

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
HIGHWAYS  
HONOLULU, HAWAII

SPECIAL PROVISIONS, SPECIFICATIONS, PROPOSAL

AND CONTRACT

FOR

FURNISHING AND DELIVERING ASPHALTIC CONCRETE

ISLANDS OF OAHU, HAWAII, MAUI, AND KAUAI

PROJECT NO. HWY-C-07-26

2026

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

The receiving of bids for **FURNISHING AND DELIVERING ASPHALTIC CONCRETE, ISLANDS OF OAHU, HAWAII, MAUI, AND KAUAI , PROJECT NO. HWY-C-07-26** will begin as of the HIePRO Release Date. Bidders shall register and submit complete bids through HIePRO only. Refer to the following HIePRO link for important information on Vendor Registration: <https://hiepro.ehawaii.gov/welcome.html>.

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

HIePRO OFFER DUE DATE AND TIME is June 30, 2026, at 2:00 p.m., Hawaii Standard Time (HST). **Bidders shall submit and upload the complete proposal to HIePRO prior to the offer due date and time. Proposals received after said due date and time shall not be considered. Any additional support documents explicitly designated as confidential and/or proprietary shall be uploaded as a separate file to HIePRO. Bidders shall not include confidential and/or proprietary documents as part of their proposal. The record of each bidder and their respective proposal shall be open to public inspection. FAILURE TO UPLOAD THE PROPOSAL TO HIePRO SHALL BE GROUNDS FOR REJECTION.**

The scope of work consists of providing unit pricing for hot and cold mix asphalt concrete material, furnish and deliver the required asphaltic concrete patching material amounts on an as-needed basis as may be required for maintenance conducted by State Highways Division on the islands of Oahu, Hawaii, Maui, and Kauai all in accordance with these Specifications and the Standard Specifications.

All Request for Information (RFI) questions and Substitution Requests shall be submitted

in HlePRO **no later than June 15, 2026, at 2:00 p.m., HST**. RFI questions received after the stated deadline shall not be addressed. Substitution Requests received after the stated deadline shall not be considered. Verbal RFI(s) shall not receive a response. All responses to RFI questions shall be provided for clarification and information only and issued by formal addendum. Any amendments to the solicitation shall be made by formal addendum and posted in HlePRO.

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

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

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

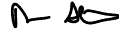
The Equal Employment Opportunity Regulations of the Secretary of Labor implementing Executive Order 11246, as amended, shall be complied with on this project.

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

23 CFR Part 200).

For additional information, contact Arron Pacheco, Contract Engineer, by phone at (808) 587-2189, or by email at [arron.ak.pacheco@hawaii.gov](mailto:arron.ak.pacheco@hawaii.gov).

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



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ROBIN K. SHISHIDO  
Deputy Director of Transportation for Highways

HIePRO RELEASE DATE: June 4, 2026

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STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
HIGHWAYS  
HONOLULU, HAWAII

SPECIAL PROVISIONS

## SPECIAL PROVISIONS

The Specifications contain herein are amended as follows:

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

1. 1.33 SUBCONTRACTOR is amended by deleting it and replacing it with the following:

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

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

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

Normal State holidays are as follows:

New Year's Day (The first day in January)

Dr. Martin Luther King, Jr. Day (The third Monday in January)

President's Day (The third Monday in February)

Prince Jonah Kuhio Kalanianaʻole Day (The twenty-sixth day in March)

Good Friday (The Friday preceding Easter Sunday)

Memorial Day (The last Monday in May)

King Kamehameha Day (The eleventh day in June)

Independence Day (The fourth day in July)

Statehood Day (The third Friday in August)

Labor Day (The first Monday in September)

General Election Day (The first Tuesday in November following the first Monday of even numbered years)

Veteran's Day (The eleventh day in November)

Thanksgiving Day (The fourth Thursday in November)

Christmas Day (The twenty-fifth day in December)

State Holiday schedules can be obtained online at:

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

3. Add the following new subsections:

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

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

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

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

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

The Contractor shall utilize the latest revision.

1.42 STANDARD PLANS – The Hawaii Standard Plans, 2008, Highways Division, Department of Transportation, including any amendments. Contractors may purchase this manual by contacting Ms. Emily Hsu of the Department of Transportation Staff Services Office at (808)587-4069. For more information, log on to:

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

1.43 MUTCD – After 10/01/2024 - The Manual on Uniform Traffic Control Devices, 2023, Federal Highway Administration, U.S. Department of Transportation, including any amendments or revisions. To review the MUTCD, log on to:

[https://mutcd.fhwa.dot.gov/kno\\_11th\\_Edition.htm](https://mutcd.fhwa.dot.gov/kno_11th_Edition.htm)

The Contractor shall utilize the latest revision.

1.44 HMSLM – The Hawaii Department of Transportation (HDOT) Highway Manual for Sustainable Landscape Maintenance, 2011, Highways, Hawaii Department of Transportation, including any amendments or revisions. To review the HMSLM, log on to:

<http://hidot.hawaii.gov/highways/landscape-architecture-program/>

1.45 OSHA – Occupational Safety and Health Administration/Act, U.S. Department of Labor, as amended, revised, or updated, applies to these Specifications. To review the OSHA, log on to:

<https://www.osha.gov/laws-regs>

The Contractor shall use the latest revision.”

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

1. 2.3 DELIVERY OF PROPOSALS is amended by replacing the entire subsection with:

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

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

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

2. 2.4 WITHDRAWAL OF PROPOSALS is amended by replacing the entire subsection with:

“2.4 WITHDRAWAL OF PROPOSALS – Bids may be modified or withdrawn prior to the bid opening date and time. Withdrawal or revision of proposal shall be completed, and submitted and uploaded to HiePRO prior to the bid opening date and time.”

3. 2.5 PUBLIC OPENING OF PROPOSALS is not applicable.
4. 2.8 OUT OF STATE BIDDERS shall be amended by adding the following to the end of the subsection:

“Successful out-of-state bidders shall, after ten (10) days from the Notice to Proceed, provide a name and phone number of the Contractor’s Technical Representative who will be responsible in assisting the recipient districts throughout the duration of the contract.

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

1. 3.1 AWARD OF CONTRACT shall be amended by adding the following to the end of the subsection:

“The awarding of the contract(s) will be made by individual groups listed in the proposal schedule and be given to the lowest responsible bidder(s) for each group whose proposal complies with all the requirements prescribed. The State reserves the right to reject any and all proposal and to waive any defects as may be deemed to be in the best interest of

the public. Any bid lacking a unit price, disqualifies the bidder and may result in rejection of bid.”

