BID DOCUMENTS AND SPECIFICATIONS FOR TOTAL ABATEMENT OF HAZARDOUS MATERIALS AND TOTAL DEMOLITION OF BUILDING NO. 2, KEALAKEKUA ARMORY, STATE OF HAWAIʻI, DEPARTMENT OF DEFENSE, HAWAIʻI ARMY NATIONAL GUARD, PROJECT NO. CA-202703-C

ISSUED BY:
STATE OF HAWAII
DEPARTMENT OF DEFENSE
3949 DIAMOND HEAD ROAD,
HONOLULU, HAWAII 96816-4495
TELEPHONE: 808-369-3567

November 2026

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STATE OF HAWAI'I
DEPARTMENT OF DEFENSE
OFFICE OF THE ADJUTANT GENERAL
3949 DIAMOND HEAD ROAD
HONOLULU, HAWAI'I 96816-4495

NOTICE TO BIDDERS - CONSTRUCTION

COMPETITIVE SEALED BIDDING (IFB) for **"*Total Abatement of Hazardous Materials and total Demolition of Building No. 2, Kealakekua Armory, State of Hawai'i, Department of Defense, Hawai'i Army National Guard, Project No. CA-202703-C*"** will be issued and awarded by the Department of Defense, Engineering Office via Hawai'i Electronic Procurement System (HIePRO). **All bids shall be submitted and uploaded through HIePRO prior to and no later than 2:00 P.M. HST on Monday, December 18, 2026**. The record of each Bidder and their respective proposal shall be open to public inspection by request for copies of bids. Late bids will not be accepted after the due date and time or received in any other form than electronically through HIePRO.

PROJECT DETAILS

Proposed Scope of Work consists of but not limited to: The project involves removing hazardous materials and demolishing Building No. 2 at the Kealakekua Armory, following strict EPA, OSHA, and state regulations.
Time of Performance is estimated to be completed within 90 consecutive calendar days.
Estimated Cost is $720,000.00
License Requirement: Due to the nature of the work contemplated Bidder must possess a valid State of Hawai'i Contractor's license in the appropriate classification as stated below:

1. Prime Contractor License C-24 (Building Demolition) and C-19 (Asbestos Abatement) + DOH Lead Abatement Certification; or
2. Prime Contractor License C-24 (Building Demolition) and subcontract asbestos/lead work to a contractor with C-19 and DOH Lead Abatement Certification; or
3. Prime Contractor License B or BC General Contractor and subcontract demolition to C-24 contractor and asbestos/lead work to C-19 contractor with DOH Lead Abatement Certification.

SITE VISIT/PRE-BID MEETING

All interested bidders, contractors and sub-contractors are welcome, but not required to attend. To attend the site visit/pre-bid meeting, all bidders, contractors and sub-contractors must register with Ms. Michiko Aizawa-Smith at michiko.aizawa-smith@hawaii.gov with subject line: Site Visit/Pre-bid meeting, CA-202703-C and shall contain the first and last name of the participants and company name. Registration will not be accepted after **2:00 PM, Tuesday, November 24, 2026**.

The site visit/pre-bid meeting will be held on **Monday, November 30, 2026**, at **9:00 AM** at **81-1032 Nani Kupuna Place, Kealakekua, HI, 96750** at the main gate with Ms. Aizawa-Smith.

QUESTIONS AND REQUESTS FOR CLARIFICATION

Questions and Requests for Clarification regarding the Technical Specifications or any other aspect of the IFB must be submitted via HIePRO by **2:00 PM Friday, December 4, 2026**. Responses are scheduled to be posted on **Friday, December 11, 2026, at 2:00 PM**. The Department of Defense, Engineering Office shall not be required to answer Questions or Requests for Clarification not submitted via HIePRO or received after the Questions and Requests for Clarification deadline.

BIDDER ADVISORY AND RESPONSIBILITY

Bidders are advised that they should not wait until the last minute to submit their bid through HIePRO. Bidders are solely responsible for ensuring that their electronic submission through HIePRO is complete and all mandatory bid files are attached to their bid prior to the due date and time. The Engineering Office

shall not be responsible for any delay or failure of any Bidder to submit any materials updated through the IFB process on a timely basis.

Bidders are responsible for checking for any addenda for this project. The addenda will be posted on the HIePRO

All solicitation documents and related addenda can be downloaded from HIePRO and standard forms can be downloaded from State of Hawai'i, Department of Defense-Engineering Office's website at http://dod.hawaii.gov/hieng/.

Bidders are solely responsible to review the project requirements, determine the appropriate licenses required, and ensure that they possess and that the Subcontractor(s) listed in their OFFER FORM possess the necessary specialty licenses to perform the work for this project.

Purchasing Ethics and Disclosure

Any person, including any actual or prospective bidder, offeror, contractor, or business shall conduct all activities in good faith, avoid actual or apparent conflicts of interest or unethical conduct, promptly disclose any actual, potential, or perceived conflict of interest to the State in writing, and support fair and open competition in accordance with HRS §3-131-1.02(c) and HAR §103D-101(b).

INCORPORATION OF SOLICITATION DOCUMENTS

All documents issued by the State in connection with this solicitation, including but not limited to the Notice to Bidders, specifications, scope of work, plans, drawings, bid forms, attachments, addenda, amendments, responses to requests for information, and any other materials issued during the solicitation process (collectively, the "Solicitation Documents"), are hereby incorporated by reference and made a part of any resulting contract as though fully set forth therein.

By submitting a bid, the bidder acknowledges and agrees that the Solicitation Documents constitute an integral part of the procurement and any resulting contract. In the event of any conflict, inconsistency, or ambiguity between the Solicitation Documents and the executed contract, the terms of the executed contract shall govern unless expressly stated otherwise in the contract. The Solicitation Documents shall be binding upon the parties to the same extent as the provisions expressly contained in the resulting contract.

PLEASE BE ADVISED

The State of Hawai'i will be transferring all procurement/solicitation over to Aloha eBUYS in the future. Effective July 1, 2026, all small purchase procurement/solicitation is ONLY being processed through Aloha eBUYS. We advise any and all contractors, vendors, and providers to register or create a profile in the Aloha eBUYS system. Link: Aloha eBUYS - /view/login/login.xhtml

Solicitation Schedule

The schedule set forth below is preliminary and subject to change. The schedule may be amended, modified, or updated at any time as necessary.

Event	Date	Time
Solicitation posting	Wednesday, November 18, 2026	
Registration for pre-bid/site visit	Tuesday, November 24, 2026	2:00 PM
Pre-bid/site visit	Monday, November 30, 2026	9:00 AM
Question deadline	Friday, December 7, 2026	2:00 PM
Answer release	Friday, December 14, 2026	2:00 PM
Bid opening	Monday, December 21, 2026	2:00 PM
Award (estimated)	Monday, December 28,2026	

Stephen F. Logan
Major General
Adjutant General

Posted on: November 18,2026

STATE OF HAWAI'I
DEPARTMENT OF DEFENSE
OFFICE OF THE ADJUTANT GENERAL
3949 DIAMOND HEAD ROAD
HONOLULU, HAWAI'I 96816-4495

SPECIAL NOTICE TO BIDDERS - CONSTRUCTION

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PROJECT LABOR AGREEMENT

A Project Labor Agreement (PLA) will may be required for any construction project in excess of one million five hundred thousand dollars ($1,500,000).

The Contractor who is awarded the project shall be required to submit to the Department of Defense, Engineering a complete, fully executed Agreement-To-Be-Bound within fourteen (14) calendar days of project award, or as soon thereafter as is practicable as determined by the Department. The Contractor must also obtain Letters of Assent from each subcontractor of whatever tier who may be employed on the project and submit copies of such Letters to the Department of Defense, Engineering within fourteen (14) calendar days of project award, or as soon thereafter as is practicable as determined by the Department. The required form of the Contractor's Agreement To Be Bound and the subcontractors' Letter of Assent may be found in the solicitation packet. Failure to timely submit any required Agreement-To-Be-Bound or any required Letter of Assent shall be cause for the State in its sole discretion to rescind the subject award and to award the project to: the responsive and responsible offerer with the next lowest bid price for solicitations made under HRS 103D-302; or the next highest ranked offerer satisfying all solicitation requirements for solicitations made under HRS 103D-303.

OFFER DEEMED FIRM/AUTHORITY TO SUBMIT OFFER

Submission of an electronic response to the State of Hawai'i constitutes and shall be deemed an offer to sell the specified goods and/or services to the State of Hawai'i at the price shown in the response and under the State's Terms and Conditions. The electronic response submitter certifies that he/she is authorized to sign the response for the submitting vendor and that the response is made without connection with any person, firm, or corporation making a response for the same goods and/or services and is in all respects fair and without collusion or fraud.

CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS PROHIBITED

If awarded a contract in response to this solicitation, offeror agrees to comply with HRS §11-355, which states that campaign contributions are prohibited from a State and County government contractor during the term of the contract if the contractor is paid with funds appropriated by the legislative body between the execution of the contract through the completion of the contract.

HAWAI'I PRODUCTS' PREFERENCE

In accordance with ACT 174, SLH 2022, effective June 27, 2022, Hawai'i Products Preference shall not apply to solicitations for public works construction. Therefore, the Hawai'i Products Preference shall not apply to this project.

SOLICITATION PROCESS

1. Definitions

The following terms are defined for clarity within the construction solicitation process conducted through HIePRO. Definitions align with those provided in the Hawaii Revised Statutes (HRS) Chapter 103D and Hawaii Administrative Rules (HAR) Title 3, Subtitle 11.

- Invitation for Bids (IFB): All documents, forms, and attachments issued to solicit competitive sealed bids (HRS §103D-302; HAR §3-122-11).
- Procurement Officer: The individual authorized by a governmental body to initiate, conduct, and award procurements (HAR §3-120-2).
- Bidder: Any individual, partnership, firm, corporation, or joint venture submitting a sealed bid in response to an IFB.
- Responsive Bidder: A bidder whose submission complies with all material solicitation requirements (HAR §3-122-97).
- Responsible Bidder: A bidder who has the capability, integrity, and reliability to perform the contract (HAR §3-122-97).

2. Procurement Method: Competitive Sealed Bidding

The competitive sealed bidding process, authorized under HRS §103D-302 and HAR §3-122-21, is used when specifications are clear and award is based primarily on price. All IFBs for construction are conducted electronically through HIePRO, the State's eProcurement system.

3. Notice / Public Advertisement

Public notice of all IFBs must be provided electronically through HIePRO (HAR §3-122-16.02). Notices must include a brief description of the work, submission deadline, pre-bid meeting details (if applicable), and contact information. Notices shall be posted for a minimum of ten (10) calendar days prior to the deadline for submission.

4. Registration / Compliance Requirements

All bidders must be registered and maintain compliance in HIePRO. Vendors must also demonstrate compliance with State and Federal tax, labor, and employment laws through the Hawaii Compliance Express (HCE) system (HRS §103D-310(c); HAR §3-122-112). Proof of compliance must be submitted prior to award and final payment.

5. Bid Submission

Bids must be submitted electronically through HIePRO by the deadline specified in the solicitation. Late submissions are automatically rejected (HAR §3-122-16.08). Each bid must include all required attachments, bid security, and certifications. Once submitted, bids cannot be altered except as allowed by law.

6. Pre-Bid Conference / Site Visit

For construction solicitations, a pre-bid conference or site visit may be required (HAR §3-122-16.05). The solicitation must specify the date, time, and location. Questions and requests for clarification must be submitted by the deadline stated in the IFB. All clarifications and amendments must be issued via HIePRO addenda.

7. Bid Opening

Bids are opened electronically in HIePRO at the time and date specified in the solicitation (HAR §3-122-30). Bidder names and bid amounts are publicly available immediately following the opening through the HIePRO system.

8. Bid Evaluation / Award

Bids shall be evaluated without discussions, based solely on the criteria stated in the solicitation (HRS §103D-302; HAR §3-122-32). Award shall be made to the lowest responsive, responsible bidder. Bid responsiveness and responsibility determinations must be documented by the procurement officer.

9. Notice of Award

The notice of award shall be posted electronically in HIePRO within seven (7) calendar days after determination (HAR §3-122-38). The awarded contractor must submit all required bonds, certificates, and insurance documentation before contract execution. No contract is binding until all approvals are obtained and the contract is executed by both parties.

10. Payment Bond / Labor Bond

Bid security is required for construction contracts as specified in HRS §103D-323. Upon award, the successful bidder must furnish performance and payment bonds in accordance with HRS §103D-324.

11. Certificate of Insurance

Shall be provided prior to notice to proceed.

12. Protests

A bidder may file a written protest regarding the solicitation or award pursuant to HRS §103D-701 and HAR §3-126-4. Protests based on the content of the solicitation must be submitted before the bid opening date. Protests concerning award decisions must be filed within five (5) working days after posting of the notice of award in HIePRO. All procurement actions are suspended until the protest is resolved.

13. Special Statutory / Rule Provisions for Construction

Construction solicitations are additionally governed by specific provisions under Hawaii law, including:

• State Resident Employment Requirements (HRS Chapter 103B): Requires that a portion of the workforce on state construction projects be Hawaii residents.

• Fiscal and Bonding Requirements (HRS §§103D-316, 103D-320): Establish financial responsibility, audit, and record retention requirements for construction contractors.

PROJECT DESCRIPTION : TOTAL ABATEMENT OF HAZARDOUS MATERIALS AND TOTAL DEMOLITION OF BUILDING NO. 2 (QUONSET HUT/VEHICLE STORAGE), KEALAKEKUA ARMORY GROUNDS

LOCATION : HAWAII ARMY NATIONAL GUARD
KEALAKEKUA ARMORY
81-1032 NANI KUPUNA PLACE
KEALAKEKUA, HAWAII 96750-8141

SCOPE OF WORK / SPECIFICATIONS:

Supply of all necessary materials, labor, and use of equipment to implement and complete, in safe and acceptable procedures and workmanship, the total abatement of all building components containing hazardous materials, and the total demolition, removal, and disposal of Building No. 2 (Quonset Hut/Vehicle Storage Bldg.), based on the Scope of Work/Specifications, Hazardous Materials Survey Report, Toxicity Characteristics Leaching Procedure (TCLP) Report, Plans, and photographs.. The performance of all work must be in strict compliance with the rules and regulations on materials bagging, storing, handling, transporting, and disposal, set by the Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), and by the Federal, State, and Local Agencies.

The principal work items shall be but are not limited to the following:

A. Protection of abatement/demolition Workers and adjacent building Users.
B. Preparatory work.
C. Total abatement of building components containing hazardous materials (bagging, storing, handling, transporting, disposing, or recycling).
D. Total demolition work.
E. Ground encapsulation.
F. Transport and disposal at special Disposal Facility and licensed Hawaii Landfill.
G. Final clean-up.
H. Reports

A. Abatement and demolition workers and adjacent building Users' protection.

1.) Independent Qualified Consultant/s.

To ensure health protection to abatement Workers and adjacent building Users, the Contractor shall hire the services of an Independent Qualified Consultant/s (IQC) with working experience in the asbestos, lead, and other toxic substances-containing materials abatement work to monitor the air quality inside and outside the confined areas during abatement work. The IQC shall also inspect the removal activities to ensure compliance with applicable EPA, OSHA, and Hawaii Occupational Safety and Health (HIOSH) regulations pertaining to the handling, transport, and disposal of asbestos, lead, and other toxic substances- containing materials. The IQC shall be given authority to order the Contractor's Project Manager or Superintendent to stop the abatement at any time he/she determines the site working conditions are not

within the specification requirements and applicable regulations. The work stoppage shall continue until corrective actions have been taken and specified conditions restored to the satisfaction of the air monitoring Specialist.

2.) OSHA Competent Person.
The Contractor shall hire, as a member of the abatement team, an OSHA accredited "Competent Person" who shall have the responsibility to ensure that the compliance program for the Project is adhered to by all personnel at the project site.

3.) OSHA-required Compliance Program.
The Contractor shall prepare the OSHA-required Compliance Program for the purpose of preventing employee exposure above the Permissible Exposure Limit (PEL) and address how that will be done whether that be through engineering controls, respiratory protection, or by use of good work practices.

4.) Site security.
   a.) Entry to the work areas is to be restricted to non-workers or unauthorized person/s. Only authorized, trained, and protected personnel shall be allowed entry. These may include the Contractor's employees, the HIARNG/FMO Project Manager and his assigned Inspector, the Facility Users' Safety Officer, State and local Inspectors, and other designated authorized individuals. A list of authorized personnel shall be provided prior to the abatement/demolition work.
   b.) A Visitor/Worker Entry Log shall be maintained at the jobsite.
   c.) The Contractor shall have control of security, subject to the approval of the FMO PM and the HIARNG Facility Commander, in the work area and in the proximity of Contractor's materials and equipment. The Contractor shall take whatever necessary steps to safeguard the work area.
   d.) Personal Protective Equipment.
   The Contractor shall provide the minimum regulation requirements for Personal Protective Equipment to all Workers, FMO PM and Inspector, HIARNG Safety Officer, State and local Inspectors, and other designated authorized personnel while in the construction site and when entry to confined work areas is necessary.

B. Preparatory work.

1. Application and procurement of necessary Permits from all concerned Government and Private Agencies, for the demolition of structures and transport of hazardous materials to recycling Plants or Landfills. Cost of permit fees, transportation, and recycling plant/landfill fees shall be included in the bid estimate.
2. Erection of temporary fence with dust barriers along Building 2 perimeter as containment barrier for debris, dust, and other air-borne particles, and to prevent non-project personnel from entering the work area. All other structures inside the Kealakekua Armory Compound must remain accessible throughout the abatement and demolition/removal work period. Temporary fence shall have a minimum height of eight (8') feet.
3. Laying and fixing of "boom" barriers on the ground around each building before the

start of abatement and demolition work, as sediment and erosion control barriers. Use the compost filter socks with twelve (12") inch-diameter netting. Use 2" x 2" wood stakes or concrete blocks spaced at ten (10') feet on centers to hold the filter socks in place. Use any brand/model provided it meets the US Army Corps of Engineers' standard specifications.

4. Delivery and placement to a designated area of trash bins appropriate for storing hazardous materials before hauling/transport to permitted disposal site/s.
5. Installation of safety/warning signs and placement of barricades and safety cones.
6. Cut off and cap all water lines that feed the building. Cut-off point shall be twelve (12') feet away from the building.
7. The Contractor shall hire the services of licensed Electrical Contractor to safely cut off the existing electrical lines that feed the Quonset Hut building's electrical system. The existing electric meter and electric feeder lines shall be removed, transferred, and reconnected to electrical panel of the adjacent smaller Quonset Hut (refer to the attach Smaller Quonset Hut. Refer to the attach Satellite Topographic Map on Plan Sheet No. 00 for the location of Electric Utility Company's feeder lines pole. The Contractor shall be responsible for the application of permit and securing approval from the local electric utility Company to proceed with the cutting-off and reconnection of electric feeder lines.

C. Total abatement of building components containing hazardous materials (bagging/storing, handling, transporting, disposing, or recycling).

Hazardous Materials Survey and Toxicity Characteristic Leaching Procedure were conducted for Quonset Hut/Vehicle Storage Bldg. No. 2. A set of Hazardous Materials Survey and the TCLP Report are attached. Interested Bidders must read the Report thoroughly to have full understanding of the scope of hazardous materials' total abatement work and use the data in the preparation of quantity and cost estimates.

Prior to and during the demolition work, *the total abatement of building components containing hazardous materials, hazardous materials inside cans or bags stored inside the buildings, and electrical fixtures/lamps and other devices/equipment found to contain toxic chemicals*, must be implemented. All must be properly bagged, wrapped, or containerized, if necessary, transported, and disposed of in strict compliance with the rules and regulations set by the Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), and by the Federal, State, and Local Agencies. Rules and regulations on safety and health protection of Workers and nearby building Users must be strictly complied with. The Contractor shall prepare a list of electrical light fixtures, lamps, ballasts, and other toxic substance -containing materials inside containers for review of HIARNG Environmental Officer before removal from site for transport to disposal site/s.

The Hazardous Materials Survey Report did not mention any contamination of soil

around each building's footprint. It is presumed that the soil under the slabs and the Buildings' footprint perimeters have certain degree of contamination. Previous laboratory analysis of soil at the nearby Armory Building was found to contain chlordane and benzene. Interested Bidders shall consider in their bid estimate the costs of protective personal equipment (PPE) for site Workers. The soil under the buildings' slab footprints shall remain in place and compacted in preparation for encapsulation.

D. Total demolition and disposal work.

Original Construction or As-built Plans of all buildings to be demolished are not available. The attach Plans (Location Map, Quonset Hut and Vehicle Storage Floor Plan, and Vehicle Storage Roof Framing Plans) were drawn based on measurements of the existing structures. Interested Bidders shall be responsible in checking the actual measurements of the buildings and other relevant data, for quantity and cost estimating purposes. Attached are photographs to aid the interested Bidders in the preparation of their bid cost estimates.

The following figures and facts which were based on the Real Property Data Record and site inspection findings and presumptions, are useful information which can be used as references.

1.) **Quonset Hut:**

The building has an approximate floor area of 4,300 square feet. Building height is approximately twenty (20') feet. Building width and length are approximately forty- one (41') feet x one hundred four (104') feet.

Exterior walls and roof were constructed using corrugated steel sheets. Original finish is paint. Interior structural main and secondary frames of corrugated walls and roof are made of built-up light gauge steel sections.

Majority of interior building components (walls, studs, columns/posts, doors, window frames) are constructed using wood materials. Wood surfaces are painted. Refer to floor plan.

Exterior windows are glass jalousie louvers with security steel grills and wood window frames in finish paint.

Floor is concrete slab-on-fill. (For cost estimating purposes, assume concrete floor slab thickness to be eight (8") inches thick). Floor is bare concrete finish.

One (1) layer of six (6") inch thick CMU foundational structures (zocalo) were constructed along the four (4) interior sides of the building except at the front and rear door width openings.

A twelve (12') ft. x eighteen (18') ft. vault was constructed inside the rear portion of the Quonset Hut. Vault walls are six (6") inch thick CMU units. Vault roof is reinforced concrete slab.

2.) **Vehicle Storage Building:**

The building has an approximate floor area of 3,370 square feet. Building height is

approximately fourteen (14') feet. Building width and length are approximately thirty-three (33') feet x one hundred two (102') feet.
Front of the building is secured by five (5) sets of two-panel swing gates constructed from GI pipe frames and chain link wire mesh. Height of the gates is seven (7') feet with three (3) strands of barbed wires on the top. The left and right sides of the building are enclosed with fixed chain link wire mesh with GI pipe frames, eight (8') feet high with three (3) strands of barbed wires on top.
The building steel roof frames are supported by twelve (12)- 8" x 8" wood columns. The exterior wood columns are laterally supported by double wood beams assumed to be two (2") inches thick x ten (10") inches deep.
The roof is constructed from solid wood, assumed to be one (1) inch thick with the type of roof coating materials presumed to be containing hazardous substances. Roof boards are supported by wood joists assumed to be two (2") inches thick x eight (8") inches deep.
Demolition work shall include the demolition of all building components above the concrete slab or ground level, all concrete slabs, all asphalt flooring, all masonry wall foundations, and all wood, metal, masonry and concrete components attached to it. In the absence of structural plans, use an average of ten (10") inches concrete slab thickness and 12" wide x 12" thick masonry wall strip foundations.

Notes: All loose non-building component materials, wood and steel cabinets, binders, paper, tires, wood crates, plastic and non-plastic containers, tables, metal tools, cylinders, tables, and carts, tarps, carton boxes and its contents, and other non-identified loose materials stored inside the Quonset Hut and Vehicle Storage buildings during the scheduled site walkthrough with interested Bidders, shall be removed, transported out of the Kealakekua Armory Compound, and disposed of to a licensed Landfill. Costs of removal, transport, and disposal Landfill fees shall be included in the bid cost estimate.

The Hazardous Materials Survey Report did not mention sampling and Laboratory analysis for light fixtures. All light fixtures inside the Quonset Hut and Vehicle Storage Buildings are presumed to contain Poly Chlorinated Biphenyl (PCB) and other toxic substances. The interested Bidders shall consider in the bid cost estimate the proper handling, transport, and disposal of such fixtures. Cost of disposal fees shall be included in the bid cost estimate.

