S Proposal, and the Compensation and Payment Schedule, Attachment 2, which is attached to and made part of this Contract.

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

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

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

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

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

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

# EXHIBIT A

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

**FUNDING AGENCY**  
(if other than contracting agency)

\_\_\_\_\_  
(Name of Funding Agency)

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

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

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

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

**STATE**

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

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

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

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

**CONTRACTOR**

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

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

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

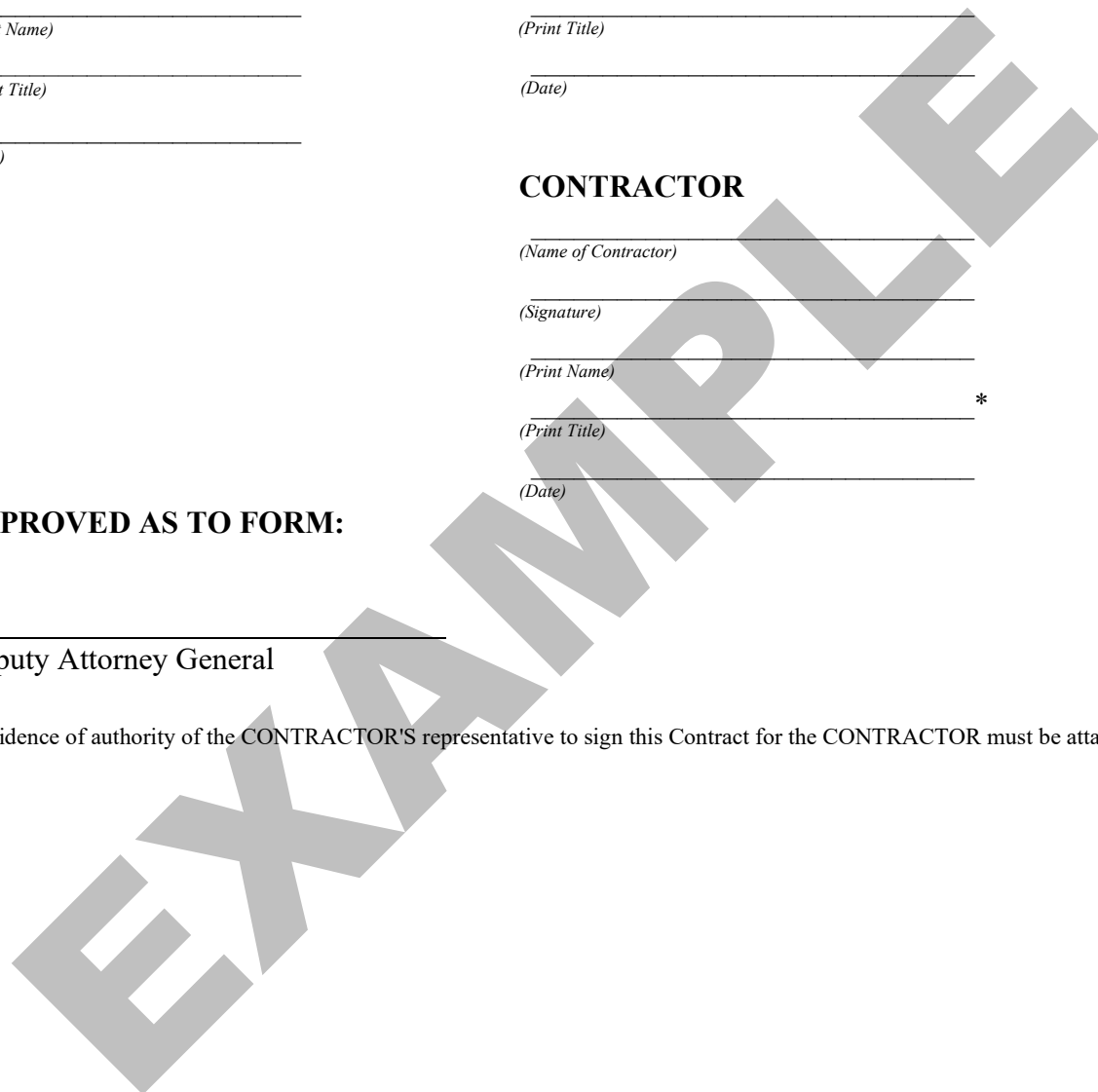
\_\_\_\_\_  
(Print Title) \*

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

**APPROVED AS TO FORM:**

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

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



# EXHIBIT A

## GENERAL CONDITIONS

### Table of Contents

	<u>Page(s)</u>
1. Coordination of Services by the STATE .....	2
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.....	2
3. Personnel Requirements .....	3
4. Nondiscrimination .....	3
5. Conflicts of Interest .....	3
6. Subcontracts and Assignments .....	3
7. Indemnification and Defense .....	4
8. Cost of Litigation.....	4
9. Liquidated Damages .....	4
10. STATE'S Right of Offset.....	4
11. Disputes .....	4
12. Suspension of Contract.....	4
13. Termination for Default.....	5
14. Termination for Convenience.....	6
15. Claims Based on the Agency Procurement Officer's Actions or Omissions.....	8
16. Costs and Expenses .....	8
17. Payment Procedures; Final Payment; Tax Clearance .....	9
18. Federal Funds .....	9
19. Modifications of Contract.....	9
20. Change Order.....	10
21. Price Adjustment .....	11
22. Variation in Quantity for Definite Quantity Contracts .....	11
23. Changes in Cost-Reimbursement Contract.....	11
24. Confidentiality of Material .....	12
25. Publicity.....	12
26. Ownership Rights and Copyright .....	12
27. Liens and Warranties .....	12
28. Audit of Books and Records of the CONTRACTOR.....	13
29. Cost or Pricing Data .....	13
30. Audit of Cost or Pricing Data .....	13
31. Records Retention.....	13
32. Antitrust Claims.....	13
33. Patented Articles.....	13
34. Governing Law .....	14
35. Compliance with Laws .....	14
36. Conflict between General Conditions and Procurement Rules .....	14
37. Entire Contract.....	14
38. Severability.....	14
39. Waiver .....	14
40. Pollution Control .....	14
41. Campaign Contributions.....	14
42. Confidentiality of Personal Information.....	14

# EXHIBIT A

## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

# EXHIBIT A

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

### 3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

# EXHIBIT A

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
  8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
  9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
  10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
  11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
  12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
    - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

# EXHIBIT A

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