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

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

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

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

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

“By mutual agreement, the estimated quantity of goods as specified in this contract maybe decreased or increased by the Engineer as necessary, provided there is no change to the unit price except as allowed for by Section 10.10 Escalation Clause.”

3. Add the following new subsection:

"4.7 CONTRACT TO BE INDEFINITE QUANTITY – The requirement for FURNISHING AND DELIVERING ASPHALTIC CONCRETE materials to be furnished by the Contractor will be on an “as needed” basis as called for in the Specifications at the applicable unit bid price during the term of this contract and in such number as may be required the State. The quantities specified in the contract is an estimate and does not signify a minimum or maximum amount. The unit bid price indicated by the Contractor shall be applicable and binding under the terms of this contract.

Payment will be made by Purchase Order.”

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

1. Add the following new subsection:

“5.4 COOPERATION OF CONTRACTOR AND DIRECTOR – The Contractor shall furnish the State with a telephone number and email address where they can be reached at all times.

The Contractor or designated qualified personnel shall return phone calls from the Engineer within one (1) hour of receipt of the phone call. All emails from the Engineer shall be returned within one (1) working day of receipt of the email. Liquidated Damages shall be charged against the Contractor for failure to respond as specified above.”

2. Add the following new subsection:

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

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

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

1. DEFECTIVE MATERIALS shall be amended by adding the following paragraphs to the end of the subsection:

“At any time during the performance of this contract, but no later than six months after the acceptance of the services or materials incorporated in accordance with the requirements of this contract, the State may require the Contractor to remedy by correction or replacement, any services or materials which have failed to comply with the requirements of this contract.”

2. The first paragraph of A. 6.2 TRADE NAMES AND ALTERNATES shall be replaced with the following:

“A. QUALIFICATION BEFORE BID OPENING – When the specifications and/or plans specify one or more manufacturer's brand names of materials or equipment to indicate a quality, style, appearance, or performance, the bidder will be assumed to have based its bid on one of the specified named products, except where such proprietary product are specified, alternate brands may be qualified if found equal or better by the Department. The bidder shall submit a request to the Department for review and approval at the earliest date possible. As specified in the Notice to Bidders, all requests shall be posted as a question in HlePRO under the “Question and Answer” tab. Supporting documents for specific request shall be emailed to the Project Manager specified in the Notice to Bidders. Request must be posted in HlePRO and supporting documents received by the Project Manager no later than fourteen (14) calendar days before the bid opening date.”

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

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

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

1. Add the following new subsection:

“7.9 PUBLIC CONVENIENCE AND SAFETY – The Contractor shall always conduct their operations with due regard to the convenience and safety of the public. The protection of persons and property shall be provided by the Contractor.

All work under this contract shall be in compliance with Subsection 107.11, Safety: Accident Prevention and 107.12, Protection of Persons and Property of the Standard Specifications.

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

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

1. 8.2 LIQUIDATED DAMAGES shall be amended by adding the following to the end of the subsection:

“Liquidated Damages – Timely performance by the Contractor of all his duties every calendar day is an essential part of this contract and in case of failure on the part of the Contractor to perform any of his duties in a timely manner, damages will be sustained by the State. As the amount of damages are difficult to predetermine, the amount of such damages are fixed in advance as follows:

Add the following at the end of the first paragraph:

A. “1/4 of 1% of the contract price of each item for each order or materials in this contract for every calendar day for failure to deliver each item within the contract time within the prescribed delivery period. The assessed amount, however, will be no less than TWENTY DOLLARS (\$20.00) for each item for each and every calendar day.”

The following shall be amended by replacing the second paragraph:

"If the Contractor finds it impossible for reasons beyond his control to deliver material within the specified delivery time for each order, such as supply chain issues, they shall by the following day verbally notify the Director of the forthcoming delay. The Contractor shall then follow-up with a written request for an extension of time setting forth therein the reason which he believes will justify the granting of his request. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the Director finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, the Director may extend the time for completion in such extension as the conditions justify. The extended time for completion shall then be in full force and effect the same as though it were the original time for completion."

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

1. 9.2 PROGRESS PAYMENTS shall be amended by adding the following to the end of the subsection:

“The Contractor shall bill the State once a month when a work order is in progress. All monthly payments are approximate only and shall be subject for correction at any time prior to or in the final estimate and payment.

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

<b>District Engineer – Oahu District</b> Highways Division-State DOT 727 Koko Street, Honolulu, Hawaii 96819	<b>District Engineer – Hawaii</b> DOT Highways Division-State DOT 50 Makaala Street Hilo, Hawaii 96720
<b>District Engineer – Maui</b> Highways Division, State DOT 650 Palapala Drive Kahului, Hawaii 96732	<b>District Engineer – Kauai District</b> DOT Highways Division-State DOT 1720 Haleukana Street Lihue, Hawaii 96766

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

- a. Contractor's name, address, and phone number.
- b. Project title, project number, contract number and work order number.
- c. Bid item number, quantity, unit price, amount, subtotal, and total.
- d. Deductions, as applicable, shall be included in the invoices as separate subtotal(s).
- e. Liquidated Damages as specified in Section 8.2 of the Special Provisions.
- f. Certification by the Contractor that services as requested under the Contract have been performed as specified in Section 9.4 Progress Payments, of these

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

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION

SPECIFICATIONS

## SECTION 1 - DEFINITION AND TERMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.11 DEPARTMENT - The State Department of Transportation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.32 STATE - The State of Hawaii.

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

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

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

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

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

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

## SECTION 2 - PROPOSAL REQUIREMENTS AND CONDITIONS

2.1 PROPOSAL FORMS - All proposals shall be made on forms furnished by the Department. All proposals shall give the prices proposed in the spaces provided and shall be signed by the bidder, who shall fill out all blanks in the proposal form as therein required.

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

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

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

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

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

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

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

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

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

C. Evidence of assistance from a person who has been an employee of the agency within the preceding two years and who participated while in State office or employment in the matter with which the contract is directly concerned, pursuant to Section 84-15, HRS.

D. Lack of proposal guaranty.

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

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

2.8 OUT-OF-STATE BIDDERS - Pursuant to Section 103D-1008, Hawaii Revised Statutes, on out-of-state purchases where the bidder or vendor is an out-of-state vendor, not doing business in the State, the bid price of such out-of-state vendor, for the purpose of determining the lowest price bid, shall be increased by the applicable retail rate of general excise tax and the applicable use tax. The lowest responsible bidder, taking into consideration the above increases, shall be awarded the contract, but the contract amount of any contract awarded shall be the amount of the bid offered and shall not include the amount of said increases.

