

SPECIAL PROVISIONS

Unless otherwise specified herein, the cost of performing work for these Special Provisions, which supplement, amend and/or supersede certain portions of the General Provisions, shall be considered incidental and included in the prices bid for the various items of work, and shall not be considered a cause for delay in the contract completion period.

SECTION SP 1 – DEFINITIONS

Article 1 of the “GENERAL PROVISIONS FOR CONSTRUCTION CONTRACTS, 2008 EDITION, HAWAII COMMUNITY DEVELOPMENT AUTHORITY,” hereinafter referred to as “General Provisions,” is amended by adding the following definitions:

- 1.76 PROJECT – Concrete, Grading, and Other Work at the Historic Kakaako Pumping Station, Honolulu, Oahu, Hawaii.
- 1.77 CONSTRUCTION MANAGER – Any employee of the Hawaii Community Development Authority (“HCDA”), or individual, partnership, firm, corporation, joint venture or other legal entity under contract to HCDA acting as the authorized field representative of the Engineer with the scope of the duties as assigned and delegated to him as such representative.

SECTION SP 2 – CONTRACTOR’S LICENSING LAWS

Attention is directed to the provisions of Chapter 444, HRS, concerning the licensing of contractors.

All bidders for this Project shall be licensed “A” General Engineering contractors, and all subcontractors for this Project shall be licensed specialty contractors, in accordance with the laws of the State of Hawaii. Any contractor or subcontractor not so licensed shall be subject to the penalties imposed by such laws.

In addition, “A” General Engineering Contractors and “B” General Building Contractors are reminded that due to the Hawaii Supreme Court’s January 28, 2002 decision in Okada Trucking Co., Ltd. v. Board of Water Supply, et. al., 97 Haw. 450 (2002), they are prohibited from undertaking any work, solely as or part of a larger project that would require the general contractor to act as a specialty contractor in any area in which the general contractor has no license. Although the “A” and “B” contractor may still bid on and act as the “prime” contractor on an “A” or “B” project (*See HRS § 444-7 for the definitions of an “A” and “B” project.*), respectively, the “A” and “B” contractor may only perform work in the areas in which they have the appropriate contractor’s license (*An “A” or “B” contractor obtains “C” specialty contractor’s licenses either on its own, or automatically under HAR § 16-77-32.*). The remaining work must be performed by appropriately licensed entities. It is the sole responsibility of the contractor to review the requirements of the Project and determine the appropriate licenses that are required to complete the Project.

SECTION SP 3 – SCOPE OF WORK

The Contractor shall be responsible to perform the work in accordance with the Contract Documents, inclusive of all standards and specifications of applicable Federal, State and/or City and County of Honolulu agencies and the public utility companies.

The following section shall supplement Section 4.2 – CHANGES of the General Provisions.

The HCDA reserves the right to delete any portion of the work or additive alternate in the Proposal after the bid opening and selection of the successful Bidder or after the award of contract or during the construction of the Project. No payment shall be made for the deleted work unless payment is due in accordance with Section 4.6 – PAYMENT FOR DELETED MATERIAL of the General Provisions.

SECTION SP 4 – ALLOWANCES FOR OVERHEAD AND PROFIT

Subsections 4.5.1.1, 4.5.1.2 and 4.5.1.3 of Section 4.5 – ALLOWANCES FOR OVERHEAD AND PROFIT are superseded by the following:

- 4.5.1.1 For the Contractor, for any work performed by its own forces, twenty percent (20%) of the direct cost;
- 4.5.1.2 For each Subcontractor involved, for any work performed by its own forces, twenty percent (20%) of the direct cost;
- 4.5.1.3 For the Contractor or any Subcontractor, for work done by their Subcontractors, ten percent (10%) of the amount due the performing Subcontractor.

SECTION SP 5 – CONTRACTOR'S SUPERINTENDENT

This section shall supplement Subsection 5.8.2 – SUPERINTENDENT of the General Provisions.

The Superintendent shall attend meetings with the general public and/or the Engineer to discuss matters relating to the Work. If required by the Engineer, the Superintendent shall prepare information pamphlets or schedules for distribution at the meetings.