## 13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

# EXHIBIT A

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

## 14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

# EXHIBIT A

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:
- (1) Any completed goods or work product; and
  - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

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

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

# EXHIBIT A

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

## 15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

(A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

(B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

(C) Within such further time as may be allowed by the Agency procurement officer in writing.

(2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

(3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

(4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

# EXHIBIT A

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

## 17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
  - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
  - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

## 19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

# EXHIBIT A

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
    - (A) Changes in the work within the scope of the Contract; and
    - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
  - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

# EXHIBIT A

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

## 21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;

# EXHIBIT A

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
    - (5) Method of shipment or packing of supplies; or
    - (6) Place of delivery.
  - b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
  - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

# EXHIBIT A

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
  - b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

# EXHIBIT A

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
  - (2) Driver's license number or Hawaii identification card number; or

# EXHIBIT A

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

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

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

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

# EXHIBIT A

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

EXAMPLE



**STATE OF HAWAII**  
**CONTRACTOR'S**  
**STANDARDS OF CONDUCT DECLARATION**

For the purposes of this declaration:

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

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

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

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

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

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

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

**CONTRACTOR**

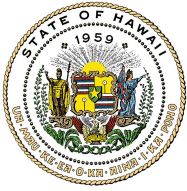
By \_\_\_\_\_  
*(Signature)*

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

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

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

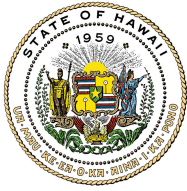
Date \_\_\_\_\_



STATE OF HAWAII  
**SCOPE OF SERVICES**

CONTRACTOR shall provide **operation and maintenance services for the Zipper Lane and Nimitz Highway Contraflow Lane** to the State in accordance with **Request for Proposals (RFP) No. \_\_\_ / HlePRO Solicitation No. \_\_\_** issued by the State of Hawaii Department of Transportation (HDOT) on issue date, as amended, and CONTRACTOR's response to solicitation # submitted on submittal date. Both the solicitation # and CONTRACTOR's response to the solicitation are incorporated herein by reference and made a part of the Contract.