Such increases will not be applied in case an out-of-state vendor specifies in its bid that its bid price includes said general excise tax; the bidder will be required to pay said general excise tax and use tax in case the bidder is awarded the contract.

2.9 TAX REQUIREMENTS - Work to be done under this contract is a taxable transaction and the bidder receiving the award for this work will be required to pay the State of Hawaii General Excise Tax (GET) and the State of Hawaii use Tax.

Additional information regarding the tax rates may be obtained from the Department of Taxation (DOTAX) website at <http://tax.hawaii.gov/geninfo/countysurcharge/>

If awardee is an out-of-state bidder not holding a Hawaii GET License, the awardee will have to obtain a Hawaii GET License and pay all taxes due to obtain a tax clearance required before final contract payment is made by the State.

To obtain the tax clearance applications, see subsection 3.1.A. Tax Clearance of these Specifications.

Vendors may apply for either a regular or a one-time GET License. Information on applying for a GET License may be found at <http://tax.hawaii.gov/geninfo/get/>

SECTION 3 - AWARD AND EXECUTION OF CONTRACT

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

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

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

**A. Tax Clearance.**

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

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

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

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

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

**B. Certificate of Compliance.**

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

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

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

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

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

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

**C. Certificate of Good Standing.**

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

- (1) incorporated or organized under the laws of the State; or
- (2) registered to do business in the State as a separate branch or

division that is capable of fully performing under the contract.

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

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

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

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

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

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

3.3 EXECUTION OF CONTRACT - The contract shall be executed by the successful bidder and returned, together with the contract bonds, when required, within ten (10) days after the award of the contract or within such further time as the Director may allow after the bidder has received the contract for execution.

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

3.4 FAILURE TO EXECUTE CONTRACT - Failure to execute the contract and file acceptable bonds, when required, within

ten (10) days after the award of the contract, or within such further time as the Director may allow, shall be cause for the cancellation of the award and the forfeiture of the proposal guaranty. Award of the contract may then be made to the next lowest responsible bidder.

## SECTION 4 - SCOPE OF WORK

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

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

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

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

### 4.4 CHANGES AND CLAIMS FOR ADJUSTMENT

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

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

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

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

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

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

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

#### 4.5 PRICE ADJUSTMENT

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

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

#### 4.6 VARIATION IN QUANTITY

Upon agreement of the parties, the quantity of goods or services or both specified in this contract may be increased by a maximum of ten (10) percent provided (1) the unit prices will remain the same except for any price adjustments otherwise applicable and (2) the procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

SECTION 5 - CONTROL OF WORK

5.1 AUTHORITY OF DIRECTOR - The Director shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed, the manner of performance and rate of progress of the work, and compensation for work performed, interpretation of the contract and fulfillment of the contract on the part of the Contractor. The Director shall have authority to enforce and make effective such decisions and orders which the Contractor fails to carry out properly and diligently. The decision of the Director shall be final.

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

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

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

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

- A. The notice in writing be given:
  - 1. Before the commencement of the work involved, if at that time the Contractor knows of such requirements or the occurrence of such actions or omissions; or
  - 2. Within thirty (30) calendar days after the

Contractor knows of such requirements or the occurrence of such action or omission if the Contractor did not have such knowledge before the commencement of the work; or

3. Within thirty (30) calendar days after receipt of the written contract change order that was not agreed upon by both parties; or

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

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

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

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

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

## SECTION 6 - CONTROL OF MATERIAL AND EQUIPMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Contractor and owner recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the owner. Therefore, contractor hereby assigns to owner any and all claims for such overcharges as to goods and materials purchased in connection with this order or contract, except as to overcharges which result from antitrust violations commencing after the price is established under this order or contract and any change order. In addition, contractor warrants and represents that each of its first tier suppliers and subcontractors shall assign any and all such claims to owner, subject to the aforementioned exception.

SECTION 7 - LEGAL RELATIONS AND RESPONSIBILITY

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

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

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

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

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

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

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

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

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

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

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

TYPES OF INSURANCE:

A. Workers' Compensation:

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

B. Comprehensive Automobile Liability:

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

C. Commercial General Liability:

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

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

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

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

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

## SECTION 8 - PROSECUTION AND PROGRESS

8.1 PROGRESS OF WORK - The Contractor shall diligently prosecute the work to completion within the time limit specified in the proposal. The Contractor shall give its personal attention to the fulfillment of the contract and shall keep the work under its control. Work shall commence on the date indicated in the "Notice to Proceed" letter from the State.

8.2 LIQUIDATED DAMAGES - Time is of the essence in this contract and in case the Contractor fails to complete the work within the time specified in the proposal, damages will be sustained by the State. Since the amount of damages is difficult and not possible of definite ascertainment and proof, the amount of such damages are fixed in advance at the sum shown in the proposal for each and every calendar (or working) day which the Contractor has delayed in the completion of this contract; and the Contractor shall pay such amount as liquidated damages, and not by way of penalty, and in case the same are not paid, the State may deduct such amount thereof from any monies due or that may become due the Contractor under this contract.

If the Contractor finds it impossible for reasons beyond its control to complete the work within the contract time as specified, the Contractor shall, within 10 days from the first day of notification from the manufacturer or supplier of any delay and prior to the expiration of the contract time, make a written request to the Director for an extension of time setting forth therein the reasons which the Contractor believes will justify the granting of its request. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the Director finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, the Director may extend the time for completion in such extension as the conditions justify. The extended time for completion shall then be in full force and effect the same as though it were the original time for completion.

### 8.3 TEMPORARY SUSPENSION OF WORK

A. Order to stop work. The Director, may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this section. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to

the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Director shall either:

1. Cancel the stop work order; or
2. Terminate the work covered by such order as provided in the "termination for default clause" or the "termination for convenience clause" of this contract.