The Superintendent shall immediately respond to all complaints relating to his construction activities. The Superintendent shall make all reasonable efforts to immediately resolve or mitigate the cause of the complaints.

If the Superintendent has not satisfactorily responded or made reasonable efforts to resolve or mitigate the cause of the complaint, the Engineer, at his option, may so resolve or mitigate the cause at the expense of the Contractor. Any action by the Engineer shall in no way relieve the Contractor from his liability for loss or damages due to his construction activities or performance of the Work, nor shall it be grounds for requesting an extension of time or damages for delay.

The Contractor shall provide the Engineer with a list of 24-hour emergency contact persons and their phone numbers. This list shall include the Superintendent and at least two other authorized representatives of the Contractor.

SECTION SP 6 – PERMITS AND LICENSES

This section shall supplement Section 7.4 – PERMITS AND LICENSES of the General Provisions.

Unless otherwise directed by the HCDA, the Contractor shall obtain all permits and licenses, pay all charges, fees and taxes, give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. Permits may include, but are not limited to, the following:

1. Building permit.
2. Community Noise permit.
3. Grading permit.
4. Dumping charges.
5. Electrical permit.
6. Trenching permit.
7. State DOT Form 4-222 (For work on a State highway).
8. Street Usage Permit (For work on a City roadway).

SECTION SP 7 – NORMAL WORKING HOURS

This section shall supplement Section 7.5 – NORMAL WORKING HOURS of the General Provisions.

Normal working hours within streets and/or public rights-of-way under the jurisdiction of the DOT shall be from 8:30 a.m. to 3:00 p.m., Monday through Friday, unless otherwise stated in writing by the DOT Traffic Engineer with the concurrence of the HCDA.

Normal working hours within streets and/or public rights-of-way under the jurisdiction of the City shall be from 8:30 a.m. to 3:30 p.m., Monday through Friday, unless otherwise stated in writing by the City Traffic Engineer with the concurrence of the HCDA.

No work shall be done on Saturdays, Sundays, State Holidays and/or during time periods other than, or in excess of the normal working hours, without the written consent of the appropriate Traffic Engineer and/or the HCDA. If the Contractor desires to work during such times, it shall request the Traffic Engineer's and/or the HCDA's approval five (5) consecutive working days prior to the start date of the proposed work times.

Should permission be granted to work at such times, the Contractor shall pay for all inspection and administrative costs thereof, which are incurred by the DOT or the City in accordance with applicable requirements, and by the HCDA, in accordance with Section 7.11 – OVERTIME AND NIGHT PAYMENT FOR STATE INSPECTION SERVICE of the General Provisions.

SECTION SP 8 – PROTECTION OF PERSONS AND PROPERTY

This section shall supplement Section 7.17 – PROTECTION OF PERSONS AND PROPERTY of the General Provisions.

1. The Contractor shall obtain a written right-of-entry allowing work within properties if requested by said property owners or HCDA.
2. Prior to working in streets and/or public rights-of-way, the Contractor shall submit traffic control plans for review and approval by the Traffic Engineer. The Contractor shall be fully responsible for properly securing work areas and open excavations within streets and/or public rights-of-way during working and nonworking hours. At all times, the Contractor shall provide and maintain paved detours for vehicles and pedestrians as necessary.
3. The Contractor shall so conduct his operations as to provide the least possible obstruction and inconvenience to the public and he shall have under construction no greater length or amount of work that he can prosecute properly with due regard to the safety of the public.
4. The Contractor shall make provisions to allow two-way traffic through the construction area in streets and/or public rights-of-way. The Contractor shall obtain the proper government permits allowing such work at his own expense and conform to the conditions and working hours stated in the permit.
5. The Contractor shall hire off-duty police officers as necessary to provide a smooth flow of traffic, as required by the Traffic Engineer or by the HCDA, through the construction area. Payment shall be paid through the allowance amount in the cost item for “Off-duty Police Officers for Traffic Control” listed in the Proposal. The Contractor shall not be allowed to charge any commission or percentage on these funds. Any unused portion of the allowance shall remain with HCDA upon completion of the Contract.
6. The Contractor shall provide and maintain safe pedestrian walkways through or around the construction area. The Contractor shall provide and maintain open access to all businesses and residents within or adjacent to the construction area, unless prior approval is granted by the Engineer to temporarily close an access.
7. The Contractor shall provide proper traffic bridges where necessary so that all streets, roads, lanes, alleys, driveways and garages will be accessible to traffic at all times. These bridges shall be constructed so that their decks are flush with the pavement, and maintained free from projecting nails, splinters or rough edges. In lieu of traffic bridges, the Contractor may use suitable steel plates. The bridges

and/or steel plates shall be able to support all legal highway loads permitted by law and shall have a non-skid surface.