EXAMPLE



STATE OF HAWAII

**COMPENSATION AND PAYMENT SCHEDULE**

The CONTRACTOR shall be compensated for services performed under this Agreement in a total amount not to exceed \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), including the applicable State General Excise Tax, as set forth in [solicitation number] and CONTRACTOR's response to [solicitation number]. Any additional State General Excise Taxes shall be at the sole expense of the CONTRACTOR.

Contractor agrees to furnish and pay for all labor, materials, tools, equipment and incidentals necessary to perform and complete the services. Any additional expenses or taxes incurred shall be at the sole expense of the CONTRACTOR.

- A. **PAYMENT.** Payment for work performed by the CONTRACTOR shall be made in accordance with paragraph 17 of the 103D General Conditions (Form AG-008).

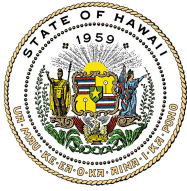
An original invoice referencing the contract number and describing the specific deliverable for which payment is being requested shall be directed to HDOT Highways within 30 days from delivery of goods and/or services:

Project/Contract Manager  
State of Hawaii Department of Transportation  
Highways  
869 Punchbowl Street  
Honolulu, HI 96813

Contractor shall be paid upon acceptance of the deliverable, and receipt and approval of the invoice, by HDOT. Payment shall be made to:

Accounts Receivable  
Contractor Name  
Contractor Payment Address

- B. **COST OR PRICING DATA.** In accordance with section 103D-312, HRS and section 3-122-123, HAR, CONTRACTOR shall provide cost or pricing data or both in support of any price adjustment to the Contract involving aggregate increases or decreases in costs plus applicable profits expected to exceed \$100,000.



STATE OF HAWAII

**TIME OF PERFORMANCE**

- A. NOTICE TO PROCEED. CONTRACTOR shall not commence any work under this Contract prior to receipt from the STATE of a written Notice to Proceed.
- B. COMMENCEMENT OF THE WORK. The CONTRACTOR shall commence work under this Contract on the date indicated in the STATE's Notice to Proceed.
- C. DURATION. The time of completion for all the work described in the Contract shall be two years from the date of commencement indicated in the Notice to Proceed. HDOT may, at its sole discretion, extend the contract term by no more than three additional one-year periods prior to the expiration of the initial term or any extension. Any extension of time will require written approval of the STATE as stated in Paragraph 19 of the 103D General Conditions (Form AG-008).
- D. TERMINATION FOR CONVENIENCE. The Contract may be terminated at any time pursuant to the Termination for Convenience clause set forth in paragraph 14 of the 103D General Conditions (Form AG-008). The STATE shall give written notice of the termination to the CONTRACTOR at least thirty (30) days prior to the effective date of such termination.

EXAMINER



**STATE OF HAWAII**

**CERTIFICATE OF EXEMPTION  
FROM CIVIL SERVICE**

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

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

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

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

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

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

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

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

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

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

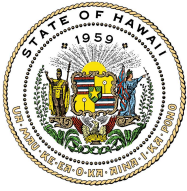
I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, HRS.

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

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

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

\_\_\_\_\_  
(Print Title, if designee of the Director of DHRD)



STATE OF HAWAII

**SPECIAL CONDITIONS**

A. Insurance Requirements

Prior to commencing with the work, the Contractor shall, at its own expense, obtain and submit to HDOT, a Certificate of Insurance from an insurance company authorized by the laws of the State to issue such insurance in the State of Hawaii, as evidence of the existence of the insurance coverage required by State policy, in amounts not less than the amounts specified herein. The Contractor shall maintain and ensure all insurance policies are current for the full period of the contract until final acceptance of the work by the State.