B. Cancellation or expiration of the order. If a stop work order issued under this section is canceled or if the period of the order or any extension thereof expires, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly; if:

1. The stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and
2. The contractor asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Director decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

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

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

#### 8.4 DEFAULT AND TERMINATION OF CONTRACT

A. Termination by Default. If the contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Director may notify the contractor in writing of the delay or non-performance and if not cured in ten (10) days or any

longer time specified in writing by the Director, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the Director may procure similar goods or services in the manner and upon terms deemed appropriate by the Director. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

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

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

3. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms, including any failure by the contractor to make progress in the prosecution of the work hereunder which endangers such performance, if the contractor has notified the Director within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the contractor shall not be

deemed to be in default, unless the goods or services to be furnished by the subcontractor were unreasonably obtained from other sources in sufficient time to permit the contractor to meet the contract requirements. Upon request of the contractor, the Director shall ascertain the facts and extent of such failure, and if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled "Termination for Convenience". As used in this paragraph of this clause, the term "subcontractor" means subcontractor at any tier.

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

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

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

1. Contractor's obligation. The contractor shall incur no further obligations in connection with the terminated work and on the dates set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Director

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

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

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

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

3. Compensation:

a. The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, bearing on such claim. If the contractor fails to file a termination claim within one (1) year from the effective date of termination, the Director may pay the contractor, if at all, an amount set in accordance with subparagraph c. below.

b. The Director and the contractor may agree to settlement provided the contractor has filed a termination claim supported by cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the

proceeds of any sales of goods and manufacturing materials under paragraph (2) of this clause, and the contract price of the work not terminated.

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

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

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

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

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

payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph b. of this paragraph, and the contract price of work not terminated.

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

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

## SECTION 9 - PAYMENT

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

Contract payments to the Contractor by the State shall be full payment, for furnishing all labor, and for furnishing and delivering all equipment, materials, supplies and other incidentals to the location(s) designated in these specifications.

9.2 PROGRESS PAYMENTS - If more than one shipment is required under these specifications, progress payments may be made to the Contractor after each shipment, provided the equipment materials, supplies, etc., furnished and delivered have satisfactorily met the requirements of these specifications. Five per cent (5%) of the amount of each progress payment shall be retained by the Department until the final acceptance of the work.

To expedite processing of all payments, for item(s) furnished and delivered to the Department, the Contractor shall forward an original and one copy of invoice with each shipment made to the recipient office.

Each invoice shall contain the following:

- A. Vendor's name, address and phone number.
- B. Contract or Purchase Order No.
- C. Description of item, the quantity, unit or lump sum price, sub-total and total.

9.3 FINAL ACCEPTANCE AND FINAL PAYMENT - Final acceptance means the acceptance in writing by the Director of the satisfactory completion of the work as provided under Section 8.5 followed by final payment in accordance with the Director's final estimate. The Department shall make final acceptance and payment promptly after the contract has been satisfactorily completed and final inspection made.

No payment will be made for any work which was not authorized by the Director in writing.

Final payment shall be made only after the issuance of the notice of final acceptance and after the Contractor has filed with the Director the following:

- A. Consent of the Contractor's surety, when applicable, of the final payment;

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

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

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

## SECTION 10 – GENERAL REQUIREMENTS

### 10.1 DESCRIPTION OF WORK

The Contractor shall provide unit pricing for hot and cold mix asphalt concrete material, furnish and deliver the required asphaltic concrete patching material, and furnish and deliver fiberglass reinforced road patch material amounts on an as-needed basis as may be required for maintenance conducted by State Highways Division on the islands of Oahu, Hawaii, Maui, and Kauai all in accordance with these Specifications and the Standard Specifications.

### 10.2 ASPHALT CONCRETE MIX MATERIALS:

- A. Hot Mix Asphalt, No. IV and No. V, shall conform to the requirements of Section 401, Hot Mix Asphalt Pavement, for Road and Bridge Construction. Prior to producing the Hot Mix, the Contractor shall submit in writing a job-mix formula to the Engineer for approval.
- B. Cold Mix Asphalt. No. IV and No. V, shall meet the following requirements:
  - 1. Composition of Cold Mix Asphalt. The cold mix asphalt shall be composed of a mixture of aggregate and bituminous material. The bituminous percentage range based on dry weight of aggregate shall be 5 to 9 percent.

Prior to producing cold mix asphalt, the Contractor shall submit, in writing a job-mix formula to the Engineer for his approval. The job-mix formula submitted shall propose definite single values for:

- a. The percentage of aggregate passing each specified sieve, based on the dry weight of aggregate.
- b. The percentage of bituminous material to be added shall be based on the dry weight of aggregate. Should a change in source of material be proposed or should a job-mix formula prove unsatisfactory, a new job-mix formula shall be established.

The Engineer may request samples of the individual material for laboratory testing.

The job-mix formula will be approved by the Engineer prior to production.

- 2. Bituminous Materials. Bituminous materials shall be a cutback asphalt MC 250 in accordance with Section 702 of the Hawaii Standard Specification for Road and Bridge Construction, or as approved by the Engineer.

3. Aggregate. Aggregate shall meet the quantity requirements of Section 703.09, Aggregate for Hot Mix Asphalt Pavement of the 2005 Hawaii Standard Specifications for Road and Bridge Construction, as amended.
4. Control of Bituminous Mixture. After the job-mix formula is established, all mixtures furnished to the Department shall fall within the following ranges of tolerances in Table 413-II:

TABLE 413-II  
RANGE OF TOLERANCES FOR JOB-MIX FORMULA

Passing No. 4 and larger sieves	+7	percent
Passing No. 8 sieve	+4	percent
Passing No. 200 sieve	+2	percent
Bitumen	+0.4	percent

5. Preparation of Mixture. The mixture may be prepared without heating approved aggregates, and the asphalt shall be heated to a temperature of between 170 and 270 degrees F (77 and 132 degree C). The mixed temperature shall not exceed 230 degrees F (110 degree C). The mixture shall be mixed until all of the aggregates are uniformly coated.
  6. Plant and Equipment. Storage facilities and all equipment used in the preparation of the mixture shall conform to Subsection 401.03(B), Equipment, as applicable, of the 2005 Hawaii Standard Specifications for Road and Bridge Construction, as amended, and shall be approved by the Department. The materials for individual batches shall be measured accurately either by volume or weight using approved methods and equipment.
- C. Emulsified Asphalts shall conform to the requirements of Section 702.04, Emulsified Asphalt, of the 2005 Hawaii Standard Specifications for Road and Bridge Construction, as amended.
- D. Bidders for Group 1 (see Proposal Schedule) shall have a plant located in the urban Honolulu area covered by zip codes 96813 through 96819, 96822, and 96826. Bidders for Group 2 (see Proposal Schedule) shall have a plant located in the rural Honolulu areas outside the areas covered by Group 1.

- E. Bidders for Group 3 (see Proposal Schedule) shall have a plant located in the Kailua-Kona area.
- F. Bidders for Group 4 (see Proposal Schedule) shall have a plant located in the Hilo area.