8. If the Contractor fails to provide adequate warning signs, lights, walkways, and detours, the HCDA may, at its option, so provide them at the Contractor's expense. The Contractor shall pay the cost of such work to the HCDA, or the HCDA may deduct the cost from any monies due the Contractor from the HCDA. The performance of such work by the HCDA shall serve in no way to release the Contractor from his liability for the safety of the public or the Work.
9. During non-working hours, the Contractor shall cover all trenches on streets and rights-of-way and shall make provisions to allow two-way traffic through the construction area. The Contractor shall provide and maintain safe pedestrian walkways through or around the construction area and access to all businesses and residents shall be open.
10. The Contractor shall provide free access to water meters, water valves, and abutting public and private property. No material or obstruction of any sort shall be placed within 25 feet of any fire hydrant. Fire hydrants must be readily accessible to the Fire Department at all times.
11. Material excavated for substructure construction shall be completely removed from the trench or excavation site unless the material will be used to backfill the same day. If the material will be used the same day, it shall be placed in such a manner as to economize space and minimize interference with traffic. If necessary, such material shall be confined by suitable bulkheads or other devices. If the street is not of sufficient width to hold excavated material with using part of an adjacent walkway, a passageway at least one-half the width of such walkway, but not less than three feet wide, shall be open at all times.
12. When substructure excavations cross street intersections, safe crossings for vehicles and pedestrians shall be provided and maintained. Pedestrian crossings shall be of a safe non-slip material, be separate from vehicular crossings and be provided with hand rails except in areas opened for vehicular traffic.
13. The Contractor shall cooperate with the HCDA, the Traffic Engineer and other authorized persons in locating all warning signs, lights, walkways and detours required under this section.

SECTION SP 9 – ARCHAEOLOGICAL SERVICES

This section shall supplement Section 7.18 – ARCHAEOLOGICAL SITES of the General Provisions.

If historic sites or burials are found during the course of the work, the Contractor shall assist the HCDA as necessary and shall be paid through the allowance amount in the cost item for "Archaeological Services" listed in the Proposal and in accordance with Sections 4.4 – PRICE ADJUSTMENT and 4.5 – ALLOWANCES FOR OVERHEAD AND

PROFIT of the General Provisions. Any unused portion of the allowance shall remain with HCDA upon completion of the Contract.

SECTION SP 10 – CONSTRUCTION SCHEDULE

The following shall supplement Section 7.22 – CONSTRUCTION SCHEDULE of the General Provisions:

1. The Contractor shall submit updated construction schedules of the entire project as deemed necessary by the Engineer.
2. The Contractor shall submit 3-week schedules listing planned construction activities and their durations on a weekly basis to the Engineer.

The Contractor shall also be responsible to schedule and coordinate the activities of the public utility companies, Federal, State and City government agencies as related to the work, including but not limited to inspections, testing, cable pulling and service connections.

SECTION SP 11 – LIQUIDATED DAMAGES

The section shall supplement Section 7.26 – FAILURE TO COMPLETE THE WORK ON TIME of the General Provisions.

It is mutually understood and agreed between the Contractor and HCDA that liquidated damages for this Project shall be One Thousand Dollars (\$1,000.00) per day for each and every calendar day, including weekends and holidays.

SECTION SP 12 – STORM WATER RUNOFF FROM CONSTRUCTION ACTIVITIES

The Contractor shall be responsible for the control and proper disposal of storm water runoff from the Project area during the construction, in accordance with applicable laws and regulations. Control and discharge of storm water runoff shall follow the Site Specific Construction Best Management Practices (SSCBMP) outlined in the National Pollutant Discharge Elimination System (NPDES) CWB NOI General Form for Appendix C for the Project as submitted to the State of Hawaii Department of Health (DOH) by the HCDA.