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 worker's 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. The STATE shall be 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.

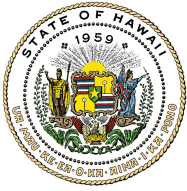
c. Commercial General Liability

The Contractor shall obtain General Liability insurance with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. The STATE shall be 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.

It is the responsibility of the Contractor to notify the STATE of any changes to its insurance policies or if the Contractor receives a notice of cancellation of any of its insurance policies. The Contractor will immediately provide written notice to the STATE should the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

In addition, Contractor's insurance policies with the exception of the Worker's Compensation and Professional Liability policies, shall contain the following clauses:

1. The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii.



STATE OF HAWAII

**SPECIAL CONDITIONS**

2. It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy.

Nothing contained in these insurance requirements is to be construed as limiting the extent of Contractor's responsibility for payment of damages resulting from its operations under this contract, including the Contractor's obligation to pay liquidated damages, nor shall it affect the Contractor's separate and independent duty to defend, indemnify, and hold the State harmless pursuant to other provisions of this contract. In no instance will the State's exercise of an option to occupy and use completed portions of the work relieve the Contractor of its obligation to maintain the required insurance until the date of final acceptance of the work.

**B. Order of Precedence**

The Contract Documents include:

- a. The Contract for Goods or Services Based Upon Competitive Sealed Proposals (the Contract), including the General Conditions (AG-008), Attachments S1 through S5, and any exhibits referenced in the Contract;
- b. Modifications, including change orders, field orders, and written amendments (supplemental contracts) to the Contract;
- c. Solicitation #, as amended; and
- d. CONTRACTOR's response to Solicitation #, as amended by CONTRACTOR's Best and Final Offer (BAFO).

In the event of conflicts or discrepancies among the Contract Documents, the documents shall govern in the following order:

- a. Modifications, with those dated the most current taking precedence;
- b. The Contract, with Attachment S5 Special Conditions taking precedence over the General Conditions;
- c. Solicitation #, as amended; and
- d. CONTRACTOR's response to Solicitation #, as amended by CONTRACTOR's BAFO.

The foregoing notwithstanding, the provision, section, and/or document most advantageous to the State shall control. Said controlling provision, section, and/or document shall be determined by HDOT in its sole discretion.

**EXHIBIT B**  
**PERFORMANCE AND PAYMENT BOND FORMS**

EXHIBIT B

**PERFORMANCE BOND (SURETY)**

(6/21/07)

**KNOW TO ALL BY THESE PRESENTS:**

That \_\_\_\_\_,  
*(Full Legal Name and Street Address of Contractor)*

as Contractor, hereinafter called Principal, and \_\_\_\_\_

\_\_\_\_\_  
*(Name and Street Address of Bonding Company)*

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

its successors and assigns, hereinafter called Oblige, 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 Oblige 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.

# EXHIBIT B

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

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

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

(Seal)

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

\*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

(Seal)

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

\*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

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

EXHIBIT B

**LABOR AND MATERIAL PAYMENT BOND (SURETY)**

(6/21/07)

**KNOW TO ALL BY THESE PRESENTS:**

That \_\_\_\_\_,  
*(Full Legal Name and Street Address of Contractor)*

as Contractor, hereinafter called Principal, and \_\_\_\_\_  
\_\_\_\_\_  
*(Name and Street Address of Bonding Company)*