Water and electric power.
The Contractor shall be allowed the use of water only for the following:

1. ***To wet surfaces of building components before abatement work on asbestos containing materials and flaking paints found to contain lead.***
2. ***To wet bare/ground soil during and after slab demolition to prevent airborne dust and to prepare for ground compaction.***
3. ***For shower/washing of Workers after hazardous materials abatement work.***

4.) For cleaning/rinsing tools and personal protective equipment. The Contractor should provide containers for contaminated rinse water. Contaminated water shall be disposed of to a proper disposal site outside HIARNG Compound.

The Contractor shall be allowed the use of electric power for hand tools, pressure washers, light fixtures, pumps, and other electric-powered light equipment. Circuit breakers that may get damaged during the use of the mentioned equipment shall be replaced by the Contractor at no cost to the Government.

E. Ground encapsulation.

The ground soil inside the footprint of each demolished building structure shall remain in place. Encapsulate the areas by backfilling with four (4") inches thick new base course materials, levelled, and compacted to eighty (80%) percent compaction density.

F. Toxicity Characteristic Leaching Procedure (TCLP).

The representative bulk sample Toxicity Characteristic Leaching Procedure (TCLP) laboratory results of the building materials with planned disposal for the demolition project at the Subject site did not exceed the applicable Resource Conservation Recovery Act hazardous waste limits. Refer to Attachment IV of the Hazardous Materials Survey Report. Shipment of toxic wastes to US Mainland Facility may no longer be required

For Hawaii Landfill special disposal fees.

The interested Bidder/s shall include all "special disposal fees" for concrete and other building components that the authorized Hawaii Landfill or Recycling Plant will be charging.

G. Final clean-up.

Dismantle and remove from construction sites all temporary fence/dust barriers, erosion control barriers, trash bins, portable storage and toilets, Contractors' equipment, safety signs and barriers.

Clean all areas affected by the construction project by removing excess backfill and construction materials and all debris.

On areas with grass, patch all ground depressions caused by Contractors' vehicles with planting soil and compact to a desired soil density.

H. Reports.

1. Prepare and submit the Hazardous Materials Abatement Close-out Report to the FMO PM. Report shall contain documents on delivery/transport, and receipts of hazardous materials disposal fees from authorized Hawaii and Mainland Landfill or

2. Disposal Facilities. This will include the documents for recyclable but contaminated materials from authorized Recycling Plant.
3. The Contractor shall read and comply with the instructions shown in the attach HIARNG Environmental Contractor Requirements in the preparation and submittals of Hazardous Materials Inventory Log, Monthly Waste Generation Reports, Spill Prevention and Control Plan, and other requirements listed, applicable to the Project.

Joint inspection and punch listing.

The Contractor and FMO PM or his Representative shall conduct a joint inspection to determine if there is any work that need to be corrected or completed and prepare a list. A second joint inspection shall be conducted after the completion of corrected work mentioned in the punch list.

SUBMITTALS:

1. Submit Certificates or Licenses as proof that the Contractor or Sub-Contractor are certified or licensed to perform the specialty job based on the Scope of Work. (before Intent to Award notice). The required Contractor licenses are the following:
   1.a. Contractor with both C-24 (for building demolition) and C-19 (for asbestos abatement) licenses, and with DOH certification for lead abatement, or
   1.b. Contractor with C-24 who can sub-contract the abatement work to a Contractor with C-19 license and DOH certification for lead abatement, or
   1.c Contractor with B or BC license who can sub-contract work to C-19 and C-24 licensed Contractors.
2. Prior to start of work, the Contractor must submit a Work and Safety Program.
3. Submit a written and signed report that the recyclable materials were delivered to and accepted by an authorized recycling Plant. To be included in the Close-Out Report.
4. Submit a report on estimated recyclable and non-recyclable materials/solid waste generated.
5. Submit a report on estimated weight of non-recyclable materials/solid waste shipped to the U.S. Mainland.

SAFETY MEASURES, IMPLEMENTATION, INSTRUCTIONS TO BIDDERS:

1. The Contractor must implement all safety measures in accordance with the present OSHA, Local, and Federal Government Rules and Regulations. This will include use of OSHA standard Personnel Protective Equipment (PPE) appropriate for the job.
2. The Contractor must implement all health and safety measures in accordance with the present EPA, OSHA, Local and Federal Government Rules and Regulations about abatement contamination and exposure to hazardous materials. Safety and warning Signs shall be posted and barricades placed in areas where necessary.
3. The Contractor shall provide their power generation equipment.
4. The Contractor shall provide portable toilets for field workers and be responsible for

its cleaning and maintenance.

5. The Contractor shall provide storage for materials and portable equipment that will be kept at site during the progress of construction work. The Government shall not be held liable for any loss of the Contractors' materials or equipment.

MANDATORY SURETY BOND:

All Bidders must submit, as one of the attachments with the quote, a **Bid (Surety) Bond** based on the bid amount if bid/price quote is $25,000.00 or more. The Bid Bond Penal Sum is five (5%) percent of the total bid amount. The Bid Bond Form can be any of the Industry-standard Forms used to transact business with the State of Hawaii. The State of Hawaii Department of Defense shall be the Project Owner.

MANDATORY PERFORMANCE AND PAYMENT BONDS

Performance Bond and **Payment Bond** shall be required for contracts $50,000.00 or higher. At the time of the execution of the contract, the successful Bidder shall file a good and sufficient Performance and Payment Bonds on the form furnished by the Department or the Contractor's Surety, each in the amount equal to one hundred (100%) percent of the amount of the contract price unless otherwise stated in the solicitation of bids. Acceptable Performance and Payment Bonds shall be limited to the following:

1.a) Surety Bond underwritten by a Company licensed to issue bonds in the State of Hawaii.

1.b) Legal tender; or

1.c) A certificate of deposit; share certificate; or a cashier's, treasurer's, teller's or official check drawn by or a certified check accepted by and payable on demand to the State by a Bank, a Savings Institution, or Credit Union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

1.c.1) This instrument may be utilized only to a maximum of $100,000.00.

1.c.2) If the required security or bond amount totals over $100,000.00, more than one instruments not exceeding $100,000.00 each and issued by different Financial institutions shall be acceptable.

If the Contractor fails to deliver the required Performance and Payment Bonds, the Contractor's award shall be cancelled, its Bid Security enforced and award of the contract shall be made to the Bidder with the second lowest reasonable bid.

ACT 68:

The General Contractor and Sub-Contractors with construction contracts over $50,000.00, are required by Law to submit a Certificate of Compliance of Employment each month of the general contract period starting from the Notice-To-Proceed (NTP) month regardless of any work performed/completed or not during the subject month, to the Government Project Manager. The Certificate must be duly notarized.

DAVIS-BACON ACT:

This project is covered by the Davis-Bacon Act. All Workers who are "direct cost contributors" to the project shall be paid the minimum basic wage rate plus fringe benefits based on their "Classifications", as listed on the latest issue of Hawaii Wage Rate Schedule. Certified payroll/s must be submitted by the Contractor together with the billing invoice/s. Processing of billing invoices for payment may not be implemented, or payment may not be made without the required Certified Payroll/s.

HAWAII COMPLIANCE EXPRESS:

Bidders must be registered or must register with the Hawaii Compliance Express and must be "compliant" status on the issue date of the "Certificate of Vendor Compliance" with the Hawaii Department of Taxation, Internal Revenue Service, Hawaii Department of Commerce and Consumer Affairs, and the Hawaii Department of Labor and Industrial Relations.

PROJECT POINTS OF CONTACT:

Michiko Aizawa-Smith (FMO Project Manager): Work cell phone: 808-753-7902
(Lead Project Manager)

Ed Mendoza (FMO Project Manager): Work cell phone: 808-386-9670
Office land line: 808-672-1526

BILLING ADDRESS:

Department of Defense
3949 Diamond Head Road
Honolulu, Hawaii 96816-4495
Attention: Michiko Aizawa-Smith
Facilities Management Office (HIARNG)
Building 1784, Room 304A

ATTACHMENTS:

1. Scope Of Work, Specifications, Instruction to Bidders, Other (9 pages)
2. Plans and photographs (Location Plan, Flor Plan, Roof Framing Plans, and Photographs (5 sheets)
3. Sets of photographs of Building 2 (Quonset Hut and Vehicle Storage Buildings)
4. Hazardous Materials Survey Report (39 pages)
5. HIARNG Environmental Contractor's Requirement (6 pages)

LEGEND

DETAIL # / SHEET # — DETAIL (ELEVATION OR SECTION) CALLOUT

DETAIL # / SHEET # — DETAIL CALL OUT

DETAIL BORDER

DOUBLE SWING GATE

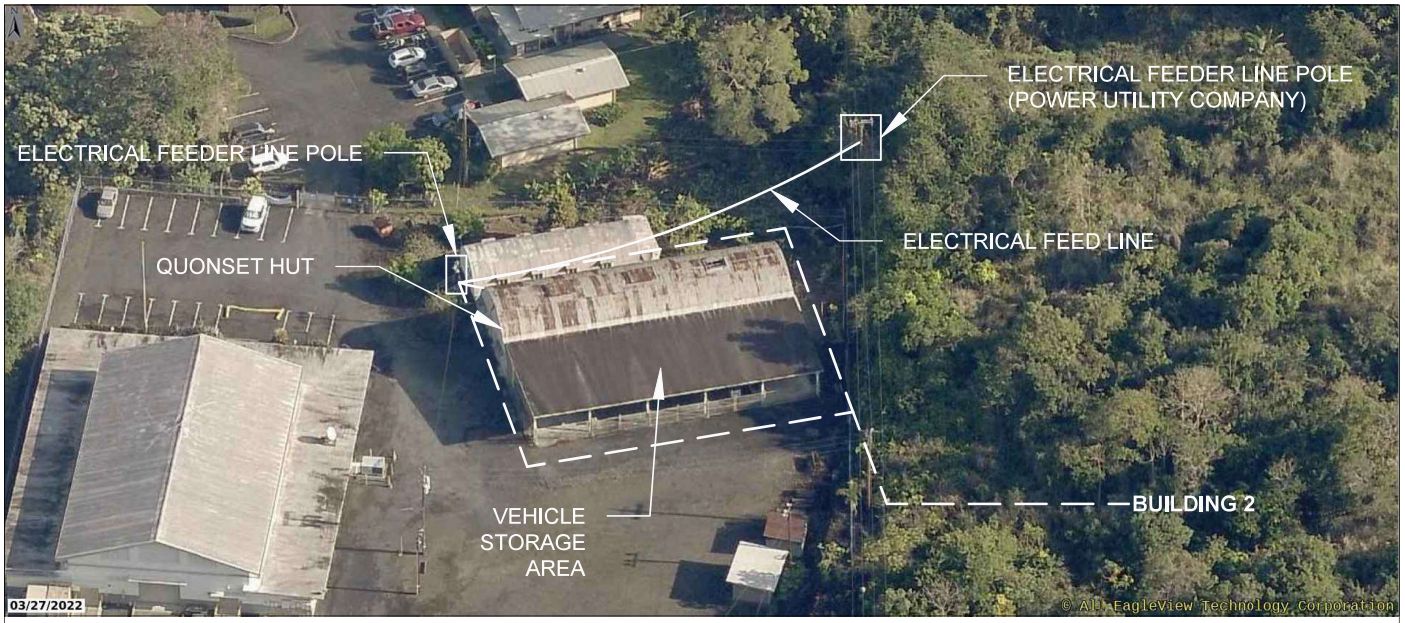
CHAIN LINK FENCE LINE

LOUVER WINDOW WITH AWNING

MATERIALS LEGEND

CONCRETE MASONRY UNIT (CMU)

CONCRETE



LOCATION MAP, PROJECT SITE

81-1032 Nani Kupuna Place, Kealakekua, HI, 96750

DESIGNED/DRAWN BY: MAS
CHECKED BY: EGM
REVISION: N/A
REVISION DATE: N/A

HAWAII ARMY NATIONAL GUARD

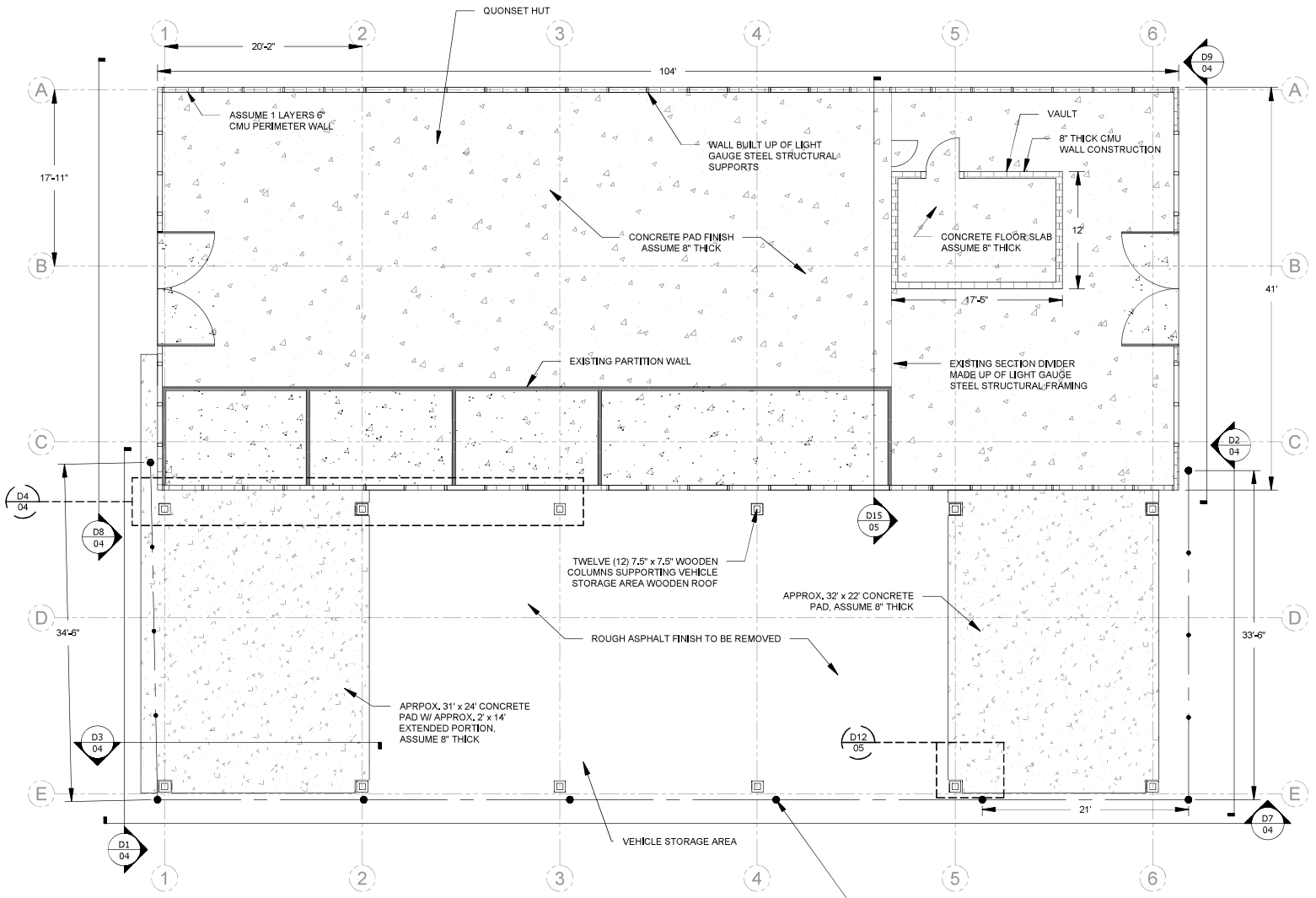
PROPOSED TOTAL ABATEMENT & DEMOLITION OF QUONSET HUT/VEHICLE STORAGE BUILDING 2

15A60 – KEALAKEKUA ARMORY

SHEET SIZE: ANSI B, 17"X11"

DATE: 8/6/2026

SHEET NO.: TITLE PAGE SHEET 00



QUONSET HUT/VEHICLE STORAGE (BUILDING 2)-FLOOR PLAN

3/32" = 1'-0"

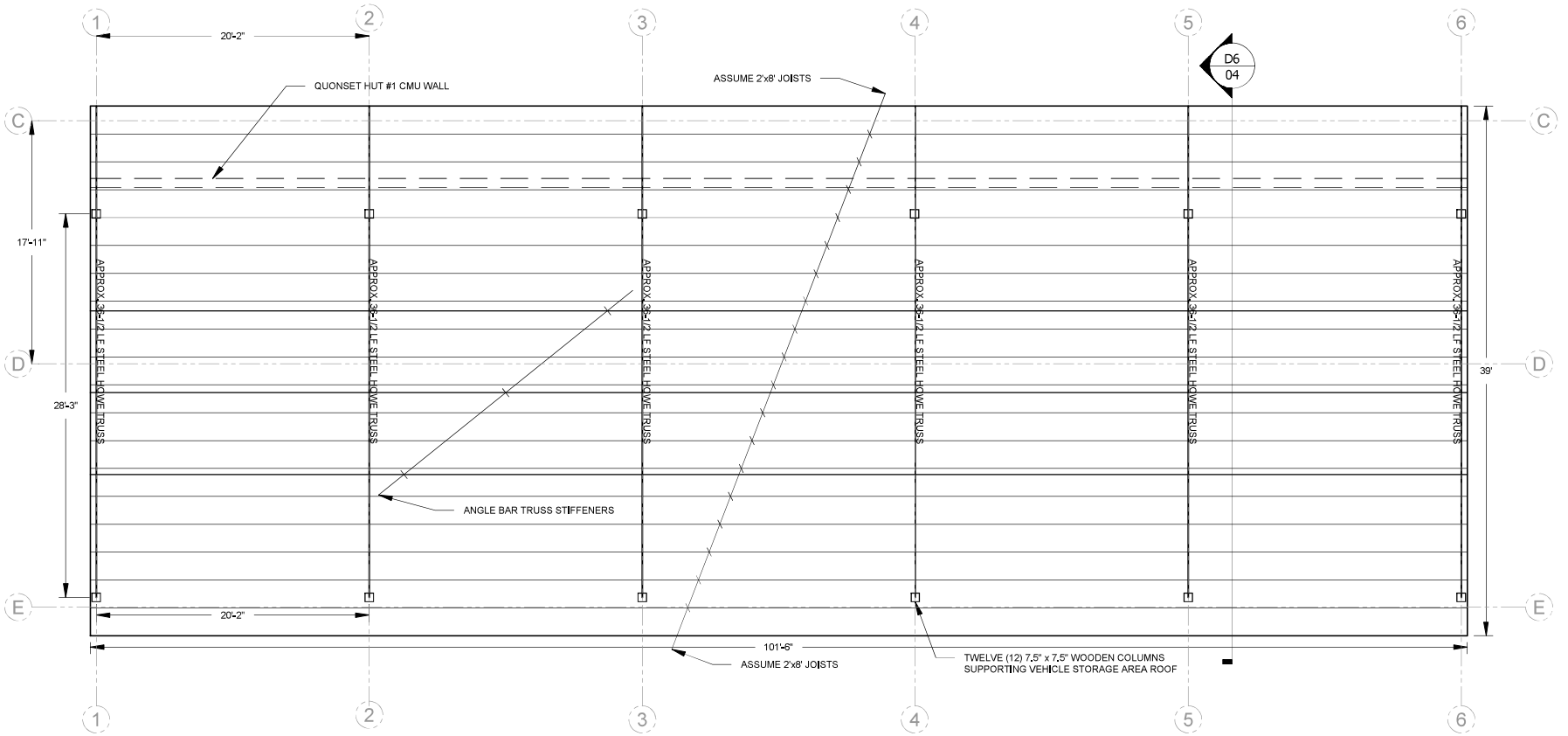
DESIGNED/DRAWN BY:	MAS
CHECKED BY:	EGM
REVISION:	N/A
REVISION DATE:	N/A

HAWAII ARMY NATIONAL GUARD

PROPOSED TOTAL ABATEMENT & DEMOLITION OF QUONSET HUT/VEHICLE STORAGE BUILDING 2

15A60 – KEALAKEKUA ARMORY

SHEET SIZE:	ANSI B, 17"X11"
DATE:	8/6/2026
SHEET NO.:	SHEET 01



VEHICLE STORAGE ROOF FRAMING PLAN

NORTH

1/8" = 1'-0"

DESIGNED/DRAWN BY: MAS
CHECKED BY: EGM
REVISION: N/A
REVISION DATE: N/A

HAWAII ARMY NATIONAL GUARD

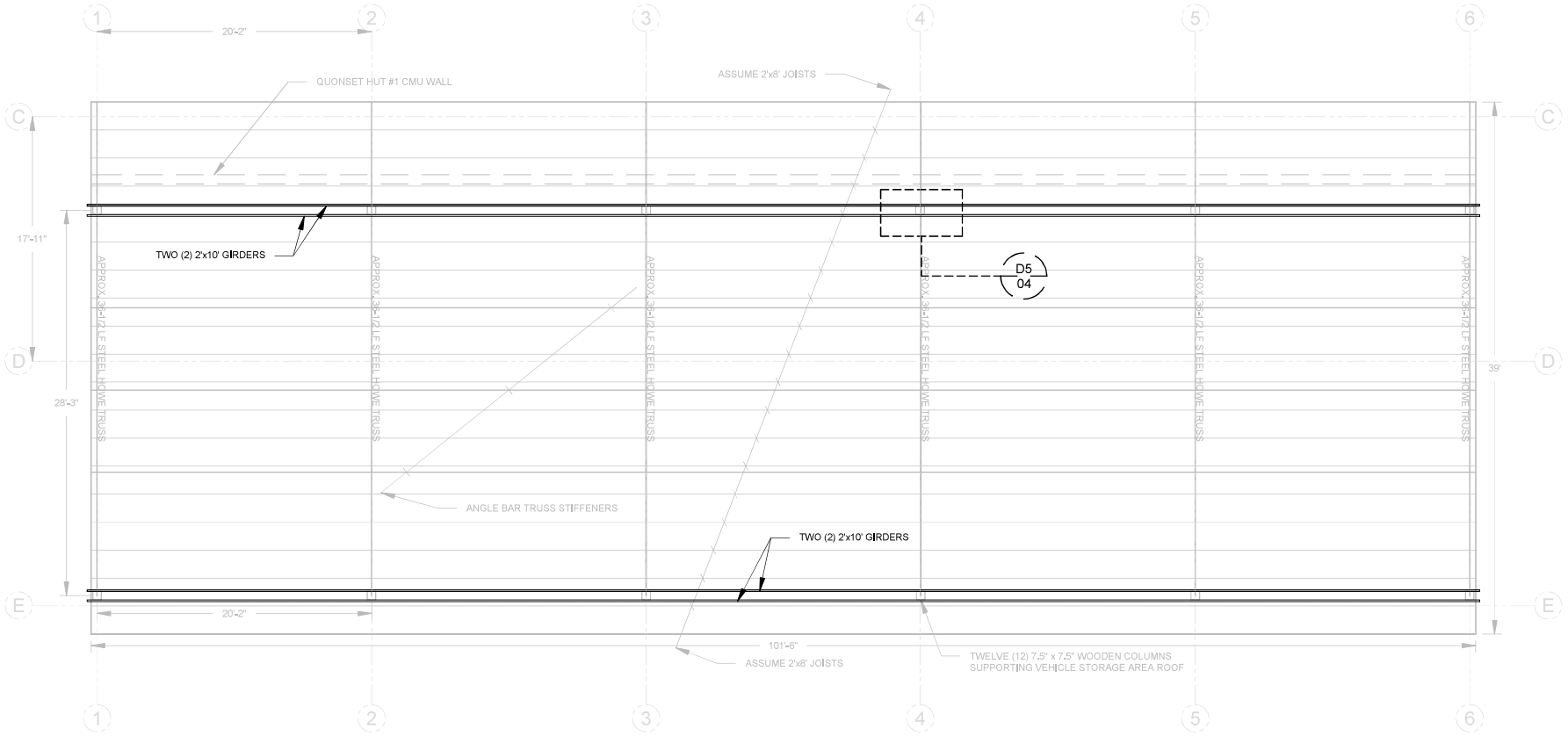
PROPOSED TOTAL ABATEMENT & DEMOLITION OF QUONSET HUT/VEHICLE STORAGE BUILDING 2

15A60 – KEALAKEKUA ARMORY

SHEET SIZE: ANSI B, 17"X11"

DATE: 8/6/2026

SHEET NO.: SHEET 02



VEHICLE STORAGE ROOF FRAMING PLAN-GIRDERS

1/8" = 1'-0"