This NPDES permit shall be made part of the Contract Documents by reference and a copy of the permit shall be given to the Contractor. The Contractor shall be responsible to have the permit available for inspection at his field office for the Project site. If there no field office, the Contractor's superintendent for the Project shall always have the permit in his possession.

The Contractor shall be responsible for maintaining the SSCBMP and proper drainage within the project area, including the cleaning of existing drain systems and the construction of temporary drain systems.

All temporary protective structures shall be removed in a manner satisfactory to the Engineer. The Contractor shall repair or replace, at his own expense, any damage to properties, buildings and the foundations or any part of the work caused by storm water or failure of any part of the diversion or protective structures.

The Contractor shall be responsible to notify and obtain approval from the DOH if he modifies or makes changes to the SSCBMPs.

SECTION SP 13 – SOIL TESTING AGENCY

The services of a soil testing agency shall be retained by the Contractor at his own expense. A representative of the soil testing agency shall be present at the site to take field density tests. Also, the soil testing agency will perform laboratory testing of Contractor-submitted soils to determine their acceptability for use as base course, subbase and fill materials. The soil testing agency shall also perform compaction tests for embankments, subbase, base course and structural backfill. Testing frequency and methodology shall conform to applicable specifications of the State DOT – Highways Division and/or the City.

The Contractor shall submit all soil test results to the Construction Manager and to the appropriate City agency and/or the DOT Highways Division. Where low density test results are noted, the area shall be reworked by the Contractor and retested by the soil testing agency. No additional material shall be placed until the required compaction is attained.

If the test results, in the opinion of the Construction Manager, indicate that the earthwork, road construction and backfilling work, and other work are not in general conformance to the intent of the plans and specifications, the Contractor shall remove and replace the material at the Contractor's own expense and no additional compensation shall be made to the Contractor by HCDA.

Further, the Contractor and the soil testing agency shall be responsible for preparing and submitting a post-grading report, certifying that the all grading work was performed in accordance with the plans and conditions of the grading permit from the City. A copy of the closed grading permit with the authorized signature from the City shall be submitted to the HCDA.

Payment for the services of the soil testing agency will not be made separately, but shall be considered incidental to the construction of the Project.

SECTION SP 14 – SURVEYS AND CONSTRUCTION STAKEOUTS

The Contractor shall be responsible to protect all surveys, benchmarks and controls established for the Project and shall provide his own construction stakeout based on said surveys, benchmarks and controls, which are necessary to construct the project in accordance with the plans and specifications.

All surveying work shall be performed by the Contractor and under the supervision of a licensed professional surveyor with current registration in the State of Hawaii, and at no expense to the HCDA.

SECTION SP 15 – “AS-BUILT” INFORMATION

The Contractor shall record all field changes made during construction on a set of drawings to be maintained at the field office. The drawings shall be prepared legibly and kept up-to-date during the progress of the work and shall be available for inspection by the Engineer and/or Construction Manager at all times. The Contractor shall submit the drawings which show the “as-built” condition for approval by the Engineer and/or Construction Manager upon completion of the Project as a requirement for final payment.

In addition, reference is made to Hawaiian Electric Company (HECO) Note #23 on Sheet E-3 of the construction plans. Accordingly, the Contractor is hereby reminded of his responsibility to provide HECO with two sets of “as-built” reproducible tracings of the electrical plans showing the offsets, stationing, and vertical elevations of the duct lines constructed. The Contractor shall also provide one set of said tracings to the HCDA.

Survey information on the “as-built” drawings shall be provided by a licensed professional surveyor with current registration in the State of Hawaii and at no expense to the HCDA.

SECTION SP 16 – ELECTRICAL AND WATER SERVICE

The Contractor shall make his own arrangements and pay for electrical and water services required for the construction of the Project.

SECTION SP 17 – PROJECT SIGN

The Contractor shall furnish, erect and subsequently remove as his property, one (1) project sign to identify the Project as specified under Section 56 – PROJECT SIGNS of the Standard Specifications and as specified herein below.