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

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

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

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Title

(Seal) \_\_\_\_\_  
Name of Surety

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

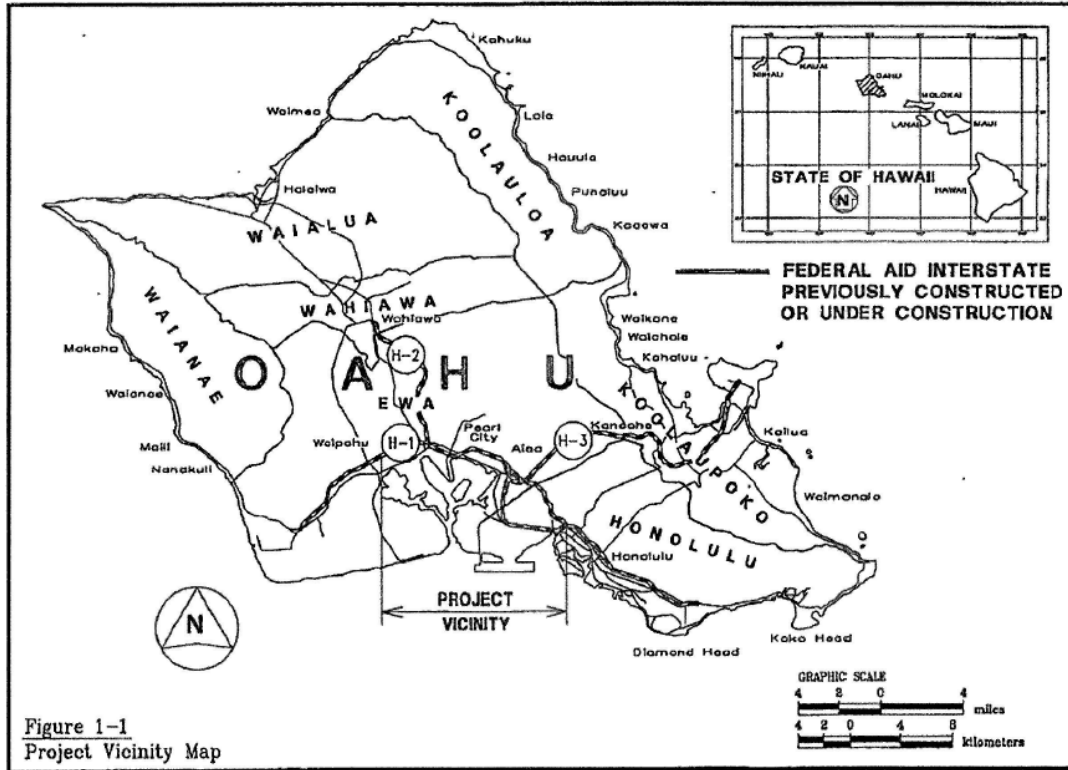
\_\_\_\_\_  
Title

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



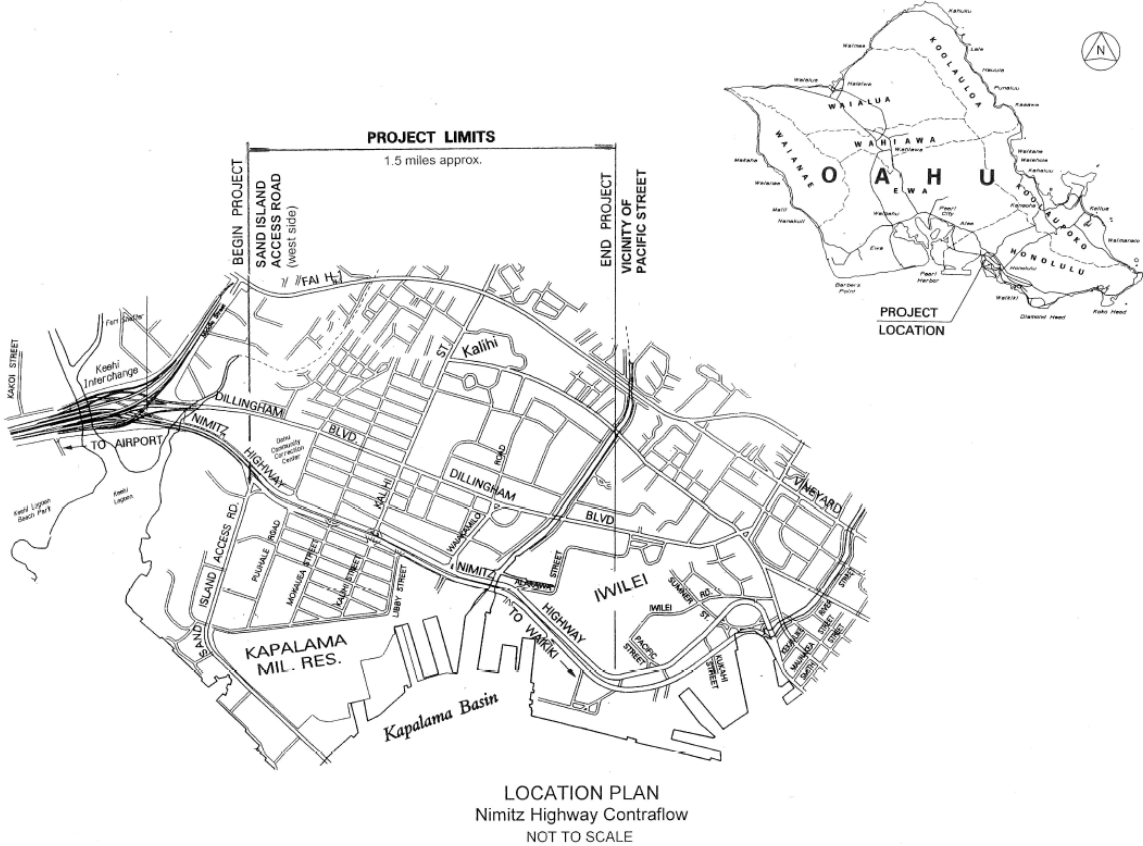
# EXHIBIT C PROJECT LOCATION MAPS

## PROJECT LIMITS



Project limits: H-1 Freeway and Nimitz Highway, Manager's Drive through Sand Island Access Road