NORTH

DESIGNED/DRAWN BY:	MAS
CHECKED BY:	EGM
REVISION:	N/A
REVISION DATE:	N/A

HAWAII ARMY NATIONAL GUARD

PROPOSED TOTAL ABATEMENT & DEMOLITION OF QUONSET HUT/VEHICLE STORAGE BUILDING 2

15A60 – KEALAKEKUA ARMORY

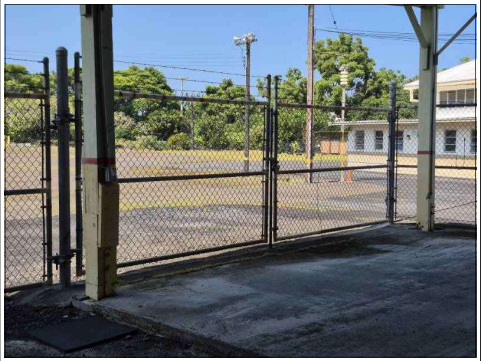
SHEET SIZE:	ANSI B, 17"X11"
DATE:	8/6/2026
SHEET NO.:	SHEET 03



D1 VEHICLE STORAGE AREA-WEST FACE
Scale: NTS 75 SCALE



D2 VEHICLE STORAGE AREA-EAST FACE
Scale: NTS



D3 VEHICLE STORAGE AREA-PERIMETER FENCE
Scale: NTS



D4 VEHICLE STORAGE AREA-COLUMNS
Scale: NTS



D5 VEHICLE STORAGE AREA-GIRDERS
Scale: NTS



D6 VEHICLE STORAGE AREA-ROOF FRAMING DETAILS
Scale: NTS



D7 VEHICLE STORAGE AREA-SOUTH FACE
Scale: NTS



D8 QUONSET HUT-WEST FACE
Scale: NTS



D9 QUONSET HUT-EAST FACE
Scale: NTS

DESIGNED/DRAWN BY: MAS
CHECKED BY: EGM
REVISION: N/A
REVISION DATE: N/A

HAWAII ARMY NATIONAL GUARD

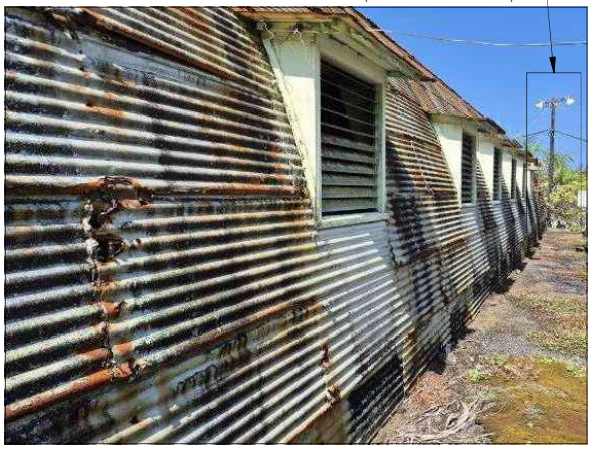
PROPOSED TOTAL ABATEMENT & DEMOLITION OF QUONSET HUT/VEHICLE STORAGE BUILDING 2

15A60 – KEALAKEKUA ARMORY

SHEET SIZE: ANSI B, 17"X11"

DATE: 8/6/2026

SHEET NO.: SHEET 04



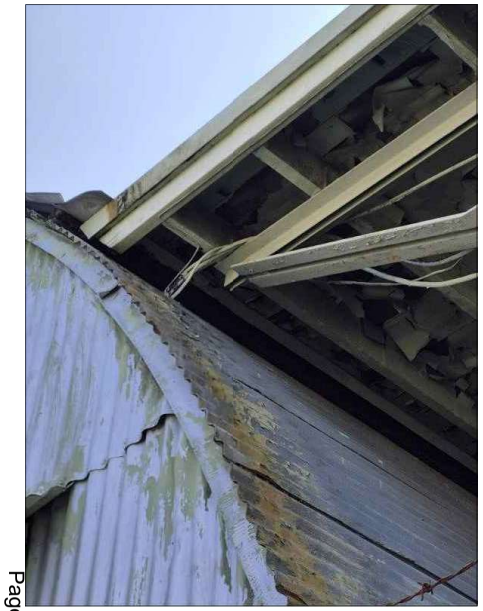
D10 **ELECTRICAL FEEDER LINE POLE LOCATION**
Scale: NTS



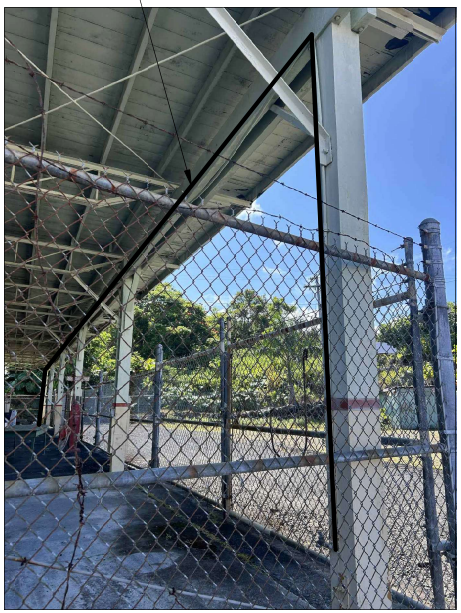
D11 **ELECTRICAL FEEDER LINE DETAIL**
Scale: NTS



D12 **CONCRETE PAD AND COLUMNS DETAIL**
Scale: NTS



D13 **VEHICLE STORAGE AND QUONSET HUT CONNECTION**
Scale: NTS



D14 **EXISTING WATER LINE**
Scale: NTS



D15 **QUONSET HUT #2-WEST FACE**
Scale: NTS

DESIGNED/DRAWN BY:	MAS
CHECKED BY:	EGM
REVISION:	N/A
REVISION DATE:	N/A

HAWAII ARMY NATIONAL GUARD

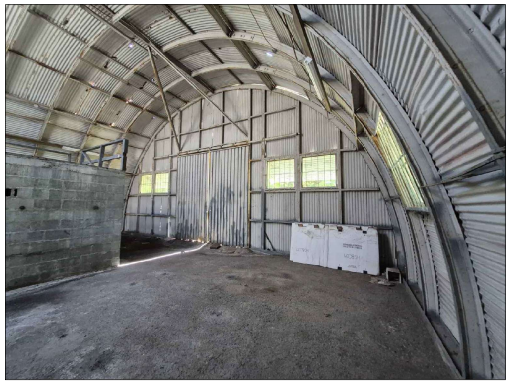
PROPOSED TOTAL ABATEMENT & DEMOLITION OF QUONSET HUT/VEHICLE STORAGE BUILDING 2

15A60 – KEALAKEKUA ARMORY

SHEET SIZE:
ANSI B, 17"X11"

DATE:
8/6/2026

SHEET NO.:
SHEET 05

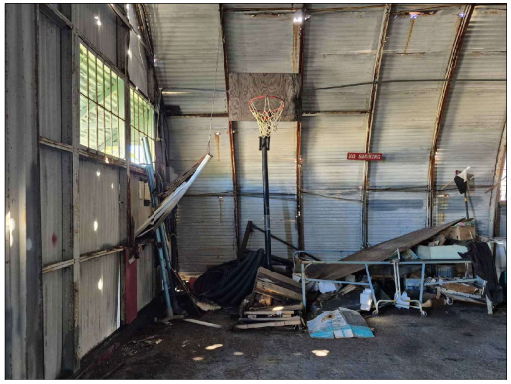










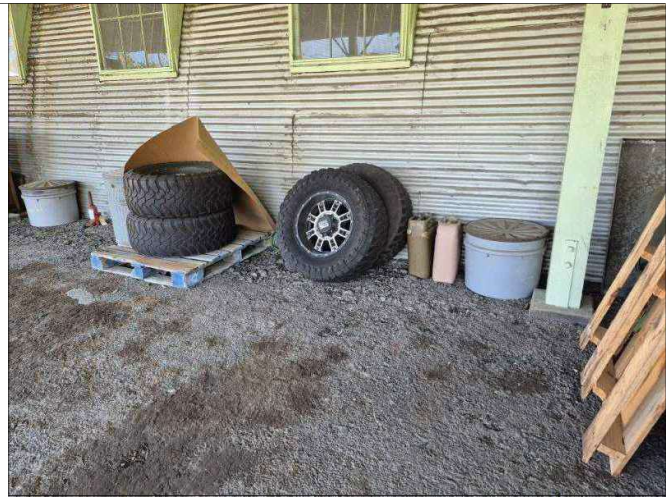




PICTURES OF QUONSET HUT INTERIORS













PICTURES OF VEHICLE STORAGE BUILDING LOOSE MATERIALS

NTS

Lehua Environmental Inc.

P.O. Box 1018 • Kamuela, Hawaii 96743 • Tel: (808) 494-0365 • Website: www.lehuaenvironmental.com

HAZARDOUS MATERIALS SURVEY REPORT

PROJECT:
KEALAKEKUA ARMORY BUILDING 2 (QUONSET HUT/VEHICLE STORAGE) FOR DEMOLITION

FACILITY SURVEYED:
KEALAKEKUA ARMORY
81-1032 NANI KUPUNA PLACE
KEALAKEKUA, HAWAII 96750

PREPARED FOR:
STATE OF HAWAII DEPARTMENT OF DEFENSE
3949 DIAMOND HEAD ROAD
HONOLULU, HAWAII 96816

CONDUCTED BY:
LEHUA ENVIRONMENTAL INC.
P.O. BOX 1018
KAMUELA, HAWAII 96743

DATE: AUGUST 3, 2026

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1.0 CERTIFICATIONS AND LIMITATIONS

Lehua Environmental Inc. (LEI) has completed this Hazardous Materials Survey for the Kealakekua Armory Building 2 Demolition project at the Kealakekua Armory located at 81-1032 Nani Kupuna Place in Kealakekua, Hawaii (Subject Site). LEI's findings and recommendations contained herein are based on research, site observations, government regulations and laboratory data, which were gathered at the time and location of the study. Opinions stated in this report do not apply to changes that may have occurred after the services were performed.

LEI has performed specified services for this project with the degree of care, skill and diligence ordinarily exercised by professional consultants performing the same or similar services. No other warranty, guarantee, or representation, expressed or implied, is included or intended; unless otherwise specifically agreed to in writing by both LEI and LEI's Client.

LEI makes no warranty or assumes no liability for the inappropriate use or misuse of this document.

Prepared By: 

Nicole Garaganza-Tengan
State of Hawaii Asbestos Certification
Certification #: HIASB-5107, Expires: 8/19/26
State of Hawaii Certified Lead Inspector
Certification #: PB-1268, Expires: 10/19/27

Report Date: August 3, 2026

2.0 SUMMARY OF FINDINGS AND RECOMMENDATIONS

Subject: Hazardous Materials Survey Report
Kealakekua Armory – Building 2 (Quonset Hut/Vehicle Storage) Demolition
81-1032 Nani Kupuna Place, Kealakekua, Hawaii 96750

Lehua Environmental Inc. (LEI) completed this hazardous materials survey on July 21, 2026 for the Kealakekua Armory – Building 2 Demolition project.

Below is a summary of LEI's findings:

ASBESTOS-CONTAINING MATERIALS (ACM)
The below table lists the identified ACM at the Subject Site.

IDENTIFIED ACM
KEALAKEKUA ARMORY – BUILDING 2 DEMOLITION

Structure	*Location*	*Int./ Ext.*	*Homogeneous Materials*	*Color*	*Friable*	*Type*	*Cond.*	*Est. Amt. of Material (ft^2)*	*Asbestos Content*	*Sample ID*
Quonset Hut	Exterior	Ext.	Paint on Corrugated Metal Siding	Silver	No	Misc.	Fair	10,400	3% Chrysotile (Silver Coat)	A-4 A-5 A-6
Covered Parking	Exterior	Ext.	Paint on Metal Roof Framing	Silver	No	Misc.	Fair	2,000	3% Chrysotile (Silver Coat)	A-4 A-5 A-6
Quonset Hut	Exterior	Ext.	Caulking on Corrugated Metal Siding Seams and Window Frame Seams	Silver	No	Misc.	Fair	1,000 linear ft. (lf)	3% Chrysotile (Silver Coat)	A-7 A-8 A-9

The identified non-friable ACM silver paint which could be crumbled and pulverized during renovation/demolition activities must be removed and disposed of by a qualified asbestos abatement contractor. Disturbance activities that would render the identified ACM to be friable must be avoided.

In addition, the services of a qualified consultant should be obtained to conduct air monitoring and inspect the removal activities to ensure compliance with applicable Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), and Hawaii Occupational Safety and Health (HIOSH) regulations pertaining to the handling of asbestos-containing material.

LEAD PAINT

Various painted exterior and interior building components within the planned areas of disturbance were identified to be Lead-Containing Paint (LCP) and Lead-Based Paint (LBP) in poor to fair conditions. The table below summarizes the identified LCP and LBP within the Subject Site.

IDENTIFIED LCP AND LBP
KEALAKEKUA ARMORY – BUILDING 2 DEMOLITION

Structure	*Location/ Room*	*Int./ Ext.*	*Description*	*Color*	*Substrate*	*Cond.*	*Lead Conc. (mg/kg)*	*LCP or LBP?*	*Sample ID*
Covered Garage	Exterior	Ext.	Roof Framing	Green	Metal	Poor	2,300	LCP	L-1
Covered Garage	Exterior	Ext.	Ceiling and Beams	Green	Wood	Poor	3,300	LCP	L-2
Covered Garage	Exterior	Ext.	Columns	Green	Wood	Fair	2,700	LCP	L-3
Quonset Hut	Throughout	Int.	Siding Walls, Large Sliding Doors	Gray	Metal	Fair	1,800	LCP	L-4
Quonset Hut	1, 2, 3, 4	Int.	Fiberboard Walls/Ceilings	White	Fiberboard	Poor	950	LCP	L-5
Quonset Hut	1,2, 3, 4	Int.	Door Frames	Blue	Wood	Fair	25,000	LBP	L-6
Quonset Hut	1, 2, 3, 4	Int.	Doors	White	Wood	Poor	2,700	LCP	L-7
Quonset Hut	Throughout	Int.	Quonset Hut Framing	Gray	Metal	Poor	1,800	LCP	L-8
Quonset Hut	5	Int.	Door and Door Frame	Silver	Metal	Poor	80,000	LBP	L-9
Quonset Hut	4	Int.	Wall	White	Wood	Fair	2,900	LCP	L-10
Quonset Hut	Throughout	Int.	Window Frame	Green	Wood	Fair	3,000	LCP	L-11
Quonset Hut	Throughout	Int.	Window Frame Security Bars	Green	Metal	Poor	2,500	LCP	L-12

LEI recommends the following for LCP or LBP disturbance:

- Spot remove and dispose of all LCP or LBP that may be disturbed or become dislodged during renovation activities in accordance with applicable local, state, and federal regulations.
- Spot remove and dispose of all loose and flaking (poor condition) LCP or LBP that may be disturbed or become dislodged during renovation activities in accordance with applicable local, state, and federal regulations.
- Workers performing disturbance of LCP or LBP must take appropriate measures to comply with applicable OSHA and HIOSH regulations pertaining to the handling of lead containing materials, lead dust and worker protection. Note that OSHA and HIOSH regulate activities that disturb paint which contain any detectable concentration of lead.

- A qualified consultant should be obtained to conduct air monitoring and inspection activities to ensure compliance with applicable state and federal regulations pertaining to the handling of lead paint.

ARSENIC-CONTAINING BUILDING PRODUCT (ARCBP)

The white fiberboard walls and ceilings at the Subject Site were identified to be ArCBP. The below table summarizes this finding.

IDENTIFIED ARCBP
KEALAKEKUA ARMORY – BUILDING 2 DEMOLITION

Bldg.	*Location/ Room*	*Int./ Ext.*	*Description*	*Color*	*Substrate*	*Cond.*	*Arsenic Conc. (mg/kg)*	*Arsenic Containing?*	*Sample ID*
Quonset Hut	1, 2, 3, 4	Int.	Walls/Ceiling	White	Fiberboard	Poor	4,300	YES	ARS-1

The identified ArCBP white fiberboard walls and ceilings must be removed and disposed of in compliance with all applicable Federal, State and local laws and regulations concerning arsenic, including all incidental and pertinent operations during the renovation of the structures at the Subject Site. Contractor employees assigned to work with the identified ArCBP must have completed training in accordance with 29 CFR 1910.1018, within the last year and as specified in the project specifications.

In addition, the services of a qualified consultant should be obtained to conduct air monitoring and inspect the removal activities to ensure compliance with applicable Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), and Hawaii Occupational Safety and Health (HIOSH) regulations pertaining to the handling of arsenic-containing building products.

3.0 SCOPE OF WORK

LEI performed the following scope of work:

- Performed site reconnaissance at the Subject Site;
- Collected a total of twenty-one (21) bulk asbestos samples from the Subject Site in accordance with DOH/EPA guidelines;
- Submitted the twenty-one (21) bulk samples to Hawaii Analytical Laboratories, LLC for analysis by polarized light microscopy (PLM) in accordance with NIOSH Method – 600/R-93/116 to determine asbestos type and content;
- Collected twelve (12) paint chip samples from the Subject Site;
- Submitted the twelve (12) paint chip samples to Hawaii Analytical Laboratories, LLC for analysis via EPA Method 7082m LEAD by Flame Atomic Absorption Spectrophotometry (FAAS) for total lead content; and,
- Collected one (1) bulk samples of suspect arsenic-containing building products from the Subject Site;
- Submitted the one (1) suspect arsenic-containing bulk sample to Hawaii Analytical Laboratories, LLC for analysis of total arsenic content;
- Collected one (1) representative bulk sample for toxicity characteristic leaching procedure (TCLP) lead analysis; and
- Provided this report documenting LEI's methodologies, findings, photograph documentation and recommendations.

4.0 METHODOLOGY

ASBESTOS

LEI personnel collected twenty-one (21) samples of suspect materials from the Subject Site for asbestos analysis. These samples were collected in accordance with DOH/EPA guidelines and recommendations.

Each suspect asbestos containing material was first wetted with water. A small piece was then removed and placed in a labeled re-sealable plastic bag. The sampling equipment was cleaned between each sample collection to avoid cross-contamination between samples. All samples were properly logged and recorded following strict chain of custody procedure and submitted to Hawaii Analytical Laboratories, LLC (HAL) for analysis by polarized light microscopy in accordance with EPA Method 600/R-93/116. HAL is accredited for bulk asbestos analysis through successful participation in the National Voluntary Lab Accreditation Program (NVLAP).

LEAD PAINT

LEI's State of Hawaii certified lead-based paint risk assessor collected twelve (12) paint chip samples from the Subject Site in accordance with the DOH/EPA guidelines and recommendations.

The suspected lead paints were wetted with amended water before sample collection. Paint was carefully scraped and placed into a labeled re-sealable plastic bag. The sampling equipment was cleaned between each sample collection to avoid cross-contamination between samples. All samples were properly logged and recorded following strict chain of custody procedure and submitted to HAL for analysis in accordance with EPA Method 7082m LEAD by FAAS.

ARSENIC-CONTAINING BUILDING PRODUCTS

LEI personnel collected and analyzed one (1) bulk samples suspected to be arsenic-containing building products from the Subject Site in accordance with the EPA guidelines and recommendations.

The suspect ArCBP were wetted with amended water before sample collection. The bulk sample was carefully removed and placed into a labeled re-sealable plastic bag. The sampling equipment was cleaned between each sample collection to avoid cross-contamination between samples. All samples were properly logged and recorded following strict chain of custody procedure and submitted to Hawaii Analytical Laboratories, LLC for analysis of total arsenic.

TCLP SAMPLE COLLECTION

LEI personnel collected and analyzed one (1) bulk representative sample of the building materials with planned disposal for the demolition project at the Subject Site. The sample was properly logged and recorded following strict chain of custody procedure and submitted to Hawaii Analytical Laboratories, LLC for analysis of TCLP lead.

5.0 RESULTS

ASBESTOS

The silver paint located on the exterior corrugated metal siding of the Quonset hut, the silver painted caulking on exterior corrugated metal siding and window frame seams of the Quonset hut and the silver paint on the metal roof frame of the covered parking were identified to be ACM. Table 1 summarizes the results of asbestos survey included in Appendix I. Photograph Log 1 included in Appendix II includes photographs of the sampled materials. Additionally, the identified ACM locations are included in Appendix III. Laboratory results are included in Appendix IV.

LEAD PAINT

Two (2) of the sampled painted building components contained lead in excess of the EPA/HUD guideline of 5,000 mg/kg to be considered Lead-Based Paint (LBP). Additionally, ten (10) of the sampled painted building components contained detectable levels of lead above the laboratory detection limit and below the LBP definition to be considered Lead-Containing Paint (LCP).

Table 2 included in Appendix I, summarizes the results of the lead paint survey at the Subject Site. Identified LCP and LBP are listed in bold text. Photograph Log 2 included in Appendix II includes photographs of the sampled paints. The laboratory results are included in Appendix IV.

ARSENIC-CONTAINING BUILDING PRODUCT

The white fiberboard walls and ceilings located in rooms 1, 2, 3 and 4 of the Quonset hut were identified to be ArCBP. Table 3 located in Appendix I summarizes the results of all sampled suspect materials collected during the arsenic-containing building products survey. Photograph Log 3 located in Appendix II includes photographs of the sampled materials within the Targeted Areas of the Subject Site. Figure 3 included in Appendix III locates the identified ArCPB at the Subject Site. The laboratory results are included in Attachment IV.

TCLP SAMPLE

The representative bulk sample TCLP laboratory results of the building materials with planned disposal for the demolition project at the Subject Site did not exceed the applicable Resource Conservation Recovery Act hazardous waste limits. The laboratory result is included in Attachment IV.

Appendix I

TABLE 1. ASBESTOS SURVEY SUMMARY
TABLE 2. LEAD PAINT SURVEY SUMMARY
TABLE 3. ARSENIC SURVEY SUMMARY

Table 1. Asbestos Survey Summary
Hazardous Materials Survey
Kealakekua Armory Building 2 Demolition
81-1032 Nani Kupuna Place
Kealakekua, Hawaii 96750

Structure	*Location/ Room*	*Int./ Ext.*	*Homogeneous Materials*	*Color*	*Friable*	*Type*	*Cond.*	*Est. Amt. of Material (ft²)*	*Asbestos Content*	*Sample ID*
Covered Parking	Roof	Ext.	Built-up Roofing Material	Black	No	Misc.	Fair	4,000	None Detected	A-1
									None Detected	A-2
									None Detected	A-3
□uonset Hut	***Exterior***	***Ext.***	***Paint on Corrugated Metal Siding***	***Sil□er***	***□o***	***Misc.***	***Fair***	***□□□□□***	***□□ C□rysotile (Sil□er Coat)***	***A□□***
										A□□
										A□□
Co□ered Parking	***Exterior***	***Ext.***	***Paint on Metal Roof Framing***	***Sil□er***	***□o***	***Misc.***	***Fair***	***2□□□***	***□□ C□rysotile (Sil□er Coat)***	***A□□***
										A□□
										A□□
□uonset Hut	***Exterior***	***Ext.***	***Caulking on Corrugated Metal Siding Seams and***	***Sil□er***	***□o***	***Misc.***	***Fair***	***□□□□linear ft. (lf)***	***□□ C□rysotile (Sil□er Coat)***	***A□□***
										A□□
										A□□
Quonset Hut	Rm. 1, 2, 3, 4	Int.	Fiberboard Walls/Ceilings	White	Yes	Misc.	Poor	2,000	None Detected	A-10
									None Detected	A-11
									None Detected	A-12
Quonset Hut	5	Int.	Grout on Walls/Ceilings	Gray	No	Misc.	Fair	1,000 lf	None Detected	A-13
									None Detected	A-14
									None Detected	A-15
Quonset Hut	5	Int.	Paint on Door and Door Frame	Silver	No	Misc.	Poor	50	None Detected	A-16
									None Detected	A-17
									None Detected	A-18
Quonset Hut	Throughout	Int.	Electrical Wire Insulation	Black	No	Misc.	Poor	500 lf	None Detected	A-19
									None Detected	A-20
									None Detected	A-21

Bold text indicates identified ACM.