The sign shall show, but shall not be limited to, the information shown in the attached Figure 1.

The sign shall be erected at the location directed by the Construction Manager, adequately braced and mounted, and shall be maintained in good condition throughout the progress of the work.

The cost of furnishing, erecting, maintaining and removing the project sign shall be paid for under the appropriate bid item in the Proposal.

SECTION SP 18 – CONSTRUCTION STAGING AREA

If directed by the Engineer, the Contractor shall provide a housed field office for use by the HCDA at a location approved by the Engineer. The field office shall be available

within seven (7) calendar days after the Start Work Date. The field office shall be weatherproof and not less than 120 square feet in gross floor area. The aggregate window areas of the field office shall not be less than 10 percent of the floor area, and one exterior door shall be provided with a keyed cylinder-type lock. The field office shall be furnished with one drafting table having dimensions of not less than 3' x 6' and a stool, adequate plan racks and hangers, one fire extinguisher, air conditioning (at least 5,000 BTU), one office desk, two chairs, shelves, a broom, working communications facilities (a cellular telephone is acceptable), electric lighting and outlets, paper towels, paper cups, soap, toilet paper and potable water and shall be maintained in good condition by the Contractor. If the office is not equipped with a water closet and lavatory, the Contractor shall make other arrangements to provide such facilities for HCDA and/or the Construction Manager.

Payment for the use of the field office by the HCDA shall be made from the cost allowance item for "Field Office" in the Proposal. The Contractor shall not be allowed to charge any commission or percentage on these funds. Any unused portion of the allowance shall remain with HCDA upon completion of the Contract.

SECTION SP 19 - GUARANTEE OF WORK

Except as otherwise specified in the Technical Specifications, all work shall be guaranteed by the Contractor against defects resulting from the use of defective or inferior materials, equipment or workmanship for one (1) year from the date of final project acceptance.

If, within any guarantee period, repairs, replacements or modifications are required as a result of the use of any materials, equipment or workmanship which is inferior, defective or not in accordance with the terms of this contract, the Contractor shall within five (5) consecutive working days and without expense to the HCDA:

1. Take corrective action to cure all defects identified by the HCDA; and
2. Repair all damage to HCDA property occasioned by the defective condition.

If any such property cannot be satisfactorily repaired or restored, the Contractor shall replace it.

Whenever a manufacturer's guarantee on any product used in the performance of this contract exceeds one (1) year, such guarantee shall become a part of this contract. The Contractor shall complete the warranty form in the name of the HCDA and submit such form to the manufacturer within the time required to validate the warranty. The Contractor shall submit to the HCDA a photocopy of the completed warranty form as evidence that such warranty form was filed with the manufacturer.

SECTION SP 20 – COMPLIANCE WITH ACT 69, SLH 2010, RELATING TO THE EMPLOYMENT OF STATE OF HAWAII RESIDENTS

1. Definitions for terms used in Act 69, SLH 2010:

- a. "Contract" means contracts for construction under 103D, Hawaii Revised Statutes ("HRS").
 - b. "Contractor" has the same meaning as in section 103D-104, HRS, provided that "contractor" includes a Subcontractor where applicable.
 - c. "Construction" has the same meaning as in section 103D-104, HRS.
 - d. "Procurement Officer" has the same meaning as in section 103D-104, HRS.
 - e. "Resident" means a person who is physically present in the State of Hawaii at the time the person claims to have established the person's domicile in the State of Hawaii and shows the person's intent is to make Hawaii the person's primary residence.
 - f. "Shortage trade" means a construction trade in which there is a shortage of Hawaii residents qualified to work in the trade as determined by the Department of Labor and Industrial Relations ("DLIR").
2. Employment of State Residents Requirements – Act 68, SLH 2010:
- a. A Contractor awarded a contract shall ensure that Hawaii residents compose not less than eighty percent of the workforce employed to perform the contract work on the project. The eighty percent requirement shall be determined by dividing the total number of hours worked on the contract by Hawaii residents, by the total number of hours worked on the contract by all employees of the Contractor in the performance of the contract. The hours worked by any Subcontractor of the Contractor shall count towards the calculation for this section. The hours worked by employees within shortage trades, as determined by the DLIR, shall not be included in the calculation for this section.
 - b. Prior to starting any construction work, the Contractor shall submit the subcontract dollar amount for each of its Subcontractors.
 - c. The requirements of this section shall apply to any subcontract of \$50,000 or more in connection with the Contractor, that is, such Subcontractors must also ensure that Hawaii residents compose not less than eighty percent of the Subcontractor's workforce used to perform the subcontract.
 - d. The Contractor and any Subcontractor whose subcontract is \$50,000 or more shall comply with the requirements of Act 68 for the entire duration of the contract.
 - 1) Certification of compliance shall be made on a monthly basis. If no progress payments are made for any month, the Contractor, and any Subcontractor as applicable, shall still be required to