### 10.3 MINIMUM QUANTITY OF STORED MATERIALS

- A. Due to limited spaces in storage facilities in State baseyards, the Contractor shall coordinate with each District regarding their requirements for on-hand store/stock of each bid item in the Proposal Schedule. The stored items shall be readily available for furnishing and delivering to the Engineer upon request and upon the issuance of a Purchase Order. *Storing shall be incidental to the cost of furnishing and delivering the specified materials.*
- B. The Engineer reserves the right to request the Contractor to furnish and deliver all estimated maximum yearly quantity of each bid item in the Proposal Schedule upon the issuance of the Notice to Proceed or anytime during the term of the contract. The Contractor shall have ninety (90) calendar days to deliver as specified in Section 10.6(D) 1.c of the Specifications.
- C. To prolong the life of the specified materials, the Contractor shall protect the materials from the degradation effects of the weather and other elements or as prescribed by the manufacturer.

### 10.4 DELIVERY

- A. DELIVERY shall mean **transporting** of the specified materials to the respective addresses below and **unloading** and **stacking**, as applicable, to a location as directed by the recipient Engineer. *The Contractor shall transport, unload and stack the specified material utilizing his or her own equipment and personnel or his or her subcontractor's equipment and personnel. Cost of "delivery" as defined above shall be incidental to the cost of furnishing and delivering the specified materials.*
- B. Coordination and Location of Delivery

All deliveries under this contract shall be coordinated with the Engineer or a duly authorized representative. Location of delivery and contact information is as follows:

<b>District</b>	<b>DE Contact Information</b>	<b>DE Point of Contact</b>
<b>Oahu District</b>	Mr. Ryan Nakata District Engineer (DE) - Oahu District Phone: (808) 831-6700 x 134 Email: ryan.a.nakata@hawaii.gov	Mr. Bruce Kawakami Maintenance Engineer - Oahu District (Authorized Representative of the DE) Phone: (808) 831-6700 x 138 Email: bruce.kawakami@hawaii.gov
<b>Hawaii District</b>	Ms. Annette Matsuda District Engineer (DE) - Hawaii District Phone: (808) 933-8866 Email: annette.dh.matsuda@hawaii.gov	Mr. Kason Pacheco Maintenance Engineer - Hawaii District (Authorized Representative of the DE) Phone: (808) 933-8866 Email: kason.h.pacheco@hawaii.gov
<b>Maui District</b>	Mr. Ty Fukuroku District Engineer (DE) - Maui District Phone: (808) 873-3538 Email: ty.h.fukuroku@hawaii.gov	Mr. Derek Takahashi Maintenance Engineer - Maui District (Authorized Representative of the DE) Phone: (808) 873-3540 Email: derek.t.takahashi@hawaii.gov
<b>Kauai District</b>	Mr. Eric Fujikawa District Engineer (DE) - Kauai District Phone: (808) 241-3000 Email: eric.i.fujikawa@hawaii.gov	Mr. Lyle Tabata Maintenance Engineer - Kauai District (Authorized Representative of the DE) Phone: (808) 241-3032 Email: lyle.tabata@hawaii.gov

### C. Packaging and Marking

1. Materials ordered shall be marked for shipment in accordance to the respective district's address in the Specifications.
2. All deliveries shall be labeled to allow quick identification of the contents.
  - a. Labeling shall contain the following information:
    - i. Contractor's and manufacturer's name and address,
    - ii. Description,
    - iii. Contract number,
    - iv. Project number and
    - v. Quantity.
  - b. This information may be included in the Sale Order or similar documents. One copy of the Sale Order or similar document shall be secured on the pallet(s) and one copy to be provided to the recipient district's contact person or their representative.
  - c. The batch/lot number and date of manufacture shall be on each bucket and bag.
3. The bid price shall include the cost of the containers which shall become the property of the Department.

#### D. Delivery Period and Capability

##### 1. Sustained Delivery Capability.

- a. Upon the request of materials and upon the issuance of Purchase Order from the Engineer, the Contractor shall have a **maximum** of ten (10) calendar days to furnish and deliver any material that is in storage at the Contractor's local storage facility.
- b. The Contractor shall maintain this sustained delivery capability through continued replenishment of inventory throughout the term of the contract including to respond to on call maintenance needs.
- c. When the Engineer's order of materials exceeds the quantity of materials that is available in the Contractor's inventory in their local storage facility, the Contractor shall have a maximum of ninety (90) calendar days to deliver the remaining quantity.
- d. Refer to Section 8.2 Liquidated Damages, of the Special Provisions for the amount that shall be assessed from the Contractor for failure to deliver in accordance to this Section.

#### E. Notification of Delivery

The Contractor shall have the shipper notify the respective recipient district by calling or emailing the point of contact as listed in the Specifications at least five (5) working days in advance as to the day and time of delivery. The day and time of delivery shall be subject to approval of the recipient Engineer.

#### F. Inspection of Material

The Contractor and the Engineer shall make a visual and physical check of the materials delivered for damage, shortages, etc. Payment will NOT be processed until the Contractor and the Engineer have both concluded that the materials delivered meet the contract requirements.

### 10.5 BIDDER/CONTRACTOR SUBMITTAL

The contractors shall provide documentation of certificates and other requirements listed in the subsection below before the time of delivery.

- A. **PRODUCT DATA:** Submit manufacturer's literature, catalog or brochure describing the product.
- B. **MATERIAL CERTIFICATE OF COMPLIANCE:**

1. The Contractor shall certify that the materials delivered conform to the requirements of the Standard Specifications, the Standard Plans, and these Specifications.

a. The notarized certificate shall include, as a minimum, the following data:

- i. Name of manufacturer
- ii. Material being certified
- iii. Signature
- iv. Applicable specifications
- v. Date
- vi. Statement of compliance by a responsible official (employee) of the Manufacturer or by his representative. The Manufacturer's statement of compliance shall be notarized.
- vii. Project identification

C. SAFETY DATA SHEET (SDS): A copy of the SDS furnishing all the necessary data for the safe handling of each specified item(s), as applicable.

D. INSTALLATION/APPLICATION AND MAINTENANCE: Upon request by the Engineer, the Contractor, through the manufacturer, shall provide installation/application and maintenance training to each recipient District's personnel. Cost of training (i.e. materials and equipment used during the training, etc.) shall be incidental to furnishing and delivering all materials.