Table 2. Lead Paint Survey Summary
Hazardous Materials Survey
Kealakekua Armory Building 2 Demolition
81-1032 Nani Kupuna Place
Kealakekua, Hawaii 96750

Bldg.	Location/ Room	Int./ Ext.	Description	Color	Substrate	Cond.	Lead Conc. (mg/kg)	LCP or LBP?	Sample ID
Co□ered □arage	Exterior	Ext.	Roof Framing	□reen	Metal	Poor	2□□□	LCP	L□□
Co□ered □arage	Exterior	Ext.	Ceiling and Beams	□reen	□ ood	Poor	□□□□	LCP	L□2
Co□ered □arage	Exterior	Ext.	Columns	□reen	□ ood	Fair	2□□□	LCP	L□□
□uonset Hut	T□roug□out	Ext.	Siding □ alls□Large Sliding Doors	□ray	Metal	Fair	□□□□	LCP	L□□
□uonset Hut	□□2□□□□	Int.	Fiberboard □ alls/Ceilings	□ □ite	Fiberboard	Poor	□□□	LCP	L□□
□uonset Hut	□□2□□□□	Int.	Door Frames	Blue	□ ood	Fair	2□□□□	LBP	L□□
□uonset Hut	□□2□□□□	Int.	Doors	□ □ite	□ ood	Poor	2□□□	LCP	L□□
□uonset Hut	T□roug□out	Int.	□uonset Hut Framing	□ray	Metal	Poor	□□□□	LCP	L□□
□uonset Hut	□	Int.	Door and Door Frame	Sil□er	Metal	Poor	□□□□□	LBP	L□□
□uonset Hut	□	Int.	□ all	□ □ite	□ ood	Fair	2□□□	LCP	L□□□
□uonset Hut	T□roug□out	Int.	□ indo□ Frame	□reen	□ ood	Fair	□□□□	LCP	L□□□
□uonset Hut	T□roug□out	Int.	□ indo□ Frame Security Bars	□reen	Metal	Poor	2□□□	LCP	L□□2

Bold text indicates identified LBP and LCP.

Table 3. Arsenic Survey Summary
Hazardous Materials Survey
Kealakekua Armory Building 2 Demolition
81-1032 Nani Kupuna Place
Kealakekua, Hawaii 96750

Bldg.	*Location/ Room*	*Int./ Ext.*	*Description*	*Color*	*Substrate*	*Cond.*	*Arsenic Conc. (mg/kg)*	*Arsenic Containing?*	*Sample ID*
uonset Hut	2	*Int.*	*alls/Ceiling*	*ite*	*Fiberboard*	*Poor*		*ES*	*ARS*

Bold text indicates identified ArCBP.

Appendix II

PHOTOGRAPH LOG 1. ASBESTOS SURVEY
PHOTOGRAPH LOG 2. LEAD PAINT SURVEY
PHOTOGRAPH LOG 3. ARSENIC-CONTAINING BUILDING PRODUCT SURVEY

P□otograp□Log □. Asbestos Sur□ey
Ha□ardous Materials Sur□ey
□ealakekua Armory □Building 2 Demolition



A □□□one Detected
A2 □□one Detected
A □□□one Detected

Exterior black built-up roofing material located on the roof of the covered parking.



A □□□□ C□rysotile (Sil□er Coat)
A □□□ot Analy□ed
A □□□ot Analy□ed

Exterior silver paint on corrugated metal siding located on the Quonset Hut.



A □□□□ C□rysotile (Sil□er Coat)
A □□□ot Analy□ed
A □□□ot Analy□ed

Exterior silver paint on corrugated metal siding seams and window frame seams located at the Quonset Hut.

P□otograp□ Log □. Asbestos Sur□ey
Ha□ardous Materials Sur□ey
□ealakekua Armory □Building 2 Demolition



A □□□one Detected
A □□□one Detected
A □2□one Detected

Interior white fiberboard walls and ceiling located in rooms 1-4 of the Quonset Hut.



A □□□one Detected
A □□□one Detected
A □□□one Detected

Interior gray grout on walls and ceiling located in room 5 of the Quonset Hut.



A □□□one Detected
A □□□one Detected
A □□□one Detected

Interior silver paint on door and door frame located in room 5 of the Quonset Hut.

P□otograp□Log □. Asbestos Sur□ey
Ha□ardous Materials Sur□ey
□ealakekua Armory □Building 2 Demolition



A □□□□one Detected
A2□□□one Detected
A2□□□one Detected

Interior black electrical wire insulation located throughout the Quonset Hut.



A □□□□ C□rysotile (Sil□er Coat)
A □□□ot Analy□ed
A □□□ot Analy□ed

Exterior silver paint on metal roof framing of the covered parking.

P□otograp□ Log 2. Lead Paint Sur□ey
Ha□ardous Materials Sur□ey
□ealakekua Armory □Building 2 Demolition



L □□LCP (2□□□□mg/kg)

Exterior green roof framing located at the covered parking.



L2□LCP (□□□□□mg/kg)

Exterior green wood ceiling and beams located at the covered parking.



L □□LCP (2□□□□mg/kg)

Exterior green wood columns located at the covered parking.

P□otograp□ Log 2. Lead Paint Sur□ey
Ha□ardous Materials Sur□ey
□ealakekua Armory □Building 2 Demolition



L □□LCP (□□□□mg/kg)

Exterior gray metal siding walls and large sliding doors located throughout the Quonset Hut.



L □□LCP (□□□mg/kg)

Interior white fiberboard walls and ceiling located in rooms 1-4 of the Quonset Hut.



L □□LBP (2□□□□mg/kg)

Interior blue wood door frames located in rooms 1-4 of the Quonset Hut.

P□otograp□ Log 2. Lead Paint Sur□ey
Ha□ardous Materials Sur□ey
□ealakekua Armory □Building 2 Demolition



L □□LCP (2□□□□mg/kg)

Interior white wood doors located in rooms 1-4 of the Quonset Hut.



L □□LCP (□□□□□mg/kg)

Interior gray metal Quonset Hut framing located throughout the Quonset Hut.



L □□LBP (□□□□□□mg/kg)

Interior silver metal door and door frame located in room 5 of the Quonset Hut.

P□otograp□ Log 2. Lead Paint Sur□ey
Ha□ardous Materials Sur□ey
□ealakekua Armory □Building 2 Demolition



L □□□LCP (2□□□□mg/kg)

Interior white wood wall located in room 4 of the Quonset Hut.



L □□□LCP (□□□□□mg/kg)

Interior green wood window frame located throughout the Quonset Hut.



L □2□LCP (2□□□□mg/kg)

Interior green metal window frame security bars located throughout the Quonset Hut.

P□otograp□ Log □. Arsenic□Containing Building Product Sur□ey
Ha□ardous Materials Sur□ey
□ealakekua Armory □Building 2 Demolition



ARS□□ArCBP (□□□□mg/kg)

Interior white fiberboard walls and ceiling located in rooms 1-4 of the Quonset Hut.

Appendix III

Figure 1. Identified ACM Location Map North Side
Figure 2. Identified ACM Location Map South Side
Figure 3. Identified Arsenic Location Map
Figure 4. Identified ACM Location Map Covered Area

Figure 1. Identified ACM Location Map, North Side
Hazardous Materials Survey
Kealakekua Armory – Building 2 Demolition

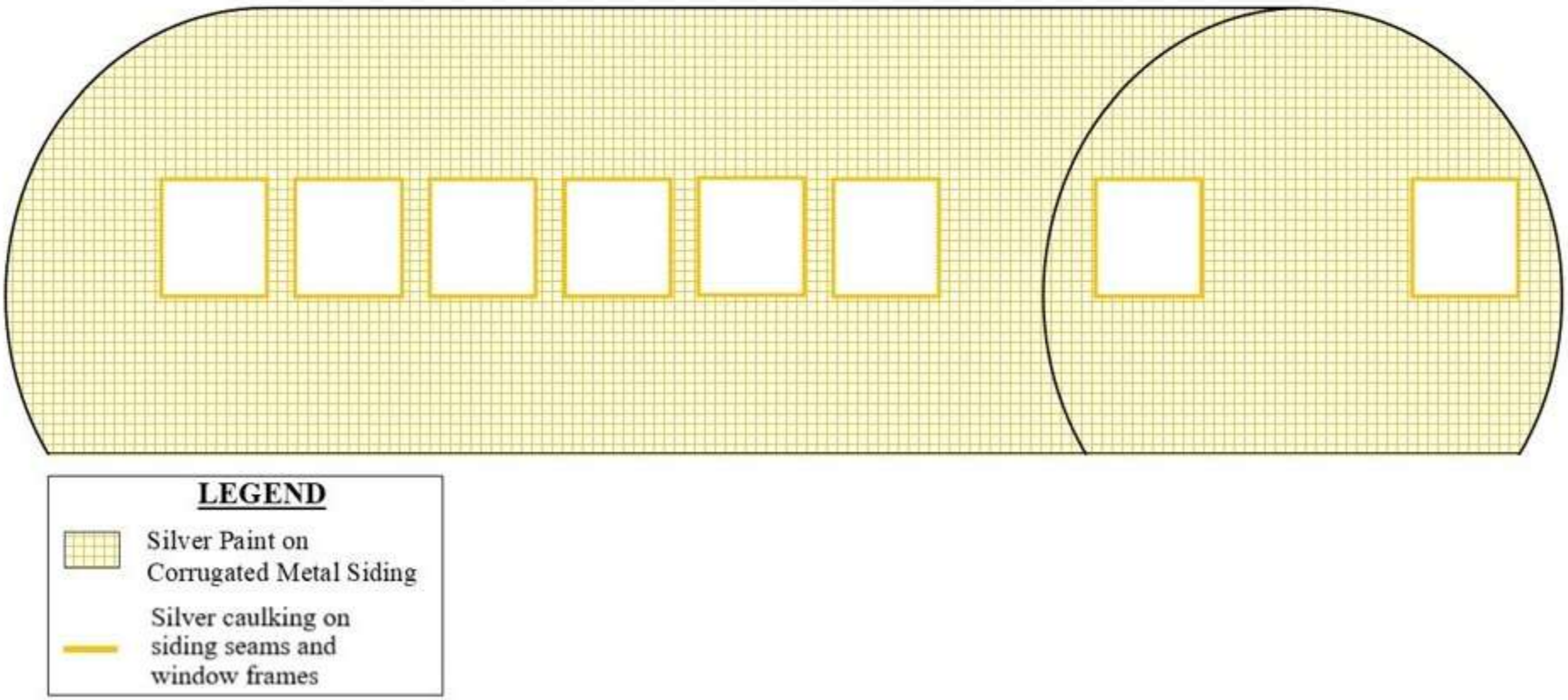


Figure 2. Identified ACM Location Map, South Side
Hazardous Materials Survey
Kealakekua Armory – Building 2 Demolition

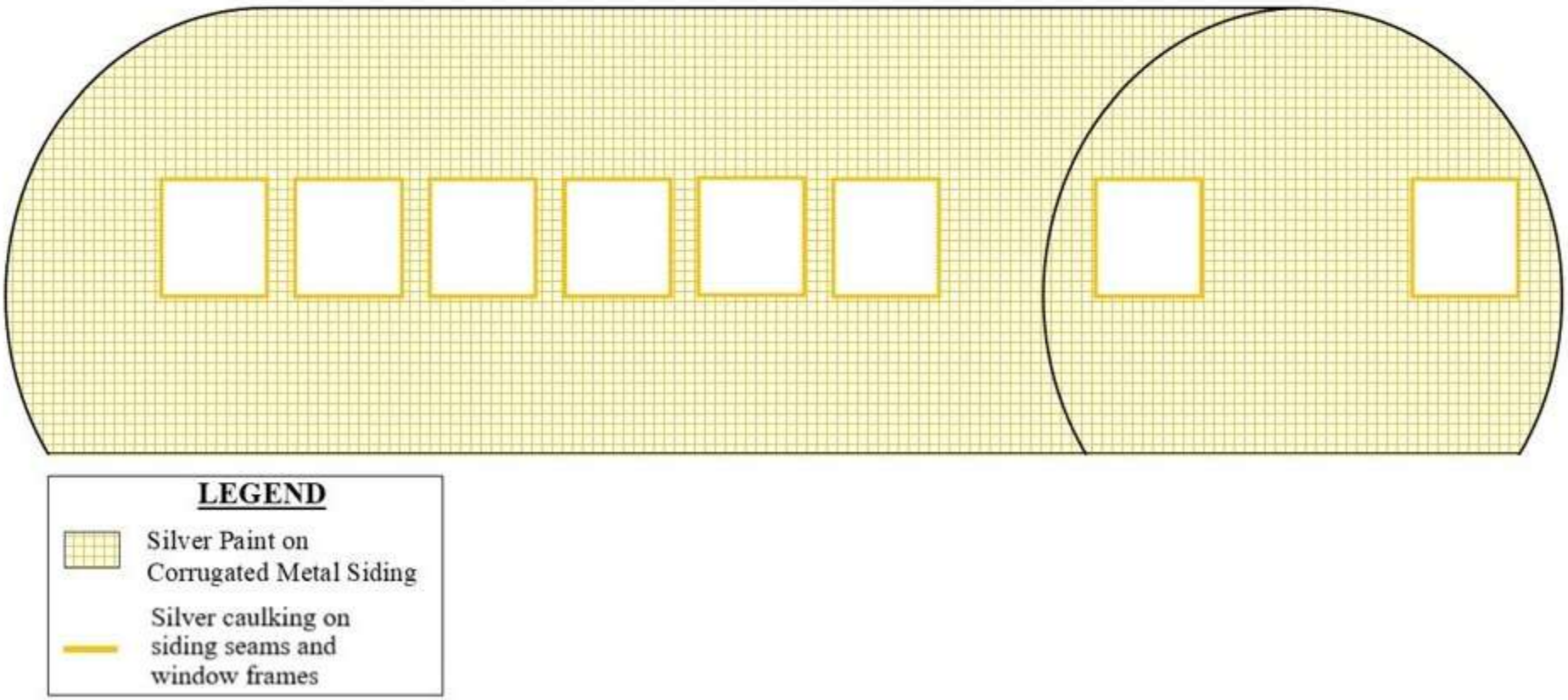


Figure 3. Identified ArCBP Location Map
Hazardous Materials Survey
Kealakekua Armory – Building 2 Demolition

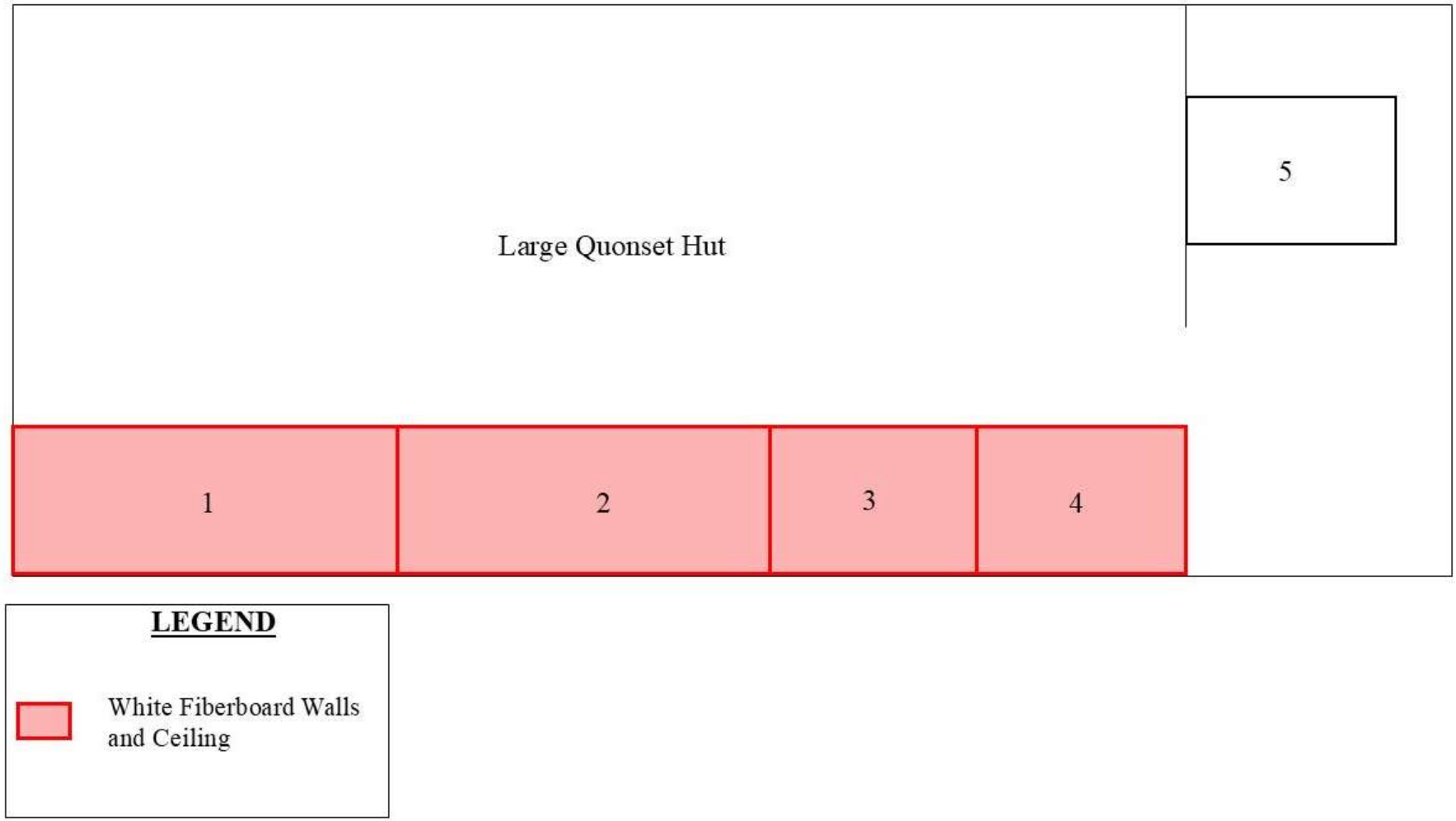
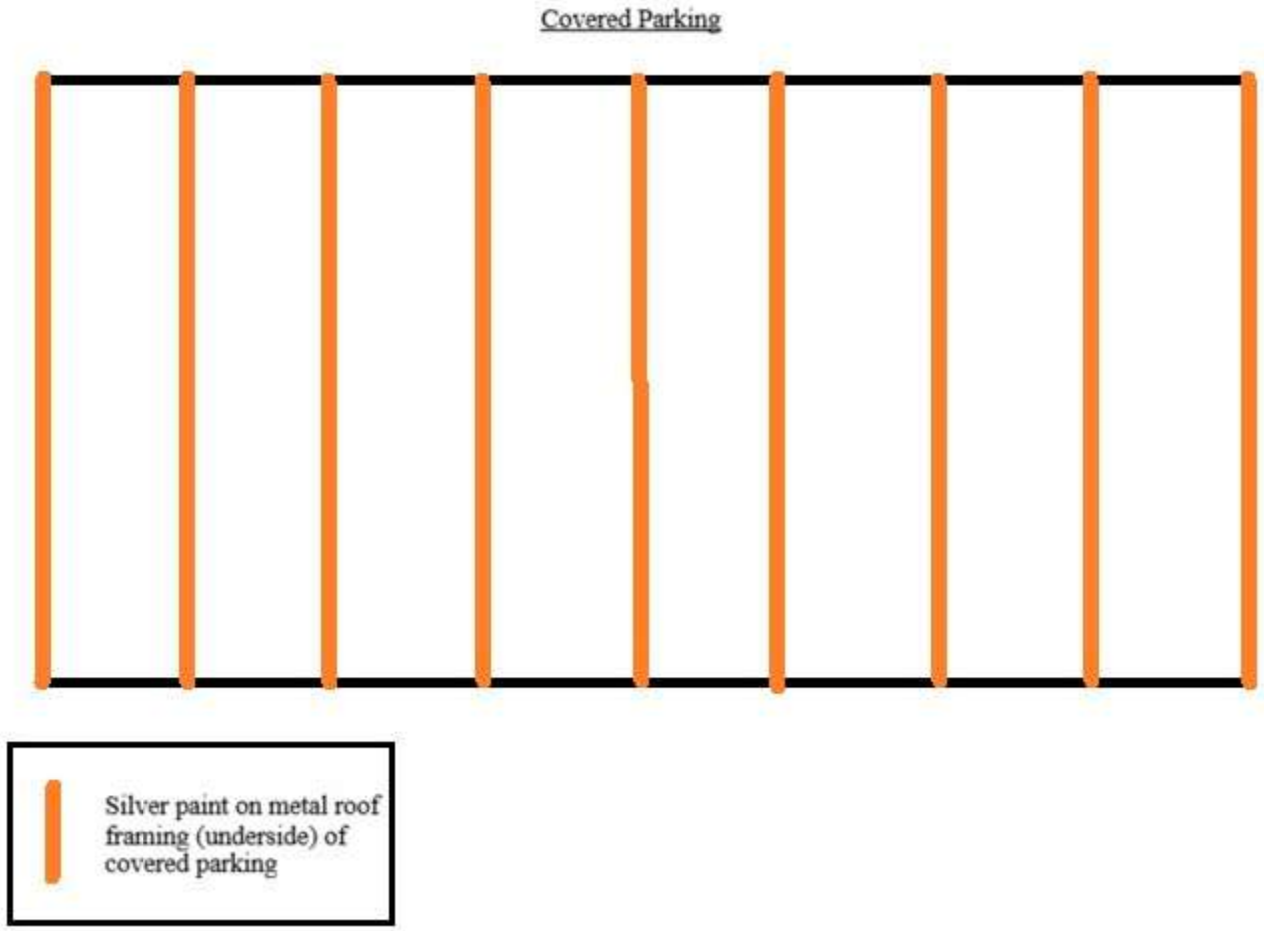


Figure 4. Identified ACM Location Map, Covered Garage
Hazardous Materials Survey
Kealakekua Armory – Building 2 Demolition



Appendix **IV**

ASBESTOS LABORATORY ANALYTICAL RESULTS AND CHAIN-OF-CUSTODY FORMS
LEAD LABORATORY ANALYTICAL RESULTS AND CHAIN-OF-CUSTODY FORMS
ARSENIC LABORATORY ANALYTICAL RESULTS AND CHAIN-OF-CUSTODY FORMS

Ha□aii Analytical Laboratory
A □AL □TICAL REP□RT

30 July 2026 issued amended report to replace original report. Additional results are included.

Mr. Kama Kobayashi
Lehua Environmental Inc.
100 Pauahi St. Suite 207
Hilo HI 96720

Phone Number: (808)494-0365
Email: lehuaenvironmental@gmail.com

Lab Job No: 202607660 Rev 1
Total Analyzed: 14
Date Collected: 7/21/2026
Date Submitted: 7/27/2026
Project Name: Kealakekua Armory

TCLP Lead

EPA Method: 1311m / 7000Bm

Lab Sple No.	Sample ID / Description	Results	Units	Date Analyzed
202656708	**TCLP-Bldg. 2**	< 1	mg/L	7/30/2026

All Quality Control data are acceptable unless otherwise noted.

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Lab Job No: 202607660 Rev 1
Total Analyzed: 14
Date Collected: 7/21/2026
Date Submitted: 7/27/2026
Project Name: Kealakekua Armory

Total Lead (paint chips)

NIOSH Method: 7082m LEAD by FAAS

Lab Sple No.	Sample ID / Description	Results	Units	Date Analyzed
202656695	**L-1**	2300	mg/kg	7/29/2026
202656696	**L-2**	3300	mg/kg	7/29/2026
202656697	**L-3**	2700	mg/kg	7/29/2026
202656698	**L-4**	1800	mg/kg	7/29/2026
202656699	**L-5**	950	mg/kg	7/29/2026
202656700	**L-6**	25000	mg/kg	7/29/2026
202656701	**L-7**	2700	mg/kg	7/29/2026
202656702	**L-8**	1800	mg/kg	7/29/2026
202656703	**L-9**	80000	mg/kg	7/29/2026
202656704	**L-10**	2900	mg/kg	7/29/2026
202656705	**L-11**	3000	mg/kg	7/29/2026
202656706	**L-12**	2500	mg/kg	7/29/2026

All Quality Control data are acceptable unless otherwise noted.

Ha□aii Analytical Laboratory (□□□□2) is accredited by t□e AIHA LAP□LLC in t□e EMLAP□IHLAP□and ELLAP programs for t□e scope of □ork listed on □□□.ai□aaccreditedlabs.org□in accordance □it□t□e recogni□ed IS□/IEC □□□2□2□□□. Controlled doc.□Amended Analytical Report□re□ □□2□2□□□2□

30 July 2026 issued amended report to replace original report. Additional results are included.

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Lab Job No: 202607660 Rev 1
Total Analyzed: 14
Date Collected: 7/21/2026
Date Submitted: 7/27/2026
Project Name: Kealakekua Armory

Total Recoverable Arsenic (FAAS)

EPA Method: 3051m / 7000Bm

Lab Sple No.	Sample ID / Description	Results	Units	Date Analyzed
202656707	**ARS-1**	4300	mg/kg	7/29/2026

All Quality Control data are acceptable unless otherwise noted.