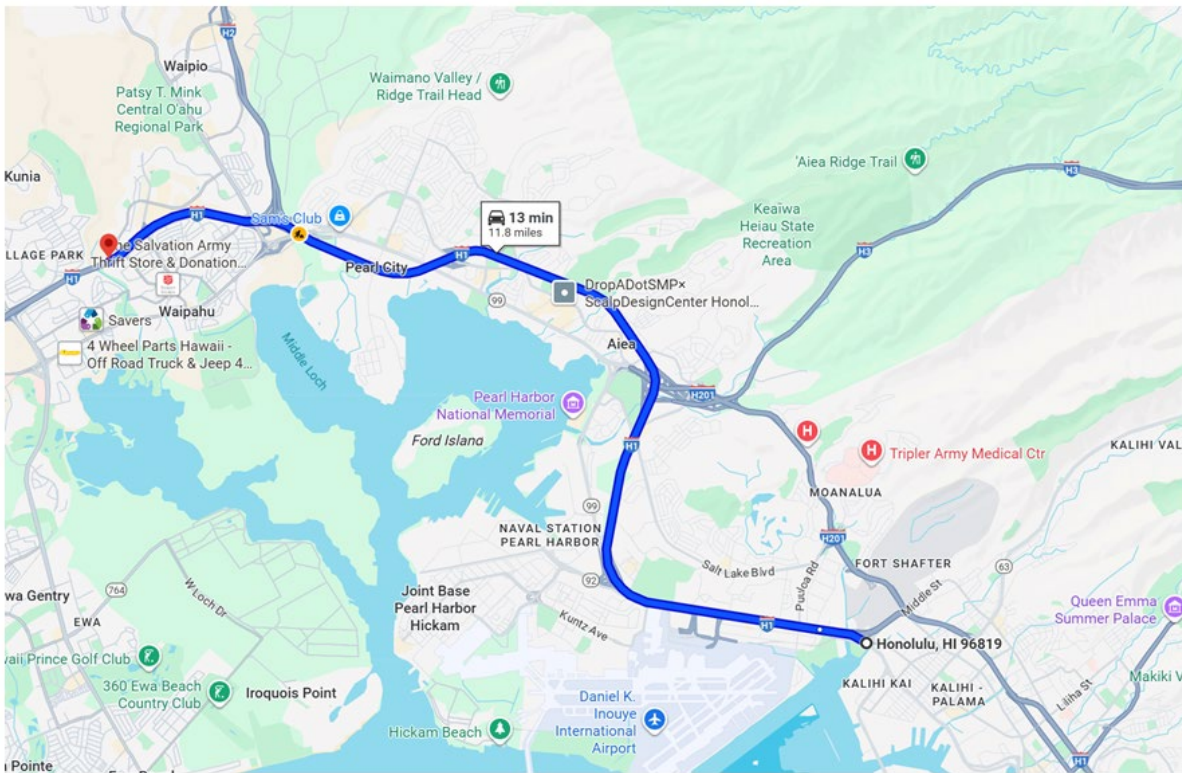
# EXHIBIT C PROJECT LOCATION MAPS



# EXHIBIT C PROJECT LOCATION MAPS



Section 1.2.1- Google Satellite Map – H-1 Zipper Lane

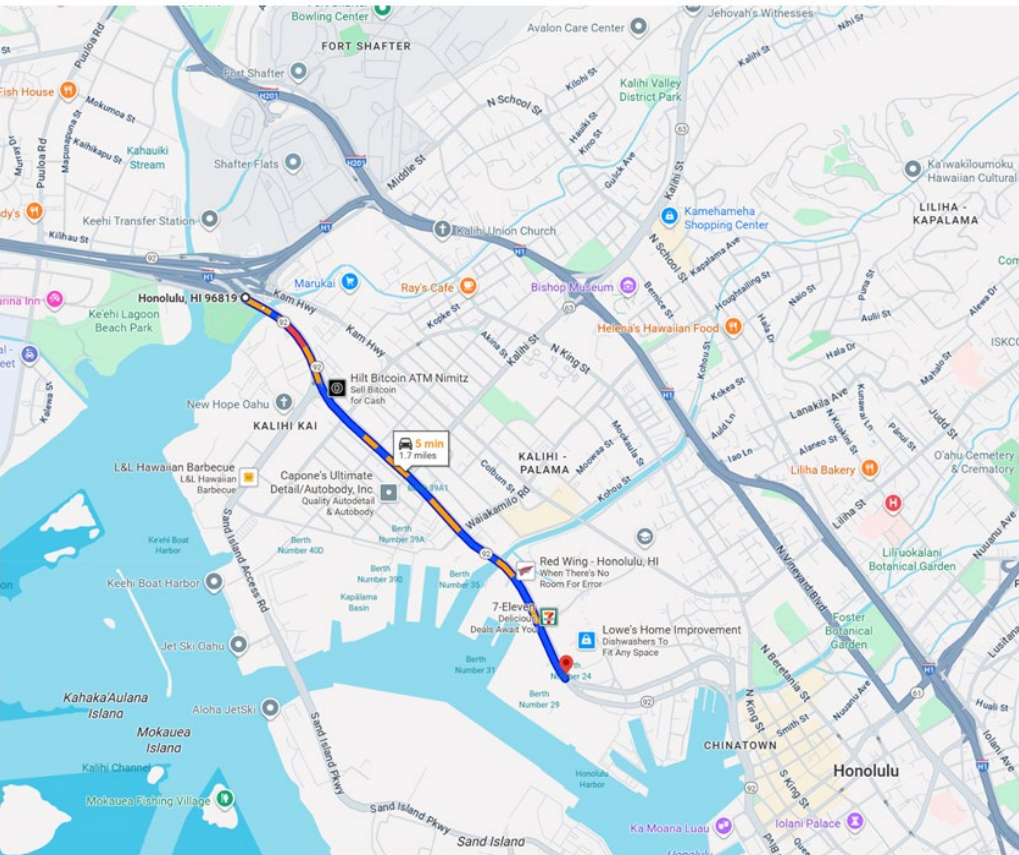


Section 1.2.1 - Google Map – H-1 Zipper Lane

# EXHIBIT C PROJECT LOCATION MAPS



Section 1.2.2 - Google Satellite Map – Nimitz Contraflow



Section 1.2.2 - Google Map – Nimitz Contraflow