submit the certification on a monthly basis to the Contracting Officer.

- 2) The certification of compliance shall be made under oath by an officer of the company by completing a Certification of Compliance for Employment of State Residents form and executing the Certificate before a licensed notary public.
 - 3) In addition to the monthly certification as indicated above, the Contractor and Subcontractors shall maintain records such as certified payrolls for laborers and mechanics that performed work at the site and time sheets for all other employees who performed work on the project. These records shall include the names, addresses and number of hours worked on the project by all employees of the Contractor and Subcontractor who performed work on the project to validate compliance with Act 68. The Contractor and Subcontractor shall retain these records and provide access to the State for a minimum period of four (4) years after the final payment, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the four (4) year period, the Contractor and Subcontractors shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the four (4) year period, whichever occurs later. Furthermore, it shall be the Contractor's responsibility to enforce compliance with this provision by any Subcontractor.
- e. A Contractor who fails to comply with this section shall be subject to any of the following sanctions:
- 1) Temporary suspension of work on the project until the Contractor or its Subcontractor complies with Act 68;
 - 2) Withholding of payment on the contract until the Contractor or its Subcontractor complies with Act 68;
 - 3) Permanent termination of the Contractor or Subcontractor from any further work on the project;
 - 4) Recovery by the State, as applicable, of any moneys expended on the contract or subcontract as applicable; or
 - 5) Proceedings for debarment or suspension of the Contractor or Subcontractor under section 103D-702, HRS.
3. Conflict with Federal Law: This section shall not apply if the application of this section is in conflict with any federal law, or if the application of this section will disqualify the State from receiving Federal funds or aid.

SECTION SP 21 – PREFERENCES

1. Hawaii Products Preference: In accordance with HRS §103D-1002 and HAR §3-124 Subchapter 1, the Hawaii products preference may be applicable to this solicitation for products that are mined, excavated, produced, manufactured, raised, or grown in the State and where the cost of the Hawaii input towards the products exceeds fifty percent of the total cost of the product; where the value of the input exceed fifty percent of the total cost, the product shall be classified as either Class I (10%) or Class II (15%).

The Hawaii Products List is available on the SPO website at <http://spo.hawaii.gov>; click on “For Vendors” > “Hawaii Product Preferences.”

Offeror submitting a Hawaii Product (HP) shall identify the HP on the solicitation offer page(s). Any person desiring a Hawaii product preference shall have the product(s) certified and submitted if not currently on the Hawaii products list, prior to the SPO-038 due date specified in the procurement notice and solicitation, pursuant to HAR §3-124-4. The responsibility for certification and qualification shall rest upon the person requesting the preference.

Persons desiring to qualify their product(s) not currently on the Hawaii product list shall complete form SPO-038, Certification for Hawaii Product Preference, and submit to the Procurement Officer issuing the solicitation (IFB or RFP). All additional information required by the Procurement Officer shall be provided at no cost to the State. For each product, one form shall be completed and submitted (i.e. 3 products should have 3 separate forms completed). Form SPO-038 is available on the SPO webpage at <http://spo.hawaii.gov>; click on “Forms” then search for SPO-038. Submit a *Certification for Hawaii Product Preference* (form SPO-038) to: *(Fill in Name of the government agency, contact person, phone number, email and SPO-038 due date and time)*.