General Comments
The sample[s] analysis subject of this analytical report were conducted in general accordance with the procedures associated with the "analytical method" referenced above. The analysis of sample relates only to the sample analyzed, and may or may not be representative of the original source of the material submitted for our analysis. All analysts participate in interlaboratory quality control testing to continuously document profiency. This report is not to be duplicated except in full without the expressed written permission of Hawaii Analytical Laboratory. This report should not be construed as an endorsement for a product or a service by the AIHA LAP, LLC or any affiliated organizations. Sample and associated sampling / collection data (e.g. air volume or surface area) is reported as provided by client. TWA values have been calculated based on information supplied by the client that the laboratory has not independently verified. Results have not been corrected for blank determinations unless noted in remarks. Unless otherwise indicated the sample condition at the time of receipt was acceptable. Measurement of uncertainty for lead in paint, dust, airborne particulates, and soil taken from and around buildings and related structures is available upon request. MRL for lead air is 5ug; MRL for lead wipe is 5ug; MRL for lead paint or soil is 40 mg/kg for a 0.25g

Results and Symbols Definitions
> This testing result is greater than the numerical value listed.
< This testing result is less than the numerical value listed.
# = Analytical methods marked with an "#" are not within our AIHA LAP, LLC Scope of Accreditation.
MRL = Method Reporting Limit

Jennifer Hsu Liao
Laboratory Manager

Ha□aii Analytical Laboratory (□□□□2) is accredited by t□e AIHA LAP□LLC in t□e EMLAP□IHLAP□and ELLAP programs for t□e scope of □ork listed on □□□.ai□aaccreditedlabs.org□in accordance □it□t□e recogni□ed IS□/IEC □□□2□2□□□. Controlled doc.□Amended Analytical Report□re□. □□2□2□□□2□

30 July 2026 issued amended report to replace original report. Additional results are included.

Ha□aii Analytical Laboratory
A□AL□TICAL REP□RT

Wednesday, July 29, 2026

Mr. Kama Kobayashi
Lehua Environmental Inc.
100 Pauahi St. Suite 207
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Phone Number: (808)494-0365
Facsimile:
Email: lehuaenvironmental@gmail.com

Lab Job No: 202607660
Date Submitted: 7/27/2026
Your Project: Kealakekua Armory, 7/21/26

Bulk Asbestos Determination

Lab Sple No.	Sample ID / Description	Asbestos Present?	Type	%v/v	Other Fibrous	%v/v	Matrix	Date Analyzed
202656674	**A-1**		NONE DETECTED		Fibrous glass (amorphous)	**30**	Tar	7/29/2026
Layer	Black felt							
Comments								
202656674	**A-1**		NONE DETECTED		Fibrous glass (amorphous)	**15**	Tar + aggregate	7/29/2026
Layer	Black shingle							
Comments								
202656674	**A-1**		NONE DETECTED		None detected		Tar	7/29/2026
Layer	Black tar							
Comments								
202656675	**A-2**		NONE DETECTED		Fibrous glass (amorphous)	**30**	Tar	7/29/2026
Layer	Black felt							
Comments								
202656675	**A-2**		NONE DETECTED		Fibrous glass (amorphous)	**15**	Tar + aggregate	7/29/2026
Layer	Black shingle							
Comments								
202656675	**A-2**		NONE DETECTED		None detected		Tar	7/29/2026
Layer	Black tar							
Comments								

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Lab Job No: 202607660
Date Submitted: 7/27/2026
Your Project: Kealakekua Armory, 7/21/26

Bulk Asbestos Determination

Lab Sple No.	Sample ID / Description	Asbestos Present?	Type	%v/v	Other Fibrous	%v/v	Matrix	Date Analyzed
202656676	**A-3**		NONE DETECTED		Fibrous glass (amorphous)	**30**	Tar	7/29/2026
Layer	Black felt							
Comments								
202656676	**A-3**		NONE DETECTED		Fibrous glass (amorphous)	**15**	Tar + aggregate	7/29/2026
Layer	Black shingle							
Comments								
202656676	**A-3**		NONE DETECTED		None detected		Tar	7/29/2026
Layer	Black tar							
Comments								
202656677	**A-4**	**Yes**	Chrysotile	**3**	Cellulose (undulose)	**1**	Paint + other	7/29/2026
Layer	Silver coat							
Comments								
202656680	**A-7**	**Yes**	Chrysotile	**5**	None detected		Paint + other	7/29/2026
Layer	Silver coat							
Comments								
202656683	**A-10**		NONE DETECTED		Wood fiber / cellulose (undulose)	**85**	Paint + other	7/29/2026
Layer	Brown canec / white paint							
Comments								
202656684	**A-11**		NONE DETECTED		Wood fiber / cellulose (undulose)	**85**	Paint + other	7/29/2026
Layer	Brown canec / white paint							
Comments								
202656685	**A-12**		NONE DETECTED		Wood fiber / cellulose (undulose)	**85**	Paint + other	7/29/2026
Layer	Brown canec / white paint							
Comments								

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Lab Job No: 202607660
Date Submitted: 7/27/2026
Your Project: Kealakekua Armory, 7/21/26

Bulk Asbestos Determination

Lab Sple No.	Sample ID / Description	Asbestos Present?	Type	%v/v	Other Fibrous	%v/v	Matrix	Date Analyzed
202656686	**A-13**		NONE DETECTED		None detected		Cementitious + paint	7/29/2026
Layer	Gray concrete / gray paint							
Comments								
202656687	**A-14**		NONE DETECTED		None detected		Cementitious + paint	7/29/2026
Layer	Gray concrete / gray paint							
Comments								
202656688	**A-15**		NONE DETECTED		None detected		Cementitious + paint	7/29/2026
Layer	Gray concrete / gray paint							
Comments								
202656689	**A-16**		NONE DETECTED		None detected		Paint + cementitious	7/29/2026
Layer	Silver paint / gray cementitious material							
Comments								
202656690	**A-17**		NONE DETECTED		None detected		Paint + cementitious	7/29/2026
Layer	Silver paint / gray cementitious material							
Comments								
202656691	**A-18**		NONE DETECTED		None detected		Paint + cementitious	7/29/2026
Layer	Silver paint / gray cementitious material							
Comments								
202656692	**A-19**		NONE DETECTED		Synthetic fiber (undulose) + fibrous glass (amorphous)	**15**	Tar	7/29/2026
Layer	Black tar material							
Comments								

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Lab Job No: 202607660
Date Submitted: 7/27/2026
Your Project: Kealakekua Armory, 7/21/26

Bulk Asbestos Determination

Lab Sple No.	Sample ID / Description	Asbestos Present?	Type	%v/v	Other Fibrous	%v/v	Matrix	Date Analyzed
202656692	**A-19**		NONE DETECTED		Cellulose (undulose)	> **99**	None detected	7/29/2026
Layer	Brown paper							
Comments								
202656693	**A-20**		NONE DETECTED		Synthetic fiber (undulose) + fibrous glass (amorphous)	**15**	Tar	7/29/2026
Layer	Black tar material							
Comments								
202656694	**A-21**		NONE DETECTED		Synthetic fiber (undulose) + fibrous glass (amorphous)	**15**	Tar	7/29/2026
Layer	Black tar material							
Comments								

Ha□aii Analytical Laboratory is a □IST □□LAP accredited laboratory (□□LAP Lab Code 2□□□□□□) and is accredited in accordance □it□t□e recogni□ed IS□/IEC □□□2□□2□□□. Controlled doc.□Asbestos Report□re□ □□2□2□□□2□

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Email: lehuaenvironmental@gmail.com

Lab Job No: 202607660
Date Submitted: 7/27/2026
Your Project: Kealakekua Armory, 7/21/26

General Comments
The bulk sample[s] analysis subject of this analytical report were conducted in general accordance with the procedures outlined in the United States Environmental Protection Agency's "Interim Method for the Determination of Asbestos in Bulk Insulation Samples" (EPA-600/M4-82-020, Dec. 1982) and / or "Method for Determination of Asbestos in bulk Building Materials" (EPA-600/R-93-116, July 1993). The analysis of each bulk sample relates only to the material examined, and may or may not represent the overall composition of its original source. Floor tile and other resinously bound materials, when analyzed by the EPA methods referenced above may yield false negative results because of limitations in separating closely bound fibers and in detecting fibers of small length and diameter. Gravimetric treatment, which HAL does not offer, may also be appropriate for certain NOB (non-friable organically bound) materials. Unless specifically requested by clients, NOB samples can be subcontracted to a NVLAP accredited lab, or else, they will be analyzed by HAL using regular PLM technique. In addition, alternative methods of identification, including Transmission Electron Microscopy (TEM) may or may not be applicable. We utilize calibrated visual area estimation on a routine basis and do not conduct point counting unless specifically requested to do so. Estimated error for the visual determinations presented are 75% relative (<1 to 10%), 65% relative (11 to 19%), 50% relative (20 to 34%); 40% relative (35 to 50%), 35% relative (51 to 60%), and 25% relative (>60% v/v). We will not separate layers which in our opinion are not readily discernable. This report is not to be duplicated except in full without the expressed written permission of Hawaii Analytical Laboratory. This report must not be used by the client to claim product certification, approval or endorsement by NVLAP, NIST or any agency of Federal Government. Unless otherwise indicated, the sample condition at the time of receipt was acceptable.

Results and Symbols Definitions
> This testing result is greater than the numerical value listed.
< This testing result is less than the numerical value listed.
None Detected = asbestos was not observed in the sample. If trace amount of asbestos was detected below our quantifiable limits of 1.0%, <1% (trace) would be indicated and the asbestos type listed. Point counting, where applicable, are recommended to improve accuracy.

Jennifer Hsu Liao
Laboratory Manager

HAWAII ANALYTICAL LABORATORY, LLC
3615 Harding Avenue, Suite 308
Honolulu, HI 96816
Ph: 808-735-0422 - Fax: 808-735-0047
https://analyzehawaii.com

☐ New Client?

Report To*	:	Lehua Environmental Inc.	Invoice To*	:	Lehua Environmental Inc.
Company	:	PO BOX 1018	Company	:	PO BOX 1018
Address*	:	Kamuela, Hawaii 96743	Address*	:	Kamuela, Hawaii 96743
Phone / Cell No.*	:	808-494-0365	Phone / Cell No.*	:	
Report results to	:	K. Kobayashi	Purchase Order No.	:	
Email / Fax	:	nicole@lehuaenv.com Lehuaenvironmental@gmail.com	Email Invoice To	:	lehuaenvironmental@gmail.com

Need Results By*:
- ☐ 5 Working Days (WD)
- ☐ 4 WD
- ☑ 3 WD
- ☐ 2 WD
- ☐ 24 hours
- ☐ 6 hours or less
- ☐ 4 hours or less
- ☐ 1-2 hours

Site/Project Name:	Client Project No.:	Verbal results?	Sampled By & Certif. # :
Kealakekua Armory		☐	Calvin Arca

Special Instructions:

PLM POSITIVE STOP Instructions:
- ☐ + stop / SAMPLE
- ☐ + stop / LAYER

Lab Report No.: 202607660

Sample ID	Sample Description*	Date Sampled* (mm/dd/yy)	Collection Medium	Sample Area / Air Volume	Analysis Requested*	Method Reference	***Lab Sample(s) No.:***
A-1	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656674
A-2	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656675
A-3	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656676
A-4	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656677
A-5	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656678
A-6	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656679
A-7	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656680
A-8	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656681
A-9	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656682
A-10	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656683
A-11	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656684
A-12	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656685
A-13	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656686
A-14	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656687
A-15	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656688
A-16	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656689
A-17	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656690

Controlled Document - Kealakekua Armory - Hawaii Analytical Laboratory Chain of custody - Rev. 20180419

HAWAII ANALYTICAL LABORATORY, LLC
3615 Harding Avenue, Suite 308
Honolulu, HI 96816
Ph: 808-735-0422 - Fax: 808-735-0047
https://analyzehawaii.com

☐ New Client?

Report To*	:	Lehua Environmental Inc.
Company	:	PO BOX 1018
Address*	:	Kamuela, Hawaii 96743
Phone / Cell No.*	:	808-494-0365
Report results to	:	K. Kobayashi
Email / Fax	:	nicole@lehuaenv.com Lehuaenvironmental@gmail.com

Invoice To*	:	Lehua Environmental Inc.
Company	:	PO BOX 1018
Address*	:	Kamuela, Hawaii 96743
Phone / Cell No.*	:	
Purchase Order No.	:	
Email Invoice To	:	lehuaenvironmental@gmail.com

Need Results By*:
- ☐ 5 Working Days (WD)
- ☐ 4 WD
- ☑ 3 WD
- ☐ 2 WD
- ☐ 24 hours
- ☐ 6 hours or less
- ☐ 4 hours or less
- ☐ 1-2 hours

Site/Project Name: Kealakekua Armory

Client Project No.:

Verbal results? ☐

Sampled By & Certif. # : Calvin Arca

Special Instructions:

PLM POSITIVE STOP Instructions:
- ☐ + stop / SAMPLE
- ☐ + stop / LAYER

Lab Report No.: 202607660

Sample ID	Sample Description*	Date Sampled* (mm/dd/yy)	Collection Medium	Sample Area / Air Volume	Analysis Requested*	Method Reference	Lab Sample(s) No.:
A-18	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656691
A-19	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656692
A-20	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656693
A-21	Asbestos Bulk	7/21/2026	bulk		asbestos %		202656694
L-1	Paint Chip	7/21/2026	paint		Total lead		202656695
L-2	Paint Chip	7/21/2026	paint		Total lead		202656696
L-3	Paint Chip	7/21/2026	paint		Total lead		202656697
L-4	Paint Chip	7/21/2026	paint		Total lead		202656698
L-5	Paint Chip	7/21/2026	paint		Total lead		202656699
L-6	Paint Chip	7/21/2026	paint		Total lead		202656700
L-7	Paint Chip	7/21/2026	paint		Total lead		202656701
L-8	Paint Chip	7/21/2026	paint		Total lead		202656702
L-9	Paint Chip	7/21/2026	paint		Total lead		202656703
L-10	Paint Chip	7/21/2026	paint		Total lead		202656704
L-11	Paint Chip	7/21/2026	paint		Total lead		202656705
L-12	Paint Chip	7/21/2026	paint		Total lead		202656706
ARS-1	bulk	7/21/2026	bulk		Total arsenic		202656707

HAWAII ANALYTICAL LABORATORY, LLC
3615 Harding Avenue, Suite 308
Honolulu, HI 96816
Ph: 808-735-0422 - Fax: 808-735-0047
https://analyzehawaii.com

☐ New Client?

Report To*	Lehua Environmental Inc.	Invoice To*	Lehua Environmental Inc.
Company	PO BOX 1018	Company	PO BOX 1018
Address*	Kamuela, Hawaii 96743	Address*	Kamuela, Hawaii 96743
Phone / Cell No.*	808-494-0365	Phone / Cell No.*	
Report results to	K. Kobayashi	Purchase Order No.	
Email / Fax	nicole@lehuaenv.com Lehuaenvironmental@gmail.com	Email Invoice To	lehuaenvironmental@gmail.com

Need Results By*:

- ☐ 5 Working Days (WD)
- ☐ 4 WD
- ☑ 3 WD
- ☐ 2 WD
- ☐ 24 hours
- ☐ 6 hours or less
- ☐ 4 hours or less
- ☐ 1-2 hours

Site/Project Name:	Client Project No.:	Verbal results?	Sampled By & Certif. # :
Kealakekua Armory		☐	Calvin Arca

Special Instructions:

PLM POSITIVE STOP Instructions:
- ☐ + stop / SAMPLE
- ☐ + stop / LAYER

Lab Report No.: 202607660

Sample ID	Sample Description*	Date Sampled* (mm/dd/yy)	Collection Medium	Sample Area / Air Volume	Analysis Requested*	Method Reference	***Lab Sample(s) No.:***
TCLP-Bldg. 2	Representative of building materials	7/21/2026	bulk		TCLP lead		202656708

Relinquished By (Print and Sign)	Date/Time	Received By (Print and Sign)	Date/Time
Kama Kobayashi	7/22/2026	Haley Leavitt 07-27-26A10:58 RCVD	

*Sample description can be paint chips, concrete, specific sample collection location, etc...
If matrix is 'soil', please specify if it is a FOREIGN SOIL SAMPLE (outside Hawaii) in the comment section.
All samples submitted are subject to Hawaii Analytical Laboratory terms and conditions.
*Required fields, failure to complete these fields may result in a delay in your samples being processed.

☐ via HAC ☐ via USPS ☐ via drop box ☐ via FedEx ☐ via pick up
awb#: 173-.....

Page: _____ of _____

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ATTACHMENTS

TOTAL ABATEMENT OF HAZMAT AND TOTAL DEMOLITION OF BUILDING NO. 2, KEALAKEKUA ARMORY, STATE OF HAWAII, DEPARTMENT OF DEFENSE, HAWAI'I ARMY NATIONAL GUARD, PROJECT NO. CA-202703-C

Adjutant General
State Department of Defense
3949 Diamond Head Road
Honolulu, Hawaii 96816-4495

Dear Sir or Ma'am,

The undersigned has carefully read and understands the terms and conditions specified in the Specifications, and all documents attached hereto, and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

The undersigned represents: **(Check √ one only)**

☐ A **Hawaii business** incorporated or organized under the laws of the State of Hawaii; **OR**

☐ A **Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii. Business shall be registered prior to award at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii. State of incorporation: _____

Offeror is:

☐ Sole Proprietor ☐ Partnership ☐ Corporation ☐ Joint Venture

☐ Other _____

Federal I.D. No.: _____

Hawaii General Excise Tax License I.D. No.: _____

Payment address (other than street address below): _____

City, State, Zip Code: _____

Business address (street address): _____

City, State, Zip Code: _____

Respectfully submitted:

(x) _____
Authorized (Original) Signature (*1)

Date: _____

_____
Name and Title (Please Type or Print)

Telephone No.: _____

*_____
Exact Legal Name of Company (Offeror) (*2)

Fax No.: _____

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

E-mail Address: _____

(*1)
Original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

1. OFFER

The undersigned has carefully examined the attached plans and specifications and hereby proposes to furnish at his own expense all labor, materials, tools and equipment necessary to construct all work as shown and called for, in strict accordance with the specifications, schedules and drawings pertaining thereto, and includes, but not limited to, cost of delivery, unloading, freight charges, all applicable taxes, and other cost involved, in the **LUMP SUM** of:

Item	Description	Amount
1	Mobilization, permits, fencing, safety and site preparation	$
2	Utility disconnection and relocation	$
3	Hazardous materials abatement and disposal	$
4	Demolition and removal of building No. 2 (Quonset Hut)	$
5	Demolition and removal of vehicle storage building	$
6	Debris hauling, recycling and landfill fees	$
7	Ground preparation, base course and compaction	$
8	Final cleanup, documentation and closeout	$

_____ DOLLARS $ _____

Written amount *Lump sum*

2. Acknowledgment of Addenda

If applicable, the Offeror shall acknowledge the receipt of all addenda issued to this solicitation by inserting the addendum release date in the schedule below:

Addendum No. 1: _____ *Dated*

Addendum No. 2: _____ *Dated*

Addendum No. 3: _____ *Dated*

Addendum No. 4: _____ *Dated*

It is understood that failure to receive any such addendum shall not relieve the Contractor from any obligation under this Proposal as submitted.

3. Time of Performance

Offeror shall complete all the work under this contract within 90 consecutive calendar days from the date of commencement specified by the Notice to Proceed.

4. License(s)

The Contractor for the duration of the contract, and subsequent renewals, shall comply with all Federal, State, and Local rules, regulations, and licensing requirements necessary to perform the work required under the awarded agreement.

The Contractor shall possess all applicable professional and business licenses required to perform work. All licenses shall be submitted with this Offor Form and updated and maintained throughout the contract and subsequent renewals, if applicable.

Due to the nature of the work contemplated Bidder must possess a valid State of Hawai'i Contractor's license in the appropriate classification as stated below:

1. Prime Contractor License C-24 (Building Demolition) and C-19 (Asbestos Abatement) + DOH Lead Abatement Certification; or
2. Prime Contractor License C-24 (Building Demolition) and subcontract asbestos/lead work to a contractor with C-19 and DOH Lead Abatement Certification; or
3. Prime Contractor License B or BC General Contractor and subcontract demolition to C-24 contractor and asbestos/lead work to C-19 contractor with DOH Lead Abatement Certification.

5. Liquidated damages

The liquidated damages per working day for failure to complete the work on time shall be at $0.00 per working day or as stipulated in the General Conditions, whichever is higher.

6. All Joint Contractors & Subcontractors to Engage on This Project

The bidder certifies that the following is a complete listing of all joint contractors or subcontractors covered under Chapter 444, Hawaii Revised Statutes, who will be engaged by the bidder on this project to perform the nature and scope of work indicated pursuant to Section 103D-302, Hawaii Revised Statutes, and understands that failure to comply with this requirement shall be just cause for rejection of the bid.

The bidder further certifies that only those joint contractors or subcontractors listed shall be allowed to perform work on this project and that all other work necessary shall be performed by the bidder with his own employees. If no joint contractor or subcontractor is listed, it shall be construed that all of the work shall be performed by the bidder with his own employees.

All bidders must be sure that they possess and that the subcontractors listed in the proposal possess all the necessary specialty licenses needed to perform the work for this project. The bidder shall be solely responsible for assuring that all of the specialty licenses required to perform the work is covered in his bid.

The bidder shall include the license number of the joint contractors or subcontractors listed below. Failure to provide the correct names and license numbers as registered with the Contractor's Licensing Board may cause rejection of the bid submitted.

The bidder shall include the license number of the joint contractors or subcontractors listed below. Failure to provide the correct names and license numbers as registered with the Contractor's Licensing Board may cause rejection of the bid submitted.

Complete Firm Name of Joint Contractor or Subcontractor for Lump Sum Bid	License Number	Nature and Scope of Work to be performed

7. Confirmation checklist.

Required Bid documents.

- ☐ Completed Offer Form Pages *(OF-1 through OF-5 ONLY)*
- ☐ Copy of License
- ☐ Copy of Corporate Resolution, or equal
- ☐ Copy Bid Bond
- ☐ Copy Form 1, if applicable
- ☐ Copy of a Compliant Hawaii Compliance Express

Reviewed and understood the below solicitation documents.

- ☐ Notice to Bidders
- ☐ Special Notices to Bidders
- ☐ Scope of Work/Specifications
- ☐ Drawings/Plans
- ☐ Other scope related attachments
- ☐ General Conditions
- ☐ Additional General Conditions
- ☐ Special Conditions

8. Incorporation of Solicitation Documents

Bidder understands that all solicitation documents issued in connection with the Contract, including without limitation the solicitation, proposal/qualification/bid, specifications, scope of work, statements of requirements, exhibits, attachments, addenda, amendments, questions and answers, and any other documents or materials issued by the STATE as part of the solicitation process (collectively, the “Solicitation Documents”), are hereby incorporated into and made a part of the Contract by reference as if fully set forth in the Contract.

In the event of any conflict, inconsistency, or ambiguity between the Solicitation Documents and the Contract, the terms of the Contract shall control, unless expressly provided otherwise. The parties acknowledge that the Solicitation Documents form an integral part of the parties’ agreement and shall be binding upon the parties to the same extent as the terms expressly set forth in the Contract.

Enclosed herewith as required by law (Check Applicable Only):

- ☐ Surety Bond
- ☐ Certificate of Deposit
- ☐ Certified Check
- ☐ Cashier's Check
- ☐ Share Certificate
- ☐ Legal Tender

_____

Written amount

_____ DOLLARS ($ _____).

_____

*Signature

Title _____

_____

Name of Company

_____

Address

_____

_____

Telephone _____

Date _____

HAWAII GENERAL EXCISE TAX

I.D. NO. _____

LICENSE CLASSIFICATION AND/OR SUBCLASSIFICATION NO.

_____

(CORPORATE SEAL)

*Please attach to this page evidence of the authority of this officer to submit bids on behalf of the Company, and also the names and residence addresses of all officers of the Company.

NOTE: Fill in all blank spaces with the information asked for or bid may be invalidated. PROPOSAL PAGES MUST BE INTACT; MISSING PAGES MAY INVALIDATE YOUR BID.