E. MANUFACTURER'S WARRANTY STATEMENT: The applicable warranty shall be submitted upon the request of the Engineer to the office as specified in Section 10.7 Bidder/Contractor Submittal of this Section.

F. SCHEDULE OF SUBMITTING REQUIRED DOCUMENTS:

1. Prior to award: The Product Data, notarized Material Certificate of Compliance, SDS, and a copy of the Manufacturer's Warranty Statement as specified in Sections 10.5.A, B, C, D, and E of this section shall be received by the Project Manager no later than seven (7) working days from the date of request (date of receipt of the written request) from the State.

Failure by the bidder to submit: The bidder may be considered non-compliant with the requirements of the Specifications if the bidder fails to submit the specified documents no later than seven (7) working days from the date of request (date of receipt of the written request) from the State. This failure may result in bid rejection.

2. When there are changes to the composition or manufacturing process of any material as specified in this contract: Throughout the life of the contract including any contract extension(s), report any changes, in writing, in the composition or manufacturing process of any material as specified in this contract to Construction and Maintenance

Branch at the address as specified in this section. Any changes require a resubmission of Material Certificate of Compliance.

3. Upon each order of materials by the Engineer, the Contractor shall require the manufacturer to furnish a material Certificate of Compliance. The Contractor shall furnish the certificate to the Construction and Maintenance Branch as indicated in Section 10.5 Bidder/Contractor Submittal, of the Specifications, upon delivery of the required material. The Contractor shall certify the manufacturer's statement of compliance as specified in Section 10.5.B.1.a.vi of the Specifications.
  - a. The materials in the Certificate of Compliance may be reviewed by the Materials Testing Branch for acceptance. The review process shall be completed within five (5) to ten (10) working days from the time of receipt of the document(s). The Construction and Maintenance Branch will notify the Contractor and the recipient District of the result.

#### 10.6 MINIMUM SINGLE ORDER:

The Engineer shall place a minimum initial order of materials per year, at a minimum dollar amount of thirty (30%) percent of the respective District's total estimated maximum yearly contract cost in the Proposal Schedule.

#### 10.7 MEASUREMENT AND PAYMENT:

- A. ASPHALT CONCRETE MIX MATERIALS: Hot mix asphalt and cold mix asphalt will be paid for at the contract unit price per ton furnished at the plant. Emulsified asphalt will be paid for at the contract unit price per gallon furnished at the plant. No payment will be made for rejected loads or defective materials.

Payment for purchases made will be made by Purchase Order. Refer to Section 9.2 Progress Payments, of the Special Provisions for additional information on Purchase Orders and processing of invoices.

#### 10.8 TERM OF CONTRACT

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

#### 10.9 OPTION TO EXTEND

Subject to the satisfactory performance of the Contractor and the availability of State appropriations, this contract may be extended for FOUR (4) ADDITIONAL twelve (12) month periods, at the option of the State provided:

- A. The option to extend is exercised by the State, prior to the expiration of the term of the existing contract.

B. The contract may be extended for FOUR (4) additional twelve (12) month periods without the necessity for rebidding, upon mutual agreement in writing to extend by the State and Contractor.

C. The total term of the contract, including any and all extensions, shall not exceed SIXTY (60) MONTHS.

#### 10.10 ESCALATION CLAUSE

If the State and Contractor mutually agree to extend the contract, in accordance with Section 10.9 Option to Extend Term, the Contractor shall be given a price escalation, effective at the start of each extension term of TWO (2) percent over the previous term's applicable unit price(s). The agreement to extend shall be a formal written approval by the State and Contractor.

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION

PROPOSAL

PROPOSAL TO THE STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
HIGHWAYS DIVISION

PROJECT: FURNISHING AND DELIVERING ASPHALTIC  
CONCRETE, ISLANDS OF OAHU, HAWAII, MAUI  
AND KAUAI

PROJECT NO: HWY-C-07-26

CONTRACT TIME: Twelve (12) months from the date indicated in the Notice to  
Proceed from the Department with options to extend as  
provided for in Specifications Section 10.9, Option to Extend  
Term.

LIQUIDATED DAMAGES: Refer to Section 8.6, Liquidated Damages, of the Special  
Provisions and Section 10.7 Measurement and Payment, of the  
Specifications for applicable deductions.

PROJECT MANAGER CONTACT INFORMATION: Maaza C. Mekuria  
869 Punchbowl Street, Room 404, Honolulu, HI 96813  
(808) 587-2332  
maaza.c.mekuria@hawaii.gov

ELECTRONIC SUBMITTAL: **Bidders shall submit and upload the complete proposal to  
HiePRO prior to the bid opening date and time. Any  
additional support documents explicitly designated as  
confidential and/or proprietary shall be uploaded as a  
separate file to HiePRO. See SPECIAL PROVISIONS 2.3  
DELIVERY OF PROPSALS for the complete details.  
FAILURE TO UPLOAD THE COMPLETE PROPOSAL  
TO HiePRO SHALL BE GROUNDS FOR REJECTION  
OF THE BID.**

NOTE: BID, PERFORMANCE AND PAYMENT BONDS ARE  
**NOT** REQUIRED FOR THIS PROJECT.

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

Dear Sir:

The undersigned bidder declares the following:

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

The undersigned bidder further agrees to the following:

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

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

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

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

Addendum No. 1 \_\_\_\_\_ Addendum No. 3 \_\_\_\_\_

Addendum No. 2 \_\_\_\_\_ Addendum No. 4 \_\_\_\_\_

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

\_\_\_\_\_  
Bidder (Company Name)

By \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Business Telephone

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contact Person (If different from above)

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

NOTE:

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

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

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

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

PROPOSAL SCHEDULE  
 FOR  
 FURNISHING AND DELIVERING ASPHALTIC CONCRETE  
 ISLANDS OF OAHU, HAWAII, MAUI AND KAUAI  
 PROJECT NO. HWY-C-07-26

<b>GROUP 1 — OAHU DISTRICT (URBAN)</b>					
BID ITEM NO.	DESCRIPTION	ESTIMATED <b>MAXIMUM</b> <b>YEARLY</b> QUANTITY (A)	UNIT (B)	UNIT PRICE (C)	AMOUNT (A x C)
1	Asphalt Cold Mix No. V	500	TONS	\$/_____/TON	\$_____
2	Asphalt Hot Mix No. V	2500	TONS	\$/_____/TON	\$_____
3	Emulsified SS-1h	4000	GALLONS	\$/_____/GALLON	\$_____
<b>GROUP 1 - TOTAL</b>					\$_____
<b>PRODUCT NAME</b> _____					