Late SPO-038 submittals for this solicitation will not be reviewed by this agency.

If the procurement officer approves the SPO-038, an addendum shall be issued showing the new qualified Hawaii product(s) pursuant to HAR §3-124-4(b)(2).

An Offeror who fails to designate that the offer is a Hawaii product shall be presumed to be providing a non-Hawaii product, and award, if made to that Offeror, shall be on the basis that a non-Hawaii product shall be delivered.

Failure to obtain certification and product qualification prior to deadline for receipt of offer(s), shall indicate that Offeror is providing a non-Hawaii product, and award, if made to that Offeror, shall be on the basis that a non-Hawaii product may be delivered. For evaluation purposes, no preference shall be considered when only Hawaii products are being offered by all offerors.

When a solicitation contains both HP and non-HP, then for the purpose of selecting the lowest bid or purchase price only, the price offered for a HP item shall be

decreased by subtracting 10% for the Class I or 15% for the Class II HP items offered, respectively. The contract amount of any contract awarded, however, shall be the amount of the price offered, exclusive of the preferences.

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

2. Recycled Products Preference: In accordance with HRS §103D-1005 and HAR §3-124 Subchapter 4, the recycled products preference may be applicable to this solicitation for products and materials that are certified to contain a minimum of twenty percent (20%) post-consumer recovered material or a minimum of forty percent (40%) recovered material. For the purpose of selecting the lowest bid or purchase price only, the price offered for a certified recycled product item shall be decreased by subtracting 10%.

Any person desiring a preference pursuant to Chapter 103D-1005, HRS, shall certify the recycled content of the product when submitting a bid. The Certification of Recycled Content form issued by the bid administrator shall be completed and submitted as part of the bid.

Bidders shall indicate on the certification form (SPO Form-008), included as part of the solicitation, the recycled content of the products offered. Recycled content shall be expressed as a percentage of total product weight.

Bidders shall submit with the certification form sufficient information to support the stated recycled content of the products offered. For purposes of this section, sufficient information shall include, but not be limited to, manufacturer's specifications, or manufacturer's certification. The procurement officer calling for bids may request additional information deemed necessary in order to qualify a product.

The procurement officer calling for bids shall have sole discretion in determining acceptance of a product. Any bidder whose product is not accepted for application of preference may appeal by filing a written request for re-examination of facts to the procurement officer calling for bids, within the permitted challenge period.

When bids received contain both recycled products and non-recycled products, for the purpose of determining the lowest evaluated bid, the original price for the recycled product item shall be decreased by the percentage specified in the solicitation.

Should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified below. The preferences (1) through (7) in this subsection shall be applied to the original prices. The sum of the preferences, where applicable, shall be added to the original price, except that preferences (1) and (4) shall be subtracted from the Hawaii products or recycled products price.

- (1) Hawaii products list, pursuant to Chapter 103D-1002, HRS;
- (2) Tax adjustment for tax exempt offerors, pursuant to Chapter 103D-1008, HRS;
- (3) Preferred use of Hawaii software development businesses, pursuant to Chapter 103D-1006, HRS.,
- (4) Recycled products, pursuant to Chapter 103D-1005, HRS;
- (5) Reciprocal preference, pursuant to Chapter 103D-1004, HRS;
- (6) Printing, binding, and stationery work within the State, pursuant to Chapter 103D-1003, HRS.,
- (7) Preference for persons with disabilities, pursuant to Chapter 103D-1009, HRS.

The responsible and responsive bidder submitting the lowest evaluated bid, taking into consideration all applicable preferences shall be awarded the contract. The contract amount shall be the original price bid, exclusive of any preference.

Should the price comparison, after taking into consideration all applicable preferences, result in identical evaluated prices, award shall be made to the responsible and responsive bidder as follows:

- (1) To the bidder bidding the product with the higher post-consumer recovered material content; or
- (2) To the bidder bidding the product with the higher recovered material content if the products have identical post-consumer recovered material content.

If the price comparison, after taking into consideration all applicable preferences, result in identical evaluated prices for products with identical recycled content, the procurement officer shall follow the requirements of Chapter 3-122-34, HAR, for low tie bids.