PLEASE TAKE NOTICE:

1. The State reserves the right to determine the extent of the contract by selecting and/or omitting bid items (not necessarily in sequence) to the extent required to come within the funds available for the project. The award of the contract shall be made to the responsible bidder whose total bid is the lowest.

2. **CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS PROHIBITED**.
   If awarded a contract in response to this solicitation, offeror agrees to comply with HRS §11-355, which states that campaign contributions are prohibited from a State and County government contractor during the term of the contract if the contractor is paid with funds appropriated by the legislative body between the execution of the contract through the completion of the contract.

3. The Surety shall not be held liable beyond two (2) years of the project acceptance date.

4. **HAWAII PRODUCTS PREFERENCE**
   In accordance with ACT 174, SLH 2022, effective June 27, 2022, Hawaii Products Preference shall not apply to solicitations for public works construction. Therefore, the Hawaii Products Preference shall not apply to this project.

5. APPRENTICESHIP AGREEMENT PREFERENCE
The estimated value of the public works contract is $250,000 or more and the apprenticeship agreement preference pursuant to Hawaii Revised Statutes §103-55.6 (Act 17, SLH 2009) **shall apply**.

1. If applicable to this project, any bidder seeking the preference must be a party to an apprenticeship agreement registered with the State Department of Labor and Industrial Relations (DLIR) at the time the bid is submitted for each apprentice able trade the bidder will employ to construct the project. "Employ" means the employment of a person in an employer-employee relationship.

   a. The apprenticeship agreement shall be registered with the DLIR and conform to the requirements of Hawaii Revised Statutes Chapter 372.

   b. Subcontractors do not have to be a party to an apprenticeship agreement for the bidder to obtain the preference.

   c. The bidder is not required to have apprentices in its employ at the time the bid is submitted to qualify for the preference.

2. A bidder seeking the preference must state the apprentice able trade the bidder will employ for each trade to be employed to perform the work by submitting a completed **signed original** *Certification of Bidder's Participation – Form 1* verifying participation in an apprenticeship program registered with the DLIR. "Apprenticeable trade" shall

have the same meaning as "apprenticeable occupation" pursuant to Hawaii Administrative Rules (HAR) §12-30-5.

a. The *Certification of Bidder's Participation – Form 1 s*hall be authorized by an apprenticeship sponsor listed on the DLIR list of registered apprenticeship programs. "Sponsor" means an operator of an apprenticeship program and in whose name the program is approved and registered with the DLIR pursuant to HAR §12-30-1.

b. The authorization shall be an original signature by an authorized official of the apprenticeship sponsor.

c. The completed *Certification of Bidder's Participation – Form 1* for each trade must be submitted with the bid. A facsimile or copy is acceptable to be submitted with the bid, however the signed original must be submitted within five (5) working days of the bid open date. If the signed original is not received within this timeframe, the preference may be denied. Previous certifications shall not apply.

d. When filling out the *Certification of Bidder's Participation – Form 1*, the name of Apprentice able Trade and Apprenticeship Sponsor must be the same as recorded in the List of Construction Trades in Registered Apprenticeship Programs that is posted on the State Department of Labor and Industrial Relations website. "Registered apprenticeship program" means a construction trade program approved by and registered with the DLIR pursuant to HAR § 12-30-1 and §12-30-4.

e. The *Certification of Bidder's Participation – Form 1* and the List of Construction Trades in Registered Apprenticeship Programs is available on the DLIR website at: http://hawaii.gov/labor/wdd

3. Upon receiving the *Certification of Bidder's participation – Form 1,* the Procurement Officer will verify that the apprenticeship program is on the List of Construction Trades in Registered Apprenticeship Programs and that the form is signed by an authorized official of the Apprenticeship Program Sponsor. If the programs and signature are not confirmed by the DLIR, the bidder will not qualify for the preference.

4. If the bidder is certified to participate in an apprenticeship program for each trade which will be employed by the bidder for the project, a preference will be applied to decrease the bidder's bid amount by five (5) percent for evaluation purposes.

5. Should the bidder qualify for other preferences (for example, Hawaii Products), all applicable preference shall be applied to the bid price.

6. If the winning bidder has submitted Form 1 with his bid packet, the Form 2 will be required the first week of each month for the prior month beginning with the month of the start of work.

6. CHARACTER OF WORKERS OR EQUIPMENT

The Contractor shall perform with his own organization, work amounting to not less than twenty percent (20%) of the total contract cost. The Engineer may require the Contractor to verify the percentage of work he will be providing with his own organization by furnishing pertinent information such as all of the actual subcontractor(s)' quotations he received for the bid. If requested, the Contractor shall provide such verification within 5 working days of the request.

7. CERTIFICATION FOR SAFETY AND HEALTH PROGRAM FOR BIDS IN EXCESS OF $100,000

In accordance with HRS 396-18, by submitting this proposal, the undersigned certifies that his company will have a written safety and health plan for this project that will be available and implemented by the Notice to Proceed date of this project. Details of the requirements of this plan may be obtained from the Department of Labor and Industrial Relations, Occupational Safety and Health Division (HIOSH).

8. TAX CLEARANCES FROM THE STATE DIRECTOR OF TAXATION AND INTERNAL REVENUE SERVICE

Contractors are required to provide a state and federal tax clearance as a prerequisite to entering into a public contract of $2,500 or more. To meet this requirement, all bidders shall submit valid tax clearances with their bid proposals when the bid is $2,500 or more.

Failure to submit the required tax clearance may be sufficient grounds for the State to refuse to receive or consider the prospective bidder's proposal.

In accordance with Act 190 Amendment to HRS 103D-310(c), required as a prerequisite to entering into a contract, the contractor shall register on the Hawaii Compliance Express web site for all tax clearances by going to http://vendors.ehawaii.gov and registering there.

A Certificate of Vendor Compliance generated from this website should be included with their bid proposal. A Compliant status is required prior to awarding the contract.

1. The Adjutant General or his designated representative reserves the right to reject any and/or all bids and waive any defects when, in his opinion, such rejection or waiver will be in the best interest of the State.

2. The award of the contract shall be conditioned upon funds being made available for these projects and further upon the right of the Adjutant General or his designated representative to hold all bids received for a period of ninety (90) days from the date of the opening thereof, unless otherwise required by law, during which time no bid may be withdrawn.

4. By submitting this proposal, the undersigned is declaring his firm has not been assisted or represented on this matter by an individual who has, in a State capacity, been involved in the subject matter of this contract in the past two years.

5. Upon the acceptance of the proposal by the Adjutant General or his designated representative, the undersigned must enter into and execute a contract for the same and furnish a bond, as required by law. This bond shall conform to the provisions of Section 103D-324 of the Hawaii Revised Statutes and any law applicable thereto.

6. If the lowest bid received by the State exceeds the funds available for this project, the State reserves the right to negotiate with the lowest responsible bidder as permitted under Section 103D-302, Hawaii Revised Statutes, as amended, to reduce the scope of work and award a contract.

7. This contract may be awarded as an informal contract as determined by the Adjutant General or his designated representative in accordance with the applicable Hawaii Revised Statutes as amended, whereby a purchase order will be executed and used as the formal contract.

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SAMPLE FORMS
Request for Substitution
Name of Corporation
Weekly Quality Control Report Form

ARTICLE 1 - Definitions

Whenever the following terms or pronouns are used in these Bidding and Execution of Contract Requirements, and General Conditions, or in any contract documents or instruments where these Bidding and Execution of Contract Requirements, and General Conditions govern, the intent and meaning shall be interpreted as follows

1.1_ ADDENDUM (plural - Addenda) A written or graphic document, including Drawings and Specifications, issued by the Engineer during the bidding period which modify or interpret the bidding documents, by additions, deletions, clarifications or corrections which shall be considered and made a part of the bid proposal and the contract when executed.

1.2_ ADDITION (to the contract sum) Amount added to the contract Sum by Change Order.

1.3_ ADMINISTRATIVE RULES - Hawaii Administrative Rules for Chapter 103-D of the Hawaii Revised Statutes.

1.4_ ADMINISTRATOR - The Public Works Administrator, Department of Accounting and General Services

1.5_ ADVERTISEMENT - A public announcement soliciting bids or offers.

1.6_ AMENDMENT - A written document properly executed by the Contractor and DOD issued to amend the existing contract between the State and the Contractor.

1.7_ BAD WEATHER DAY - When weather or other conditions prevent a minimum of four hours of work with the Contractor's normal work force on controlling items of work at the site.

1.8_ BENEFICIAL OCCUPANCY - The point of project completion when the State can use the constructed facility in whole or in part for its intended purpose even though substantial completion may not be achieved.

1.9_ BID See OFFER

1.10_ BID SECURITY - The security furnished by the bidder from which the State may recover its damages in the event the bidder breaches its promise to enter into a contract with the State and fails to execute the required bonds covering the work contemplated, if its proposal is accepted.

1.11_ BIDDER - See Offeror

1.12_ BIDDING DOCUMENTS (or SOLICITATION DOCUMENTS) - The advertisement solicitation notice and instructions, Offer requirements, Offer forms, and the proposed contract documents including all addenda, and clarifications issued prior to receipt of the Offer.

1.13_ BULLETIN - A written notice to the Contractor requesting a price and / or time proposal for contemplated changes preparatory to the issuance of a field order or change order.

1.14_ BY OR TO THE ENGINEER - To avoid cumbersome and confusing repetition of expressions in these General Conditions, it is provided that whenever the following words or words of like import are used, they shall be understood as if they were followed by the words "by the Engineer" or "to the Engineer", unless the context clearly indicates another meaning: contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected or condemned.

1.15_ CALENDAR DAY - Any day shown on the calendar beginning at midnight and ending at midnight the following day. If no designation of calendar or working day is made, "day" shall mean calendar day.

1.16_ CHANGE ORDER - A written order signed by the Engineer that establishes the full payment and final settlement of all claims for direct, indirect and consequential costs, including costs of delays, and establishes any adjustments to contract time related to the work covered and affected by one or more field orders, or for change work done or agreed to be done without issuance of a separate field order. A change order signed by all the parties to the contract constitutes a supplemental agreement.

1.17_ COMPLETION - See SUBSTANTIAL COMPLETION and FINAL COMPLETION.

1.18_ COMPTROLLER - The Comptroller of the State of Hawaii, Department of Accounting and General Services.

1.19_ CONSULTANT - A person, firm or corporation having a contract with the State to furnish services with respect to the project

1.20_ CONTRACT - The written agreement between the Contractor and the State of Hawaii by its Adjutant General, by which the Contractor is bound to furnish all labor, equipment, and materials and to perform the specified work within the contract time stipulated, and by which the State of Hawaii is obligated to compensate the Contractor therefore at the prices set forth therein. The contract shall include the Contract Documents and also any and all amendments and change orders which are required to complete the construction in an acceptable manner.

1.21_ CONTRACT COMPLETION DATE - The calendar day on which all work on the project, required by the contract, must be completed. See CONTRACT TIME and FINAL COMPLETION.

1.22_ CONTRACT DOCUMENTS - The Contract, Addenda (which pertain to the Contract Documents, Contractor's Proposal (including Wage Schedule, List of Subcontractors and other documentation accompanying the Bid and any post bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Contract, the Notice to Proceed, the Bonds, these GENERAL CONDITIONS, the SPECIAL CONDITIONS, the Specifications and the Drawings as the same are more specifically identified in the Contract together with all written Amendments, Change Orders, Field Orders, a written order for minor changes in the work and Engineer's written interpretations and clarifications issued on or after the effective date of the Contract.

1.23_ CONTRACT PRICE - The amount designated on the face of the contract for the performance of work including allowances for extra if any.

1.24_ CONTRACT TIME (or CONTRACT DURATION) - The number of calendar (or working) days provided for completion of the contract, inclusive of authorized time extensions. The number of days shall begin running on the effective date in the Notice to Proceed. If in lieu of providing a number of calendar (or working) days, the contract requires completion by a certain date, the work shall be completed by that date.

1.25_ CONTRACTOR - Any individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of the work under the terms of the contract with the State of Hawaii, and acting directly or through its agents, or employees.

1.26_ DEPARTMENT - The Department of Defense, State of Hawaii (abbreviated DOD).

1.27_ DRAWINGS (or Plans) - The contract drawings in graphic or pictorial form, which show the design, location, character, dimensions and details of the Work to be done and which shall be a part of the Contract Documents.

1.28_ ENGINEER - The Department of Defense Engineer, or the authorized person to act in the Engineer's behalf.

1.29_ EQUAL OR APPROVED EQUAL - Whenever this term is used in the drawings or specifications, it shall be interpreted to mean a brand or article, prequalified in accordance with Section 6.3 SUBSTITUTION OF MATERIALS AND EQUIPMENT, that may be used in place of the one specified.

1.30_ FIELD ORDER - A written order issued by the Engineer or the Engineer's authorized representative to the Contractor requiring the contract work to be performed in accordance with a change or changes in the work. A field order may (1) establish a price adjustment and/or time adjustment in an amount the Engineer believes is reasonable for the change; or (2) may declare that the Engineer does not intend to adjust contract time or price for the work; or (3) may request the Contractor to submit a proposal for an adjustment to the contract time and/or price by a certain date.

1.31_ FINAL COMPLETION - The date set by the Engineer that all work required by the contract and any amendments or changes thereto is in full compliance with the contract.

1.32_ FORCE ACCOUNT - Term used when Work is ordered to be done without prior agreements as to lump sum or unit price cost thereof and is to be billed for at cost of labor, materials and

equipment, insurances, taxes, etc., plus an agreed percentage for overhead and profit.

1.33_ GUARANTEE - Legally enforceable assurance of the duration of satisfactory performance of quality of a product or Work

1.34_ GOODS - Materials. §103D-104

1.35_ HAZARDOUS MATERIALS - Any and all radioactive materials, asbestos, polychlorinated biphenyls, petroleum, crude oil, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, toxic substances or materials cited in Hazardous Material Laws. Abandoned motor vehicles or parts thereof are not hazardous material.

1.36_ HOLIDAYS - The days of each year which are set apart and established as State holidays pursuant to Chapter 8, Hawaii Revised Statutes.

1.37_ INSPECTOR - The person assigned by the Engineer to make detailed inspections of contract performance and materials supplied for the work.

1.38_ LAWS - All Federal, State, City and County Laws, ordinances, rules and regulations, and standard specifications including any amendments thereto effective as of the date of the call for sealed bids.

1.39_ PERFORMANCE LIQUIDATED DAMAGES The amount prescribed in the General Conditions, Section 7.26 FAILURE TO COMPLETE THE WORK ON TIME to be paid to the State or to be deducted from any payments due or to become due the Contractor for each working day or calendar day (as applicable) delay in completing the whole or any specified portion of the work beyond the Contract Time.

1.40_ LETTER OF AWARD - A written notice from the Engineer to the successful bidder(s) stating that its proposal has been accepted by the State.

1.41_ MAJOR UNIT PRICE ITEM - A unit price item which, when extended on its estimated quantities in the proposal form, exceeds five percent (5%) of the total base bid proposal less any allowance and contingent items included in the proposal.

1.42_ NON-CONFORMING WORK - Work that does not fulfill the requirements of the Contract Documents.

1.43_ NOTICE TO CONTRACTORS – See Solicitation.

1.44_ NOTICE TO PROCEED - A written notice from the Contracting Officer to the Contractor advising it of the date on which it is to begin the prosecution of the Work, which date shall also be the beginning of Contract Time.

1.45_ POST CONTRACT DRAWINGS - Drawings issued after the award of the contract for the purpose of clarification and / or changes to the work indicated in the original drawings and which may be made a part of the contract.

1.46_ PROJECT ACCEPTANCE DATE - The calendar day on which the Engineer accepts the project as sufficiently completed in compliance with the contract so that the State can occupy or utilize the Work for its intended use. See SUBSTANTIAL COMPLETION.

1.47_ PROJECT CONTRACT LIMITS (or Contract Zone) - The portion of the site as delineated on the drawings which define the Contractor's primary area of operation for the prosecution of the work. It does not define the exact limits of all construction that may be required under the contract.

1.48_ PROJECT GUARANTEE - A guarantee issued by the Contractor to the State. See GUARANTEE.

1.49_ PROPOSAL (Bid) – See Offer (or Bid).

1.50_ PROPOSAL FORM – See Offer Form (or Bid Form).

1.51_ PUNCH LIST - A list compiled by the Engineer (or Contractor) stating work yet to be completed or corrected by the Contractor in order to substantially complete or finally complete the contract requirements.

1.52_ QUESTIONNAIRE - The specified forms on which the bidder shall furnish required information as to its ability to perform and finance the work.

1.53_ SHOP DRAWINGS - All drawings, diagrams illustrations, schedules and other data or information which are specifically prepared or

assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

1.54_ SPECIAL CONDITIONS - Supplements or modifies the standard clauses of the GENERAL CONDITIONS setting forth conditions or requirements peculiar to the individual project under consideration, which are not thoroughly or satisfactorily covered, described or explained in these GENERAL CONDITIONS.

1.55_ SPECIFICATIONS - That portion of the Contract Documents consisting of written descriptions for materials, equipment, construction systems, standards, workmanship, directions, provisions and requirements that pertain to the method and manner of performing the work and certain administrative requirements applicable thereto.

1.56_ STATE - The State of Hawaii acting through its authorized representative.

1.57_ SUBCONTRACT - Any written agreement between the Contractor and its subcontractors which contains the conditions under which the subcontractor is to perform a portion of the work for the Contractor.

1.58_ SUBCONTRACTOR - An individual, partnership, firm, corporation, joint venture or other legal entity, as covered in Chapter 444, Hawaii Revised Statutes, which enters into an agreement with the Contractor to perform a portion of the work for the Contractor.

1.59_ SUBSTANTIAL COMPLETION - The status of the project when the Contractor has completed all the work and 1) all utilities and services are connected and working, 2) all equipment is in acceptable working condition, 3) additional activity by the Contractor to correct punch list items as described herein will not prevent or disrupt use of the work or the facility in which the work is located, and 4) the building, structure, improvement or facility can be used for its intended purpose.

1.60_ SUPERINTENDENT - The employee of the Contractor who is charged with the responsibility of all the Work.

1.61_ SURETY - The qualified individual, firm or corporation other than the Contractor, which executes a bond with and for the Contractor to insure its acceptable performance of the contract.

1.62_ UNUSUALLY SEVERE WEATHER Uncommonly harsh weather including but not limited to hurricanes, tornados, tropical storms and tropical depressions, or as otherwise defined in the SPECIAL CONDITIONS.

1.63_ 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.

1.64_ WORKING DAY - A calendar day, exclusive of Saturdays, Sundays and State-recognized legal holidays for the month in question.

1.65_ OFFER (or Bid) – The executed document submitted by an Offeror in response to a solicitation request, to perform the work required by the proposed contract documents, for the price quoted and within the time allotted.

1.66_ OFFEROR (or BIDDER) – Any individual, partnership, firm, corporation, joint venture or other legal entity submitting directly or through a duly authorized representative or agent, an Offer for the work or construction contemplated.

1.67_ OFFER FORM (or BID FORM) – The form prepared by the Department on which the Offeror submits the written offer or bid. By submitting an offer or bid, the Offeror adopt the language on the form as its own.

1.68_ PROJECT START DATE – The date established in the Notice to Proceed when the Contractor shall begin prosecution of the work and the start of contract time.

1.69_ SOLICITATION – An Invitation to Bid or Request for Proposals or any other document issued by the Department to solicit bids or offers to perform a contract. The solicitation may indicate the time and place to receive the bids or offers and the location, nature and character of the work, construction or materials to be provided.

ABBREVIATIONS

HAR Hawaii Administrative Rules

HRS Hawaii Revised Statutes

VECP Value Engineering cost Proposal

DOTAX State Department of Taxation

IRS Internal Revenue Service

BIDDING AND EXECUTION OF CONTRACT REQUIREMENTS

ARTICLE 2 - Proposal Requirements and Conditions

2.1 QUALIFICATION OF BIDDERS Prospective bidders must be capable of performing the work for which bids are invited, and must be capable of entering into a public contract of $25,000 or more.

2.1.1 Notice of Intention to Bid

2.1.1.1 In accordance with Section 103D-310, Hawaii Revised Statutes, and Section 3-122-111, Hawaii Administrative Rules, a written notice of intention to bid need not be filed for construction of any public building or public work. A written notice of intention to bid need not be filed for mere furnishing and installing of furniture, equipment, appliances, material and any combination of these items when a Contractor's license is not required under Chapter 444 of the Hawaii Revised Statutes, as amended, and the rules and regulations of the Contractor's License Board.

2.1.1.2 If two (2) or more prospective bidders desire to bid jointly as a joint venture on a single project, they must file an affidavit of joint venture. Such affidavit of joint venture will be valid only for the specific project for which it is filed. No further license is required when all parties to the joint venture possess current and appropriate contractor's licenses. Joint ventures are required to be licensed in accordance with Chapter 444 of the Hawaii Revised Statutes, as amended, and the rules and regulations of the Contractor's License Board when any party to the joint venture agreement does not hold a current or appropriate contractor's license. The joint venture must register with the office of the Director of Commerce and Consumer Affairs in accordance with Chapter 425 of the Hawaii Revised Statutes, as amended.

2.1.1.3 No persons, firm or corporation may bid where (1) the person, firm, or corporation, or (2) a corporation owned substantially by the person, firm, or corporation, or (3) a substantial stockholder or an officer of the corporation, or (4) a partner or substantial investor in the firm is in arrears in any payment owed to the State of Hawaii or any of its political subdivisions or is in default of any obligation to the State of Hawaii or to all or to any of its political subdivisions, including default as a surety or failure to perform faithfully and diligently any previous contract with the Department.

2.1.1.4 The Engineer may, in accordance with Section 103D-310 Hawaii Revised Statutes, require the prospective Bidder to submit answers to questions contained in the STANDARD QUALIFICATION QUESTIONNAIRE FOR PROSPECTIVE BIDDERS ON PUBLIC WORKS CONTRACTS, on the form provided by the Department, properly executed and notarized, setting forth a complete statement of the experience of such prospective Bidder and its organization in performing similar work and a statement of the equipment proposed to be used, together with adequate proof of the availability of such equipment, at least two (2) working days prior to the time advertised for the opening of bids. If the information in the questionnaire proves satisfactory, the Bidder's proposal will be received. All information contained in the answers to the questionnaire shall be kept confidential. The questionnaire will be returned to the Bidder after it has served its purpose.

2.1.1.5 If upon review of the Questionnaire, or otherwise, the Bidder appears not fully qualified or able to perform the intended work, the Engineer shall, after affording the Bidder an opportunity to be heard and if still of the opinion that the Bidder is not fully qualified to perform the work, refuse to receive or to consider any bid offered by the prospective Bidder.

2.1.1.6 Failure to complete and submit the prequalification questionnaire by the designated deadline will be sufficient cause for the Department to disqualify a prospective Bidder.

2.1.2 Compliance Certificate § 103D -310(c) HRS)

2.1.2.1 Contractors are required to provide proof of compliance in order to receive a contract of $25,000 or more. To meet this requirement, Offerors may apply and register at the "Hawaii Compliance Express" website: http://vendors.ehawaii.gov/hce/splash/welcome/html

2.1.2.2 Tax clearances may be obtained by completing the Tax Clearance Application (Form A-6) and submitting it to the Hawaii State Department of Taxation (DOTAX) or the Internal Revenue Service (IRS). The application may be obtained from the DOTAX, or the IRS. The application may be mailed in or walked in to either the DOTAX or the IRS. Both tax agencies encourage the use of their mail-in process, which should

be completed within twenty-one (21) calendar days. Tax clearance certificates will be issued to the applicant upon determination that the applicant has filed all tax returns due, and has paid all amounts owing on such returns, including penalty and interest.

2.1.2.3 Only original tax clearance certificates or certified copies will be accepted for this purpose. Failure to submit the required tax clearance certificates may be sufficient grounds for the Department to refuse to receive or consider the prospective bidder's proposal.

2.1.2.4 Tax clearance certificates are valid for six (6) months. The six-month period will begin with the later approval date stamped on the tax clearance. An original copy of a tax clearance that bears an original green certified copy stamp will be accepted by the Department for final payment. The period of validity is two months.

2.1.2.5 The tax clearances submitted with the bid proposals must be valid on the solicitation's first legal advertisement date or any date thereafter up to the bid opening date. Valid tax clearances submitted with the proposal will remain valid for the contract award and encumbrance.