PROPOSAL SCHEDULE  
 FOR  
 FURNISHING AND DELIVERING ASPHALTIC CONCRETE  
 ISLANDS OF OAHU, HAWAII, MAUI AND KAUAI  
 PROJECT NO. HWY-C-07-26

<b>GROUP 2 — OAHU DISTRICT (RURAL)</b>					
BID ITEM NO.	DESCRIPTION	ESTIMATED <b>MAXIMUM</b> <b>YEARLY</b> QUANTITY (A)	UNIT (B)	UNIT PRICE (C)	AMOUNT (A x C)
1	Asphalt Cold Mix No. V	400	TONS	\$ _____/TON	\$ _____
2	Asphalt Hot Mix No. V	2500	TONS	\$ _____/TON	\$ _____
3	Emulsified SS-1h	2000	GALLONS	\$ _____/GALLON	\$ _____
<b>GROUP 2 - TOTAL</b>					\$ _____
<b>PRODUCT NAME</b> _____					

PROPOSAL SCHEDULE  
FOR  
FURNISHING AND DELIVERING ASPHALTIC CONCRETE  
ISLANDS OF OAHU, HAWAII, MAUI AND KAUAI  
PROJECT NO. HWY-C-07-26

<b>GROUP 3 — HAWAII DISTRICT (KAILUA-KONA)</b>					
BID ITEM NO.	DESCRIPTION	ESTIMATED <b>MAXIMUM</b> <b>YEARLY</b> QUANTITY (A)	UNIT (B)	UNIT PRICE (C)	AMOUNT (A x C)
1	Asphalt Cold Mix No. V	2000	TONS	\$/_____/TON	\$_____
2	Asphalt Hot Mix No. IV	1000	TONS	\$/_____/TON	\$_____
3	Asphalt Hot Mix No. V	1000	TONS	\$/_____/TON	\$_____
4	Emulsified SS-1h	400	GALLONS	\$/_____/GALLON	\$_____
<b>GROUP 3 - TOTAL</b>					\$_____
<b>PRODUCT NAME</b> _____					

PROPOSAL SCHEDULE  
FOR  
FURNISHING AND DELIVERING ASPHALTIC CONCRETE  
ISLANDS OF OAHU, HAWAII, MAUI AND KAUAI  
PROJECT NO. HWY-C-07-26

<b>GROUP 4 — HAWAII DISTRICT (HILO)</b>					
BID ITEM NO.	DESCRIPTION	ESTIMATED <b>MAXIMUM</b> <b>YEARLY</b> QUANTITY (A)	UNIT (B)	UNIT PRICE (C)	AMOUNT (A x C)
1	Asphalt Cold Mix No. V	2000	TONS	\$/_____/TON	\$_____
2	Asphalt Hot Mix No. IV	1000	TONS	\$/_____/TON	\$_____
3	Asphalt Hot Mix No. V	1000	TONS	\$/_____/TON	\$_____
4	Emulsified SS-1h	400	GALLONS	\$/_____/GALLON	\$_____
<b>GROUP 4 - TOTAL</b>					\$_____
<b>PRODUCT NAME</b> _____					

PROPOSAL SCHEDULE  
 FOR  
 FURNISHING AND DELIVERING ASPHALTIC CONCRETE  
 ISLANDS OF OAHU, HAWAII, MAUI AND KAUAI  
 PROJECT NO. HWY-C-07-26

<b>GROUP 5 — MAUI DISTRICT</b>					
BID ITEM NO.	DESCRIPTION	ESTIMATED <b>MAXIMUM</b> <b>YEARLY</b> QUANTITY (A)	UNIT (B)	UNIT PRICE (C)	AMOUNT (A x C)
1	Asphalt Cold Mix No. V	500	TONS	\$/TON	\$
2	Asphalt Hot Mix No. V	100	TONS	\$/TON	\$
3	Emulsified SS-1h	200	GALLONS	\$/GALLON	\$
<b>GROUP 5 - TOTAL</b>					\$
<b>PRODUCT NAME</b> _____					

PROPOSAL SCHEDULE  
 FOR  
 FURNISHING AND DELIVERING ASPHALTIC CONCRETE  
 ISLANDS OF OAHU, HAWAII, MAUI AND KAUAI  
 PROJECT NO. HWY-C-07-26

<b>GROUP 6 — KAUAI DISTRICT</b>					
BID ITEM NO.	DESCRIPTION	ESTIMATED <b>MAXIMUM</b> <b>YEARLY</b> QUANTITY (A)	UNIT (B)	UNIT PRICE (C)	AMOUNT (A x C)
1	Asphalt Cold Mix No. V	300	TONS	\$/TON	\$
2	Asphalt Hot Mix No. V	500	TONS	\$/TON	\$
3	Emulsified SS-1h	2000	GALLONS	\$/GALLON	\$
<b>GROUP 6 - TOTAL</b>					\$
<b>PRODUCT NAME</b> _____					

PROPOSAL SCHEDULE  
FOR  
FURNISHING AND DELIVERING ASPHALTIC CONCRETE  
ISLANDS OF OAHU, HAWAII, MAUI AND KAUAI  
PROJECT NO. HWY-C-07-26

**ASPHALT CONCRETE MIX PROPOSAL SCHEDULE (CONT.)**

<b>BID SUMMARY</b>	
TOTAL GROUP 1	\$ _____
TOTAL GROUP 2	\$ _____
TOTAL GROUP 3	\$ _____
TOTAL GROUP 4	\$ _____
TOTAL GROUP 5	\$ _____
TOTAL GROUP 6	\$ _____

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**ASPHALT CONCRETE MIX PROPOSAL SCHEDULE (CONT.)**

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“The attention of out-of-state bidders is directed to Section 2.8 of the Specifications. An out-of-state bidder is required to answer the following statement:

State of Hawaii General Excise and Use Taxes are included in all bid prices.

Write “Yes” or “No”

If the above statement is left unanswered, it will be considered a “No” answer by the State.”