2.1.2.6 Any person, firm or corporation that is not presently doing business in the State of Hawaii and submits a Notice of Intention to Bid must submit along with said Notice of Intention to Bid a certified letter stating that said person, firm or corporation is not doing business in the State of Hawaii and is not in default of any obligations due to the State or any of its political subdivisions.

2.1.2.7 If a business cannot obtain a tax clearance certificate because of tax delinquencies, it may submit a "special letter" from DOTAX and/or the IRS. The "special letter" may only be obtained if (1) the business has an existing installment agreement with the tax agency, or (2) the delinquency is the subject of an administrative or judicial appeal. The bidder is cautioned that the "special letter" from the IRS must be certified by DOTAX. All conditions applied to tax clearance certificates for this purpose are applicable to these "special letters". Instructions to obtain the "special letter" are available from each respective tax agency.

2.1.2.8 Various combinations of tax clearance certificates and "special letters" are acceptable for this purpose as follows: Tax clearance certificate signed by both tax agencies;

(a) Individual tax clearance certificates from each tax agency, respectively;

(b) Tax clearance certificate from one tax agency and a "special letter" from the other tax agency;

(c) "Special letters" from both tax agencies.

2.1.3 Wrongful Refusal to Accept a Bid - In the event the Engineer, for any reason, wrongfully refuses to accept what would otherwise be a responsive and responsible lowest bid, the exclusive remedy for such lowest bidder shall be the recovery of the reasonable actual costs of preparing the bid. No other bidder shall have any claim for damages. Refer to 2.13 PROTEST.

2.2 INTERPRETATION OF QUANTITIES IN BID SCHEDULE

2.2.1 When quantities for individual items of work are listed in the proposal form for which respective unit prices are asked, said quantities are estimated or approximate and are to be used by the Department only for the purpose of comparing on a uniform basis bids offered for the work. The Department does not, expressly or by implication, agree that the actual quantity of work will correspond therewith.

2.2.2 After determining the low bidder by comparison of bids submitted in accordance with the proposal form and Section 3.1 CONSIDERATION OF PROPOSALS; CANCELLATION in these specifications, the quantities of unit price items of work may increase or decrease.

2.2.3 On unit price bids, payment will be made only for the actual number of units incorporated into the finished project at the unit price bid, subject to Section 4.7 VARIATIONS IN ESTIMATED QUANTITIES.

2.3 CONTENTS OF PROPOSAL FORMS

2.3.1 Prospective bidders will be furnished with proposal forms giving the location, description, and the contract time of the work contemplated for which a lump sum bid price is asked or containing a schedule of items, together with estimated quantities of work to be performed and materials to be furnished, for which unit bid prices and/or lump sum bid prices are asked.

2.3.2 All papers bound with or attached to the proposal form shall be considered a part thereof and shall not be detached or altered when the proposal is submitted.

2.3.3 The drawings, specifications and other documents designated in the proposal form, will also be considered a part thereof whether attached or not.

2.3.4 By submitting a bid on the proposal form, a bidder accepts the language therein as its own.

2.4 THE SITE AND PROPOSED CONTRACT DOCUMENTS

2.4.1 The Bidder shall examine carefully the Project Site contemplated and the proposal, drawings, specifications, supplemental specifications, SPECIAL CONDITIONS, and any documents or items referenced therein and contract and bond forms therefore. The submission of a bid shall be considered as a warranty that the Bidder has made such examination and is informed of the conditions to be encountered in performing the Work and of the requirements of the drawings, specifications, supplemental specifications, SPECIAL CONDITIONS and any documents and items referenced therein, and contract and bonds.

2.5 ADDENDA AND BID CLARIFICATIONS

2.5.1 The terms and requirements of the bid documents (i.e. drawings, specifications and other bid and contract documents) cannot be changed prior to the bid opening except by a duly issued addenda or bid clarification.

2.5.2 The Department may alter, increase or decrease the scope of the work or the contract time, provisions and conditions by issuing a written addendum which sets forth such alterations, increase or decrease.

2.5.3 Bid Discrepancy - If a bidder discovers what it considers to be a discrepancy, ambiguity, omission or doubt as to the meaning of drawings, specifications and any other bid or contract documents, the bidder shall request in writing no later than 14 days before the bids are opened.

2.5.4 Addenda to the bid documents will be provided to all prospective bidders at the respective offices furnished for such purposes. Each addendum shall be an addition to the Contract Documents.

2.5.5 Upon providing an addenda, all bidders shall be deemed to be on notice of the information therein whether or not the addendum or bid clarification is actually received. All addenda and bid clarifications so issued shall become part of the Contract Documents.

2.5.6 No claim for additional compensation and/or time for performance will be allowed if the Contractor discovered, or in the exercise of reasonable care, should have discovered a discrepancy, ambiguity, omission or doubt for which an interpretation was not requested.

2.6 SUBSTITUTION OF MATERIALS AND EQUIPMENT BEFORE BID OPENING

2.6.1 Brand names of materials or equipment are specified or shown on the drawings to indicate a quality, style, appearance or performance and not to limit competition. The Bidder shall base its bid on one of the specified brand names unless alternate brands are qualified as equal or better in an addendum. Qualifications of such proposed alternate brands shall be submitted in writing and addressed to the Engineer. The face of the envelope containing the request must be clearly marked “SUBSTITUTION REQUEST”. The request may be hand carried to the Department of Defense, State of Hawaii, 3949 Diamond Head Road, Honolulu, HI 96816-4495, or mailed. In either case, the written request must be received no later than the time and date specified in the NOTICE TO BIDDERS. The written request will be time stamped by the Department. For the purpose of this section, the time designated by the time stamping device in the Engineering Office shall be official. If the written request is hand carried, the bearer is responsible to ensure that the request is time stamped by the Engineering Office.

2.6.2 Submit three (3) sets of the written request, technical brochures, and a statement of variances. Refer to the Appendix for the Sample “Request for Substitution.”

2.6.3 Statement of Variances - The statement of variances must list all features of the proposed substitution which differ from the drawings, specifications and / or product(s) specified and must further certify that the substitution has no other variant features. The brochure and information submitted shall be clearly marked showing make, model, size, options, etc., and must include sufficient evidence to evaluate each feature listed as a variance. A request will be denied if submitted without sufficient evidence. If after installing the substituted product, an unlisted variance is discovered, Contractor shall immediately replace the product with a specified product all at no cost to the State

2.6.4 Substitution Denial - Any substitution request not complying with the above requirements will be denied. Substitution requests sent to other agencies and received by the Engineering Office after the deadline above will be denied.

2.6.5 An addendum shall be issued to inform all prospective bidders of any accepted substitution in accordance with Section 2.5 ADDENDA AND BID CLARIFICATIONS.

2.6.6 For substitutions of materials and equipment after issuance of the Letter of Award, refer to Section 6.3 SUBSTITUTION OF MATERIALS AND EQUIPMENT AFTER BID OPENING.

2.7 PREPARATION OF PROPOSAL

2.7.1 The Bidder's proposal must be submitted on the proposal form furnished by the Department. The proposal must be prepared in full accordance with the instructions thereon. The Bidder must state, both in words and numerals, the lump sum price or total sum bid at which the work contemplated is proposed to be done. These prices must be written in ink or typed. In case of a discrepancy between the prices written in words and those written in figures, the words shall govern over the figures. The Bidder shall sign the proposal in the spaces provided with ink. By submitting a bid, the Bidder adopts the language of the proposal as its own.

2.7.2 If the proposal is made by an individual, the person's name and post office address must be shown in the space provided. If made by a partnership the name and post office address of each member of the partnership must be shown and the proposal signed by all partners or evidence in the form of a partnership agreement must be submitted showing the authority of the partner to enter, on behalf of said partnership, into contract with the State. If made by a corporation the proposal must show the name, titles, and business address of the president, secretary and treasurer and also evidence in the form of a corporate resolution must be submitted showing the authority of the particular corporate representative to enter on behalf of said corporation into contract with the State. If made by a joint venture the name and post office address of each member of the individual firm, partnership or corporation comprising the joint-venture must be shown with other pertinent information required of individuals, partnerships or corporations as the case may be. The proposal must be signed by all parties to the joint-venture or evidence in the form of a Joint-Venture Agreement must be submitted showing the authority of the joint-venture's representative to enter on behalf of said joint-venture into contract with the State.

2.7.3 Pursuant to the requirements of Section 103D-302, HRS, each Bidder shall include in its bid the name of each person or firm to be engaged by the Bidder on the project as joint contractor or subcontractor indicating also the nature and scope of work to be performed by such
joint contractor and/or subcontractor and their respective contractor's license number. If the Bidder fails to list a joint contractor or subcontractor, the State may accept the bid if it is in the State's best interest and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one percent of the total bid amount. The Bidder shall be solely responsible for verifying that their joint contractor or subcontractor has the proper license at the time of the submitted bid.

2.8 BID SECURITY §3-122-223(d) HAR

2.8.1 Subject to the exceptions in Section 3-122-223(d) HAR, all lump sum bids of $25,000 and higher, or lump sum base bids including alternates of $25,000 and higher, that are not accompanied by bid security are non-responsive. Bid security shall be one of the following: §3-122-222(a) HAR

2.8.1.1 Surety bid bond underwritten by a company licensed to issue bonds in this State which shall be substantially in the form of the Surety Bid Bond form in the Appendix; or

2.8.1.2 Legal Tender; or

2.8.1.3 Certificate of Deposit; Credit Union share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the State by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(a) These instruments may be utilized only to a maximum of $100,000.

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

(c) **CAUTION** - Bidders are cautioned that certificates of deposit or share certificates with an early withdrawal penalty must have a face value sufficient to cover the maximum penalty amount in addition to the proposal guaranty requirement. If the certificate is made out to two names, the certificate must be assigned unconditionally to the Department of Defense.

2.8.2 Unless otherwise stated, the bid security shall be in an amount equal to at least five percent (5%) of the lump sum bid or lump sum base bid including alternates or in an amount required by the terms of the federal funding, where applicable.

2.8.3 If the Bidder is a corporation, evidence in the form of a corporate resolution, authorizing the corporate representative to execute the bond must be submitted with the proposal. (See sample in Appendix.) If the Bidder is a partnership, all partners must sign the bond

or evidence in the form of a partnership agreement must be submitted showing the authority of the partner.

2.8.4 If the Bidder is a joint -venture, all parties to the joint venture must sign the bond; provided, that one party to the joint-venture may sign on behalf of the joint-venture if evidence in the form of a joint-venture agreement or power of attorney, is submitted showing the authority of the signatory to sign the bond on behalf of the joint-venture.

2.8.5 In the case where the award will be made on a group or item basis, the amount of bid security shall be based on the total bid for all groups or items submitted.

2.8.6 Bidders are cautioned that surety bid bonds which place a limit in value to the difference between the bid amount and the next acceptable bid, such value not to exceed the purported amount of the bond, are not acceptable. Also, surety bid bonds which place a time limit on the right of the State to make claim other than allowed by statutes or these GENERAL CONDITIONS are not acceptable. Bidders are hereby notified that a surety bid bond containing such limitation(s) is not acceptable and a bid accompanied by such surety bid bond will be automatically rejected.

2.9 DELIVERY OF PROPOSALS - The entire proposal shall be placed together with the bid security, in a sealed envelope so marked as to indicate the identity of the project, the project number, the date of bid opening and the name and address of the bidder and then delivered as indicated in the Notice to Contractors. Bids which do not comply with this requirement may not be considered. Proposals will be received up to the time fixed in the public notice for opening of bids and must be in the hands of the official by the time indicated. The words "SEALED BID" must be clearly written or typed on the face of the sealed envelope containing the proposal and bid security.

2.10 WITHDRAWAL OR REVISION OF PROPOSAL - may be modified prior to the deadline to submit the offers by any of the following documents.

2.10.1 Withdrawal of Proposals:

2.10.1.1 A signed, written notice received in the office designated in the solicitation; or

2.10.1.2 A written notice faxed to the office designated in the solicitation; or

2.10.1.3 A telegraphic message received by telephone by the office designated in the solicitation from the receiving telegraph company office, provided the telegraph company confirms the telephone message by sending a written copy of the telegram showing that the message was received at such office prior to the time and date set for the opening.

2.10.2 Modification of Proposals:

2.10.2.1 A written notice received in the office designated in the solicitation, stating that a modification to the offer is submitted; and

2.10.2.2 The actual modification sealed securely in a separate envelope or container, accompanying the written notice.

2.11 PUBLIC OPENING OF PROPOSALS - Proposals will be opened and read publicly at the time and place indicated in the Notice to Contractors. Bidders, their authorized agents and other interested parties are invited to be present.

2.12 DISQUALIFICATION OF BIDDERS - Any one or more of the following causes will be considered as sufficient for the disqualification of a Bidder and the rejection of its proposal or proposals:

2.12.1 Non-compliance with Section 2.1 QUALIFICATION OF BIDDERS.

2.12.2 Evidence of collusion among bidders.

2.12.3 Lack of responsibility and cooperation as shown by past work such as failing to complete all of the requirements to close the project within a reasonable time or engaging in a pattern of unreasonable or frivolous claims for extra compensation.

2.12.4 Being in arrears on existing contracts with the State of Hawaii, or having defaulted on a previous contract with the State of Hawaii.

2.12.5 Lack of proper equipment and/or sufficient experience to perform the work contemplated, as revealed by the Standard Questionnaire and Financial Statement for Bidders.

2.12.6 No contractor's license or a contractor's license which does not cover type of work contemplated.

2.12.7 More than one proposal for the same work from an individual, firm, partnership, corporation or joint venture under the same or different name.

2.12.8 Delivery of bids after the deadline specified in the advertisement calling for bids.

2.12.9 Failure to pay, or satisfactorily settle, all bills overdue for labor and materials of former contracts in force at the time of issuance of proposal forms.

2.12.10 Debarment or suspension pursuant to the provisions of Chapters 103D, 104 and 444, Hawaii Revised Statutes, as amended.

2.13 PROTEST

2.13.1 Protests shall be adjudicated in accordance with §103D-701, HRS and as amended.

2.13.2 No Protest based upon the contents of the solicitation shall be considered unless it is submitted in writing to the Engineer, prior to the date set for the receipt of proposals.

2.13.3 A protest of an award or proposed award pursuant to §103D-302 or §103D-303, HRS, shall be submitted in writing to the Engineer within five (5) working days after the posting of the award of the Contract.

2.13.4 In addition to any other relief, when a protest is sustained and the protestor should have been awarded the contract under the solicitation but is not, then the protestor shall be entitled to the actual costs reasonably incurred in connection with the solicitation, including bid or proposal preparation costs but not attorney's fees.

ARTICLE 3 - Award and Execution of Contract

3.1 CONSIDERATION OF PROPOSALS; CANCELLATION - After the proposals are opened and read, the figures will be extended and/or totaled in accordance with the bid prices of the acceptable proposals and the totals will be compared and the results of such comparison shall be made public. In the event of a tie bid, the low bidder shall be determined by lot. In the comparison of bids, words written in the proposals will govern over figures and unit prices will govern over totals. Until the award of the contract, the Department may cancel the solicitation, reject any and all proposals in whole or part and may waive any defects or technicalities whenever such action is deemed to be in the best interest of the State.

3.2 IRREGULAR PROPOSALS - Proposals will be considered irregular and may be rejected for the following reasons:

3.2.1 If the proposal is unsigned.

3.2.2 If bid security is not in accordance with Section 2.8 BID SECURITY.

3.2.3 If proposal is on a form other than that furnished by the Department; or if the form is altered or any part thereof detached.

3.2.4 If the proposal shows any non-compliance with applicable law, alteration of form, additions not called, conditional bids, incomplete bids, non initialed erasures, other defects, or if the prices are obviously unbalanced.

3.2.5 If the Bidder adds any provisions reserving the right to accept or reject an award.

3.2.6 If the Bidder adds any provisions reserving the right to enter into a contract pursuant to an award.

3.2.7 When a proposal is signed by an officer or officers of a corporation and a currently certified corporate resolution authorizing such signer(s) to submit such proposal is not submitted with the proposal or when the proposal is signed by an agent other than the officer or officers of a corporation or a member of a partnership and a power of attorney is not submitted with the proposal.

3.2.8 Where there is an incomplete or ambiguous listing of joint contractors and/or subcontractors the proposal may be rejected. All work which is not listed as being performed by joint contractors and/or subcontractors must be performed by the bidder with its own employees. Additions to the list of joint contractors or subcontractors will not be allowed. Whenever there is a doubt as to the completeness of the list, the Bidder will be required to submit within five (5) working days, a written confirmation that the work in question will be performed with its own work force. Whenever there is more than one joint contractor and/or subcontractor listed for the same item of work, the Bidder will be required to either confirm in writing within five (5) working days that all joint contractors or subcontractors listed will actually be engaged on the project or obtain within five (5) working days written releases from those joint contractors and/or subcontractors who will not be engaged.

3.2.9 If in the opinion of the Engineer, the Bidder and its listed subcontractors do not have the contractor's licenses or combination of contractor's licenses necessary to complete all of the work.

3.3 CORRECTION OF BIDS AND WITHDRAWAL OF BIDS §3-122-31 HAR

3.3.1 Corrections to bids after bid openings but prior to award may be made under the following conditions:

3.3.1.1 If the mistake is attributable to an arithmetical error, the Engineer shall so correct the mistake. In case of error in extension of bid price, the unit price shall govern.

3.3.1.2 If the mistake is a minor informality which shall not affect price, quantity, quality, delivery, or contractual conditions, the Bidder shall request correction by submitting proof of evidentiary value which demonstrates that a mistake was made. The Engineer shall prepare a written approval or denial in response to this request. Examples of such mistakes include:

(a) Typographical errors;

(b) Transposition errors;

(c) Failure of a Bidder to sign the bid, but only if the unsigned bid is accompanied by other material indicating the Bidder's intent to be bound.

3.3.1.3 For reasons not allowable under paragraphs 3.3.1.1 and 3.3.1.2 when the Engineer determines that the correction or waiver of an obvious mistake is in the best interest of the Department or is warranted for the fair treatment of other bidders.

3.3.2 Withdrawal of bids after bid opening but prior to award may be made when the bid contains a mistake attributable to an obvious error which affects price, quantity, quality, delivery, or contractual conditions, and the bidder requests withdrawal by submitting proof of evidentiary value which demonstrates that a mistake was made. The Contracting Officer shall prepare a written approval or denial in response to this request.

3.3.3 Correction or withdrawal of bids after award is not permissible except in response to a written withdrawal or correction request by the Contractor, and the Engineer makes a written determination that the Department's procurement practices and policies would not be materially affected by such correction or withdrawal.

3.4 AWARD OF CONTRACT

3.4.1 The award of contract, if it be awarded, will be made within ninety (90) consecutive calendar days after the opening of the proposals to the lowest responsible and responsive Bidder (including the alternate or alternates which may be selected by the Engineer in the case of alternate bids) whose proposal complies with all the requirements prescribed, but in no case will an award be made until all necessary investigations are made. The successful Bidder will be notified, by letter mailed to the address shown on the proposal, that its bid has been accepted and that it has been awarded the contract.

3.4.2 If the contract is not awarded within the ninety (90) days noted in paragraph 3.4.1 above, the Department may request the successful Bidder to extend the time for the acceptance of its bid. The Bidder may reject such a request without penalty; and in such case, the Department may at its sole discretion make a similar offer to the next lowest responsive and responsible bidder and so on until a bid is duly accepted or until the Department elects to stop making such requests.

3.4.3 No contract will be awarded to any person or firm suspended or debarred under the provisions of Chapters 103D, 104 and Chapter 444, Hawaii Revised Statutes as amended.

3.4.4 The contract will be drawn on the forms furnished by the Comptroller. The contract will not be binding upon the Department until all required signatures have been affixed thereto and written certification that funds are available for the work has been made.

3.5 CANCELLATION OF AWARD - The Department reserves the right to cancel the award of any contract at any time before the execution of said contract by all parties. The exclusive remedy to the awardee for such cancellation shall be payment of the reasonable bid preparation costs and the reimbursement of any direct expenses incurred as directed in the Notice of Award. Such cancellation will not incur any liability by the Department to any other Bidder.

3.6 RETURN OF BID SECURITY - All bid securities, except those of the four (4) lowest Bidders, will be returned following the opening and checking of the proposals. The retained bid securities of the four lowest Bidders will be returned within five (5) working days following the complete execution of the contract.

3.7 REQUIREMENT OF PERFORMANCE AND PAYMENT BONDS

3.7.1 Performance and Payment Bonds shall be required for contracts $25,000 and higher. At the time of the execution of the contract, the successful Bidder shall file good and sufficient performance and payment bonds on the form furnished by the Department (see Appendix), each in an amount equal to one hundred percent (100%) of the amount of the contract price unless otherwise stated in the solicitation of bids. Acceptable performance and payment bonds shall be limited to the following:

3.7.1.2 Surety bonds underwritten by a company licensed to issue bonds in this State; or

3.7.1.3 A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the State by a bank, a savings institution, or credit union insured by the Federal Deposit

Insurance Corporation or the National Credit Union Administration.

(a) These instruments may be utilized only a maximum of $100,000.

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

3.7.2 If the Contractor fails to deliver the required performance and payment bonds, the contractor's award shall be canceled, the Department shall have the remedies provided under Section 3.9 FAILURE TO EXECUTE THE CONTRACT and award of the contract shall be made to the next lowest responsible and responsive bidder.

3.8 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Contractors are hereby notified of the applicability of Section 11-205.5, HRS, 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.

3.9 EXECUTION OF THE CONTRACT

3.9.1 Upon acceptance of the successful bidder's offer by the Contracting Officer, the Contractor shall provide satisfactory performance and payments bonds within ten (10) calendar days after the award of the contract or within such further time as granted by the Contracting Officer. No proposal or contract shall be considered binding upon the State until the contract has been fully and properly executed by all parties thereto and the Comptroller has endorsed thereon its certificate, as required by Section 103D-309, HRS, that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the State's amount required by such contract.

3.9.2 On any individual award totaling less than $25,000, the State reserves the right to execute the contract by the issuance of a State Purchase Order. Issuance of a State Purchase Order shall result in a binding contract between the parties without further action by the State. The issuance of a Purchase Order shall not be deemed a waiver of these General Conditions and Contract Document requirements.

3.10 FAILURE TO EXECUTE THE CONTRACT

3.10.1 Before the Award - If a low Bidder without legal justification withdraws its bid after the opening of bids but before the award of the contract, the State shall be entitled to retain as liquidated damages the amount established as bid security, and may take all appropriate actions to recover the performance liquidated damages sum from the property or third-party obligations deposited as bid security.

3.10.2 After the Award - If the Bidder to whom a contract is awarded shall fail or neglect to furnish security within ten (10) calendar days after such award or within such further time as the Contracting Officer may allow, the State shall be entitled to recover from such Bidder its actual damages, including but not limited to the difference between the bid and the next lowest responsive bid, as well as personnel and administrative costs, consulting and legal fees and other expenses incurred in arranging a contract with the next low responsive bidder or calling for new bids. The State may apply all or part of the amount of the bid security to reduce its damages. If upon determination by the State of the amount of its damages the bid security exceeds that amount, it shall release or return the excess to the person who provided same.

3.10.3 Engineer's Options - Upon a withdrawal of the lowest responsive bid, or upon a refusal or failure of the lowest Bidder to execute the contract, the Engineer may thereupon award the contract to the next lowest responsible and responsive Bidder or may call for new bids, whichever method the Engineer may deem to be in the best interests of the State.

3.11 NOTICE TO PROCEED

3.11.1 After the contract is fully executed and signed by the Department of Defense, the Contractor will be sent a formal Notice to Proceed letter advising the Contractor of the date on which it may proceed with the work. The Contractor shall be allowed ten (10) consecutive working days from said date to begin its work. In the event that the Contractor refuses or neglects to start the work, the Engineer may terminate the contract in accordance with Section 7.27 TERMINATION OF CONTRACT FOR CAUSE.

3.11.2 The Contractor may commence its operations strictly at its own risk prior to receipt of the formal notice to proceed, provided it makes a written request and has received approval from the Engineer in writing. All work performed shall be conducted in accordance with Section 7.1 PROSECUTION OF THE WORK.

3.11.3 In certain cases, the State, with agreement of the Contractor, may issue a Notice to Proceed before full execution of the contract by the Engineer and it may

further issue a Notice to Proceed concurrently with the Notice of Award.

3.11.4 In the event the Notice to Proceed is not issued within one hundred and eighty (180) days after the date of the award of contract the Contractor may submit a claim for increased labor and material costs (but not overhead costs) which are directly attributable to the delay beyond the first 180 days. Such claims shall be accompanied with the necessary documentation to justify the claim. No payment will be made for escalation costs that are not fully justified.