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GENERAL NOTES:

1. Bids shall include all Federal, State, County and other applicable taxes and fees.
2. The TOTAL AMOUNT FOR COMPARISON OF BIDS shall be used to determine the lowest responsible bidder per group.
3. Bidders shall complete all unit prices and amounts. Failure to do so shall be grounds for rejection of bid.
4. If a discrepancy occurs between unit bid price and the bid price, the unit bid price shall govern.
5. Do not add or remove anything on the proposal schedule. Altered proposal schedules will be rejected. Only provide bid prices and totals where space is provided.
6. Bidder may bid on any or all groups. To be considered, bidder must submit a bid for all items within a group. Separate contracts will be awarded for each area. If a bidder is determined the lowest bidder for multiple areas, one combined contract will be awarded.
7. Bidders for Group 1 shall have a plant located in the urban Honolulu area covered by zip codes 96813 through 96819, 96822, and 96826. Bidders for Group 2 shall have a plant located in the rural Honolulu areas outside the areas covered by Group 1.
8. Bidders for Group 3 shall have a plant located in the Kailua-Kona area.

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**ASPHALT CONCRETE MIX PROPOSAL SCHEDULE (CONT.)**

9. Bidders for Group 4 shall have a plant located in the Hilo area.
10. The materials for this contract shall be furnished on an “as-needed” basis as required by the State. The estimated quantities specified do not signify a maximum or minimum quantity
11. If product is unavailable due to plant closure the State may obtain product by other means.
12. **Bidders shall submit and upload the complete proposal to HIePRO prior to the bid opening date and time. Proposals received after said due date and time shall not be considered. Any additional support documents explicitly designated as confidential and/or proprietary shall be uploaded as a separate file to HIePRO. Bidders shall not include confidential and/or proprietary documents with the proposal. The record of each bidder and respective bid shall be open to public inspection. Original (wet ink, hard copy) proposal documents are not required to be submitted. Contract award shall be based on evaluation of proposals submitted and uploaded to HIePRO.**

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

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

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**ASPHALT CONCRETE MIX PROPOSAL SCHEDULE (CONT.)**

The Department recognizes that certain items of material to be incorporated into the project and/or consumed in the prosecution of the project are temporarily in short supply and effect of such shortages has, among other things, resulted in periodic fluctuations in the posted prices of such short supply materials, thereby making it difficult for the Contractor to bid with confidence.

For this project, the only materials considered to be in short supply and Sections involved herewith are tabulated below (See proposal Schedule in regards to the Contract items involved):

<u>Description</u>	<u>Short Supply Material</u>
Asphalt Concrete Mix V	Asphalt Cement
Asphalt Concrete Fine Mix	Asphalt Cement
Cold-Laid Plant Mix or Cold Mix No. V	Asphalt Cement

Each bidder shall submit with the proposal a written statement from the supplier of each short supply material indicating the supplier's current posted price, effective date of that price and the location of the material at that posted price (by island).

If the price of such short supply material is increased or decreased by more than five (5%) percent by the supplier prior to the completion of that contract item requiring the short supply material, the Contractor shall submit to the Department a written statement from the supplier indicating the effective date and changed price the Contractor will thereafter be charged for such short supply material. The Contractor shall also obtain whenever possible, quotations for furnishing the material from other available local suppliers. The quotations shall be obtained sufficiently in advance of the need for the material to allow review by the Department so as not to delay the work.

The Contractor's request to the Department for adjusted compensation due to such changed prices will be computed only with prices in effect at the time of delivery. Only the lowest quotation obtained will be accepted by the Department.

Transportation, handling, loading, processing and other similar costs will not be subject to adjusted compensation.

No adjustment to the unit bid prices will be made when the increase or decrease in the price of the short material is less than five (5%) percent of the original posted price.

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**ASPHALT CONCRETE MIX PROPOSAL SCHEDULE (CONT.)**

If the adjustment to the unit bid price is decreased in the price of the short supply material by more than five (5%) percent of the original posted price, the State will be credited. If an increase in the price of any short supply material exceeds or is scheduled to exceed thirty-five (35%) percent of the original posted price, the Contractor must notify the state within five (5) working days before using the short supply material. Upon receipt of such notification from the Contractor, the State will direct the Contractor to either **(1)** authorize work to proceed as usual with the assurance that the indicated incremental price increase above the thirty-five (35%) percent will be compensable, **(2)** issue such change orders as the State may deem necessary to reduce further requirements of the short supply material which is to be paid at the increased price, or **(3)** if the material is considered to have priced itself beyond reason or beyond what the State can pay, the state may order cessation of further use of such short supply material on the project. Such notification by the Contractor will be required at each instance of incremental price increase above thirty-five (35%) percent limit. If the Contractor fails to notify the state of any such incremental price increase within five (5) working days before using the short supply material and continues to utilize the short supply material on the project the State will not be responsible for payment for the incremental cost increase of which the State was not forewarned.

Computation for the adjusted compensation will be as follows:

Asphalt Cement

If	X	=	adjustment per ton of mix,
	P	=	asphalt cement content, expressed in percent of dry weight of the aggregates, as determined and accepted by the Department for each of the design plant mixes,
	Q	=	increase or decrease in the price of asphalt cement, in dollars per ton,
Then	X	=	$\frac{Q(P)}{100+P}$ for A.C. Hot Mix and Cold Mix

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**ASPHALT CONCRETE MIX PROPOSAL SCHEDULE (CONT.)**

Example:      Posted price of asphalt cement increases from \$70 to \$80 per ton and the asphalt content of the A.C. mix was accepted at 6.0%, then the adjustment shall be:

$$\begin{array}{rcl} \$80.00 - \$70.00 & = & \$10.00 \\ (\$70.00)(5\%) & = & \$3.50 \\ \$10.00 - \$3.50 & = & \$6.50 \end{array}$$

For the purpose of determining the adjustment per ton, “x”, the Contractor shall follow above example. Current State of Hawaii General Excise Tax maybe added to the result of “x” if supplier of the materials has not added above said taxes.

The Contractor shall submit to the Department original receipted bills covering the short supply material used on the project as soon as practicable after shipments are completed. The bills shall be accompanied by a tabulation on which the bills are listed in chronological order showing for each bill the quantity, the date shipped from the supplier’s terminal and the price per unit at the place indicated in the posted price (reflecting any deduction for quantity shipments). These bills shall be subject to audit verification.

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
HONOLULU, HAWAII

FORMS

Contents:

Sample Contract

## C O N T R A C T

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

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

“«PROJECT NAME AND NO»”

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

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

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

«WORKING\_DAYS» from the date indicated in the notice to proceed from the STATE, with an option to extend for FOUR (4) additional TWELVE (12) MONTH periods, subject to the terms specified in Section «SECTION\_REFERENCING\_OPTION\_YEAR» of the specifications. The total term of this contract shall not exceed SIXTY (60) MONTHS.

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

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

STATE OF HAWAII

\_\_\_\_\_  
Director of Transportation

(Seal)

«CONTRACTOR»

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date