GENERAL CONDITIONS
ARTICLE 4 - Scope of Work

4.1 INTENT OF CONTRACT, DUTY OF CONTRACTOR - The intent of the Contract is to provide for the construction, complete in every detail, of the Work described at the accepted bid price and within the time established by the contract. The Contractor has the duty to furnish all labor, materials, equipment, tools, transportation, incidentals and supplies and to determine the means, methods and schedules required to complete the work in accordance with the drawings, specifications and terms of the contract.

4.2 CHANGES - The Engineer may at any time, during the progress of the work, by written order, and without notice to the sureties, make changes in the work as may be found to be necessary or desirable. Such changes shall not invalidate the Contract nor release the Surety, and the Contractor will perform the work as changed, as though it had been a part of the original Contract.

4.2.1 Minor Changes - Minor changes in the work may be directed by the Engineer with no change in contract price or time of performance. Minor changes are consistent with the intent of the Contract Documents and do not substantially alter the type of work to be performed or involve any adjustment to the contract sum or extension of the contract time.

4.2.2 Oral Orders

4.2.2.1 Any oral order, direction, instruction, interpretation or determination from the Engineer or any other person which in the opinion of the Contractor causes any change, shall be considered as a change only if the Contractor gives the Engineer written notice of its intent to treat such oral order, direction, instruction, interpretation or determination as a change directive. Such written notice must be delivered to the Engineer before the Contractor acts in conformity with the oral order, direction, instruction, interpretation or determination, but not more than five (5) days after delivery of the oral order to the Contractor. The written notice shall state the date, circumstances, whether a time extension will be requested, and source of the order that the Contractor regards as a change. Such written notice may not be waived and shall be a condition precedent to the filing of any claim by the Contractor. Unless the Contractor acts in accordance with this procedure, any such oral order shall not be treated as a change for which the Contractor may make a claim for an increase in the contract time or contract price related to such work.

4.2.2.2 No more than five (5) days after receipt of the written notice from the Contractor, a Field Order shall be issued for the subject work if the State agrees that it constitutes a change. If no Field Order is issued in the time established, it shall be deemed a rejection of Contractor's claim for a change. If the Contractor objects to the failure to issue a Field Order, it shall file a written protest with the Engineer within thirty (30) days after delivery to the Engineer of the Contractor's written notice of its intention to treat the oral order as a change. In all cases, the Contractor shall proceed with the work. The protest shall be determined as provided in Section 7.25 DISPUTES AND CLAIMS.

4.2.3 Field Orders – Upon receipt of a Field Order, the Contractor shall proceed with the changes as ordered. If the Contractor does not agree with any of the terms or conditions or in the adjustment or non-adjustment to the contract time and / or contract price, Contractor shall file a notice of intent to claim within thirty (30) calendar days after receipt of the written Field Order that was not agreed upon by both parties. Failure to file such protest within the time specified shall constitute agreement on the part of the Contractor with the terms, conditions, amounts and adjustment or non-adjustment to contract price and / or contract time set forth in the Field Order. The requirement for timely written notice shall be a condition precedent to the assertion of a claim.

4.2.4 Change Orders

4.2.4.1 The Department will issue sequentially numbered Change Orders at times it deems appropriate during the contract period. A Change Order may contain the adjustment in contract price and / or time for a number of Field Orders. The Change Order will be issued in the format attached (refer to the Appendix). No payment for any change will be made until the change order is issued.

4.2.4.2 The penal sum of the Surety Performance and Payment Bonds will be adjusted by the amount of each and every Change Order.

4.2.4.3 Upon receipt of a change order, that the Contractor does not agree with any of the terms or conditions or the adjustments or non adjustments of the

contract price or contract time; the Contractor shall not execute or sign the change order, but shall return the unsigned change order, along with a written notification of the conditions or items that are in dispute.

4.2.4.4 If the Contractor signs or executes the change order, this constitutes an agreement on the part of the Contractor with the terms and conditions of the change order. A change order that is mutually agreed to and signed by the parties of the contract constitutes a contract modification.

4.2.5 Claim Notification – The Contractor shall file a notice of intent to claim for a disputed change order within 30 calendar days after receipt of the written order. Failure to file the protest within the time specified constitutes an agreement on the part of the Contractor within the terms, conditions, amounts and adjustment or non-adjustment to contract price or contract time set forth in the dispute change order. The requirement for timely written notice shall be a condition precedent to the assertion of a claim.

4.2.6 Proceeding with Directed Work – Upon receipt of a contract modification, change order, or field order, the Contractor shall proceed with the directed changes and instructions. The Contractor's right to make a claim for additional compensation or an extension of time for completion is not affected by proceeding with the changes and instructions described in a change order and field order.

4.2.7 Pricing or Negotiating Costs Not Allowed – The Contractor's cost of responding to requests for price or time adjustments is included in the contract price. No additional compensation will be allowed unless authorized by the Contracting Officer.

4.3 DUTY OF CONTRACTOR TO PROVIDE PROPOSAL FOR CHANGES

4.3.1 A Field Order may request the Contractor to supply the Department with a proposal for an adjustment to the contract time or contract price for the work described therein. Any such request for a proposal shall not affect the duty of the Contractor to proceed as ordered with the work described in the Field Order.

4.3.2 The Engineer from time to time may issue a Bulletin to the Contractor requesting price and / or time adjustment proposals for contemplated changes in the work. A Bulletin is not a directive for the Contractor to perform the work described therein.

4.3.3 Within fifteen (15) days after receipt of a Bulletin or Field Order containing a request for proposal, the Contractor shall submit to the Engineer a detailed written statement in a format similar to the one shown in the Appendix to these General Conditions setting forth all charges the Contractor proposes for the change and the proposed adjustment of the contract time, all properly itemized and supported by sufficient substantiating data to permit evaluation. No time extension will be granted for delays caused by late Contractor pricing of changes or proposed changes. If the project is delayed because Contractor failed to submit the cost proposal within the fifteen (15) days, or as allowed by the Engineer, performance liquidated damages will be assessed in accordance with Section 7.26 FAILURE TO COMPLETE THE WORK ON TIME.

4.3.4 No payment shall be allowed to the Contractor for pricing or negotiating proposed or actual changes.

4.4 PRICE ADJUSTMENT HRS 103D-501

4.4.1 A fully executed change order or other document permitting billing for the adjustment in price under any method listed in paragraphs (4.4.1.1) through (4.4.1.5) shall be issued within ten days after agreement on the price adjustment. Any adjustment in the contract price pursuant to a change or claim in this contract shall be made in one or more of the following ways:

4.4.1.1 By agreement on a fixed price adjustment before commencement of the pertinent performance;

4.4.1.2 By unit prices specified in the contract or subsequently agreed upon before commencement of the pertinent performance;

4.4.1.3 Whenever there is a variation in quantity for any work covered by any line item in the schedule of costs submitted as required by Section 7.2 COMMENCEMENT REQUIREMENTS, by the Department at its discretion, adjusting the lump sum price proportionately;

4.4.1.4 Force Account Method. At the sole option of the Contracting Officer, by the costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as specified in Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT and the force account provision of Section 8.3 PAYMENT FOR ADDITIONAL WORK before commencement of the pertinent performance;

4.4.1.5 In such other manner as the parties may mutually agree upon before commencement of the pertinent performance; or

4.4.1.6 In the absence of an agreement between the two parties:

4.4.1.6.a For change orders with value not exceeding $50,000 by documented actual costs of the work, allowing for overhead and profit as set forth in Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT. A change order shall be issued within fifteen days of submission by the contractor of proper documentation of completed force account work, whether periodic (conforming to the applicable billing cycle) or final. The procurement officer shall return any documentation that is defective to the contractor within fifteen days after receipt, with a statement identifying the defect; or

4.4.1.6.b For change orders with value exceeding $50,000 by a unilateral determination by the Contracting Officer of the reasonable and necessary costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as computed by the Contracting Officer in accordance with applicable sections of Chapters 3-123 and 3-126 of the Hawaii Administrative Rules, and Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT. When a unilateral determination has been made, a unilateral change order shall be issued within ten days. Upon receipt of the unilateral change order, if the contractor does not agree with any of the terms or conditions, or the adjustment of non-adjustment of the contract time or contract price, the contractor shall file a notice if intent to claim within thirty days after the receipt of the written unilateral change order. Failure to file a protest within the time specified shall constitute agreement on the part of the contractor with the terms, conditions, amounts, and adjustment or non-adjustment of the contract time or the contract price set forth in the unilateral change order.

4.4.1.7 In such other manner as the parties may mutually agree;

4.4.1.8 At the sole option of the Engineer, by the costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as specified in Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT and the force account provision of Section 8.3 PAYMENT FOR ADDITIONAL WORK; or

4.4.1.9 In the absence of an agreement between the two parties, by a unilateral determination by the Engineer of the reasonable and necessary costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as computed by the Engineer in accordance with applicable sections of Chapters 3-123 and 3-126 of the Hawaii Administrative Rules and Regulations, and Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.

4.4.2 Cost or Pricing Data – Contractor shall provide and certify cost or pricing data for any price adjustment to a contract involving aggregate increases and decreases in costs plus applicable profits expected to exceed $100,000. The certified cost or pricing data shall be subject to the provisions of HAR chapter 3-122, subchapter 15.

4.5 ALLOWANCES FOR OVERHEAD AND PROFIT HRS103D-501

4.5.1 In determining the cost or credit to the Department resulting from a change, the allowances for all overhead, including, extended overhead resulting from adjustments to contract time (including home office, branch office and field overhead, and related delay impact costs) and profit combined, shall not exceed the percentages set forth below:

4.5.1.1 For the Contractor, for any work performed by its own labor forces, twenty percent (20%) of the direct cost;

4.5.1.2 For each subcontractor involved, for any work performed by its own forces, twenty percent (20%) of the direct cost;

4.5.1.3 For the Contractor or any subcontractor, for work performed by their subcontractors, ten percent (10%) of the amount due the performing subcontractor.

4.5.2 Not more than three markup allowance line item additions not exceeding the maximum percentage shown above will be allowed for profit and overhead, regardless of the number of tier subcontractors.

4.5.3 The allowance percentages will be applied to all credits and to the net increase of direct costs where work is added and deleted by the changes.

4.6 PAYMENT FOR DELETED MATERIAL

4.6.1 Cancelled Orders - If acceptable material was ordered by the Contractor for any item deleted by an ordered change in the work prior to the date of notification of such deletion by the Engineer, the Contractor shall use its best efforts to cancel the order. The Department shall pay reasonable cancellation charges required by the supplier excluding any markup for overhead and profit to the Contractor.

4.6.2 Returned Materials - If acceptable deleted material is in the possession of the Contractor or is ultimately received by the Contractor, if such material is returnable to the supplier and the Engineer so directs, the material shall be returned and the Contractor will be paid for the reasonable charges made by the supplier for the return of the material, excluding any markup for overhead and profit to the Contractor. The cost to the

Contractor for handling the returned material will be paid for as provided in Section 4.4 PRICE ADJUSTMENT.

4.6.3 Uncancelled Materials - If orders for acceptable deleted material cannot be canceled at a reasonable cost, it will be paid for at the actual cost to the Contractor including an appropriate markup for overhead and profit as set forth in Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT. In such case, the material paid for shall become the property of the State and the cost of further storage and handling shall be paid for as provided in Section 4.4 PRICE ADJUSTMENT.

4.7 VARIATIONS IN ESTIMATED QUANTITIES §3-125-10 HAR

4.7.1 Where the quantity of a major unit price item in this contract is estimated on the proposal form and where the actual quantity of such pay item varies more than fifteen percent (15%) above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. The adjustment shall be subject to Section 4.4 PRICE ADJUSTMENT and Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT. If the quantity variation is such as to cause an increase in the time necessary for completion, the Engineer shall, upon receipt of a written request for an extension of time within thirty (30) days of the item's completion, ascertain the facts and make such adjustment to the completion date as the Engineer finds justified.

4.8 VARIATIONS IN BOTTOM ELEVATIONS The Contractor shall plan and construct to the bottom elevations of footings, piles, drilled shafts, or cofferdams as shown on the drawings. When the bottom of a pile, drilled shaft, or cofferdam is shown as an estimated or approximate elevation, the Contractor shall plan and construct to that elevation or to any deeper elevation required by the drawings or direction of the Engineer. In the event the bottom elevation is lowered, the Contractor shall be entitled to additional payment in accordance with Sections 4.4 PRICE ADJUSTMENT and 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT. In the event the bottom elevation is raised, the State shall be entitled to a credit in accordance with Sections 4.2 CHANGES, 4.4 PRICE ADJUSTMENT and 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.

4.9 DIFFERING SITE CONDITIONS §3-125-11 HAR

4.9.1 During the progress of the work, if the Contractor encounters conditions at the site differing materially from those shown in the drawings and specifications, Contractor shall promptly, and before any such conditions are disturbed or damaged (except in an emergency as required by subsection 7.17.8), notify the Engineer in writing of:

4.9.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the contract; or

4.9.1.2 Unknown physical conditions at the site, of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

4.9.2 After receipt of written notice, the Engineer shall promptly investigate the site, and if it is found that such conditions do materially differ and cause an increase in the Contractor's cost of, or the time required to, perform any part of the Work, whether or not changed as a result of such conditions, an adjustment shall be made and the contract modified accordingly. Any adjustment in contract price made pursuant to this Section 4.9 shall be determined in accordance with Sections 4.4 PRICE ADJUSTMENT and 7.25 DISPUTES AND CLAIMS.

4.9.3 Nothing contained in this Section 4.9 shall be grounds for an adjustment in compensation if the Contractor had actual knowledge or should have known of the existence of such conditions prior to the submission of bids.

4.10 UTILITIES AND SERVICES

4.10.1 The cost of all the following will be included in the contract price and the Contractor shall be fully responsible for:

4.10.1.1 Reviewing and checking all such information and data,

4.10.1.2 Locating all underground and overhead utilities shown or indicated in the contract documents,

4.10.1.3 Coordination of the Work with the Owners of such underground and overhead utilities during construction, and

4.10.1.4 The safety and protection of all such underground and overhead utilities as provided in Section7.17 PROTECTION OF PERSONS AND PROPERTY and repairing any damage thereto resulting from the work.

4.10.2 Unknown Utilities - During the progress of the work, if an underground utility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents, or found at a location that is substantially different than shown or indicated in the Contract Documents, Contractor shall promptly, and before any such conditions are disturbed or damaged (except in an emergency as required by subsection 7.17.8), notify the Engineer. Contractor shall be responsible for the safety and protection of the underground utility as provided in Section7.17 PROTECTION OF PERSONS AND PROPERTY. Refer to subsections 4.9.2 and 4.9.3.

4.10.3 If the Engineer determines a change in the Contract Documents is required, a Field Order or Change Order will be issued. Upon issuance of a duly authorized Field Order or Change Order regarding the disposition of a newly discovered utility, Contractor shall be responsible for damages to the utility, including any damage claims due to the disruption of service caused by the utility being damaged.

4.10.4 Restoration of Damaged Utilities - The Contractor shall repair and restore to pre-damaged condition any utilities or any other property it damaged. The Contractor shall be liable for any resulting damages, to the Work or to the utility owner or property owner and shall pay any claim due to the disruption of service caused by the utilities being damaged. Contractor shall defend and save harmless the State from all suits, actions or claims of any character brought on account of such damages, whether or not the State may have been partially at fault. Contractor shall obtain public liability and property damage insurance pursuant to Article 7 PROSECUTION AND PROGRESS to cover such risk of damage.

4.10.5 In the event the Contractor, simultaneously with the discovery of an unknown utility or other property, damages that utility or other property, the Contractor shall immediately notify the Engineer. If the Contractor is without fault in such a situation, notwithstanding subsection 4.10.4, the Contractor shall not be liable for resulting damages or the defense of the State from claims brought on account of said damages to unknown utilities or other property. Upon instruction from the Engineer, the Contractor shall repair all damages and execute a plan for dealing with the damaged utility or other property. This repair work shall be considered additional work as covered in Section 4.2 CHANGES.

ARTICLE 5 - Control of Work

5.1 AUTHORITY OF THE ENGINEER

5.1.1 The Engineer shall make final and conclusive decisions on all questions which may arise relating to the quality and acceptability of the materials furnished and work performed, the manner of performance and rate of progress of the work, the interpretation of the Contract Documents, the acceptable fulfillment of the contract on the part of the Contractor, the compensation under the Contract and the mutual rights of the parties to the Contract.

5.1.2 The Engineer shall have the authority to enforce and make effective such decisions and orders at the Contractor's expense when the Contractor fails to carry such decisions and orders out promptly and diligently.

5.1.3 The Engineer shall have the authority to suspend the work wholly or in part as provided in Section 7.24 SUSPENSION OF WORK.

5.1.4 The Engineer may delegate specific authority to act for the Engineer to a specific person or persons. Such delegation of authority shall be established in writing to the Contractor.

5.2 AUTHORITY OF THE INSPECTOR

5.2.1 The Inspector shall observe and inspect the contract performance and materials. The Inspector does not have any authority vested in the Engineer unless specifically delegated in writing.

5.2.2 The Inspector may offer advice and recommendations to the Contractor, but any such advice or recommendations are not directives from the Engineer.

5.2.3 The Inspector has no authority to allow deviations from the Contract Documents and may reject any and all work that the Inspector deems is not in conformity with the contract requirements. Failure of an Inspector at any time to reject non-conforming work shall not be considered a waiver of the Department's right to require work in strict conformity with the Contract Documents as a condition of final acceptance.

5.3 AUTHORITY OF CONSULTANT(S) - The Department may engage Consultant(s) for limited or full observation to supplement the inspections performed by the State and respective Counties. Unless otherwise specified in writing to the Contractor, such retained Consultant(s) will have the authority of a Project Inspector.

5.4 SHOP DRAWINGS AND OTHER SUBMITTALS

5.4.1 The following documents shall be submitted where required by the contract documents:

5.4.1.1 Shop Drawings

(1) The Contractor shall prepare, and thoroughly check, approve, all shop drawings, including those prepared by subcontractors or any other persons. The Contractor shall indicate its approval by stamping and signing each drawing. Any shop drawing submitted without being reviewed, stamped and signed will be considered as not having been submitted, and any delay caused thereby shall be the Contractor's responsibility.

(2) Shop drawings shall indicate in detail all parts of an item of work, including erection and setting instructions and engagements with work of other trades or other separate contractors. Shop drawings for structural steel, millwork and pre-cast concrete shall consist of calculations, fabrication details, erection drawings and other working drawings, as necessary, to show the details, dimensions, sizes of members, anchor bolt plans, insert locations and other information necessary for the complete fabrication and erection of the structure to be constructed.

(3) All shop drawings as required by the contract, or as determined by the Engineer to be necessary to illustrate details of the Work shall be submitted to the Engineer with such promptness as to cause no delay in the work or in that of any other Contractor. Delay caused by the failure of the Contractor to submit shop drawings on a timely basis to allow for review, possible resubmittal and acceptance will not be considered as a justifiable reason for a contract time extension. Contractor, at its own risk, may proceed with the work affected by the shop drawings before receiving acceptance; however the Department shall not be liable for any costs or time required for the correction of work done without the benefit of accepted shop drawings.

(4) It is the Contractor's obligation and responsibility to check all of its and its subcontractor's shop drawings and be fully responsible for them and for coordination with connecting and other related work. The Contractor shall prepare, and submit to the Engineer coordination drawings showing the installation locations of all plumbing, piping, duct and electrical work including equipment throughout the project. By approving and submitting shop drawings, the Contractor thereby represents that it has determined and verified all field measurements and field construction criteria, or will do so, and that it has checked and coordinated each shop drawing with the requirements of the work and the contract documents. When shop drawings are prepared and processed before field measurements and field construction criteria can be or have been determined or verified, the Contractor shall make all necessary adjustments in the work or resubmit further shop drawings, all at no change in contract price or time.

5.4.1.2 Shop Drawing Form - Each drawing and/or series of drawings submitted must be accompanied by a letter of transmittal giving a list of the titles and number of the drawings. Each series shall be numbered consecutively for ready reference and each drawing shall be marked with the following information:

(1) Date of Submission
(2) Name of Project
(3) Project Number
(4) Location of Project
(5) Name of submitting Contractor and Subcontractor
(6) Revision Number

5.4.1.3 The size of the sheets that shop drawings are prepared on shall be as appropriate to suit the drawing being presented so that the information is clearly and legibly depicted. At the determination of the Engineer, for each sheet of drawings, the submittal shall consist of either; one reproducible transparency and five prints, or eight prints.

5.4.1.4 Descriptive Sheets and Other Submittals - When a submittal is required by the contract, the Contractor shall submit to the Engineer eight (8) complete sets of descriptive sheets such as shop drawings, brochures, catalogs, illustrations, calculation, material safety data sheets (MSDS), certificates, reports, warranty, etc., which will completely describe the material, product, equipment, furniture or appliances to be used in the project as shown in the drawings and specifications and how it will be integrated into adjoining construction. When submittals are specified to be submitted under Web Based Construction Management System, the number of complete sets will be as specified or as directed by the Engineer. Prior to the submittal, the Contractor shall review and check all submittal sheets for conformity to the contract requirements and indicate such conformity by marking or stamping and signing each sheet. Where descriptive sheets include materials, systems, options, accessories, etc. that do not apply to this contract, non-relevant items shall be crossed out so that all remaining information will be considered applicable to this contract. It is the responsibility of the Contractor to submit descriptive sheets for review and acceptance by the Engineer as required at the earliest possible date after the date of award in order to meet the construction schedule. Delays caused by the failure of the Contractor to submit descriptive sheets as required will not be considered as justifiable reasons for contract time extension.

5.4.1.5 Material Samples and Color Samples – When material and color sample submittals are required by the contract, the Contractor shall submit to the Engineer no less than three (3) samples conforming to Section 6.6 MATERIAL SAMPLES. One sample will be retained by the Consultant, one sample will be retained by the State, and the remaining sample(s) will be returned to the contractor. Prior to the material and color submittal, the Contractor shall review and check all samples for conformity to the contract requirements and indicate such conformity by marking or stamping and signing each sample. It is the responsibility of the Contractor to submit samples for review and acceptance by the Engineer as required at the earliest possible date after the date of award in order to meet the construction schedule. Delays caused by the failure of the Contractor to submit material and color samples as required will not be considered as justifiable reasons for contract time extension.

5.4.1.6 Unless the technical sections (Divisions 2 – 16) specifically require the Contractor furnish a greater quantity of shop drawings and other submittals, the Contractor shall furnish the quantities required by this section.

5.4.2 Submittal Variances - The Contractor shall include with the submittal, written notification clearly identifying all deviations or variances from the contract drawings, specifications and other Contract Documents. The notice shall be in a written form separate from the submittal. The variances shall also be clearly indicated on the shop drawing, descriptive sheet, material sample or color sample. Failure to so notify of and identify such variances shall be grounds for the subsequent rejection of the related work or materials, notwithstanding that the submittal was accepted by the Engineer. If the variances are not acceptable to the Engineer, the Contractor will be required to furnish the item as specified or indicated on the contract documents at no additional cost or time.

5.4.3 Review and Acceptance Process - Submittals will be returned to the Contractor within twenty one (21) days (for projects on Oahu) and twenty five (25) days (for projects on the islands of Hawaii, Maui, Kauai, Molokai and Lanai) after receipt by the Engineer unless otherwise agreed between the Contractor and the Engineer or as stated elsewhere in the contract documents.

5.4.3.1 The acceptance by the Engineer of the Contractor's submittal relates only to their sufficiency and compliance with the intention of the contract. Acceptance by the Engineer of the Contractor's submittal does not relieve the Contractor of any responsibility for accuracy of dimensions, details, and proper fit, and for agreement and conformity of submittal with the contract drawings and specifications. Nor will the Engineer's acceptance relieve the Contractor of responsibility for variance from the contract documents unless the Contractor, at the time of submittal, has provided notice and identification of such variances required by this section. Acceptance of a variance shall not justify a contract price or time adjustment unless the Contractor requests such an
adjustment at the time of submittal and the adjustment are explicitly agreed to in writing by the Engineer. Any such request shall include price details and proposed scheduling modifications. Acceptance of a variance is subject to all contract terms, stipulations and covenants, and is without prejudice to any and all rights under the surety bond.

5.4.3.2 If the Engineer returns a submittal to the Contractor that has been rejected, the Contractor, so as not to delay the work, shall promptly make a resubmittal conforming to the requirements of the contract documents and indicating in writing on the transmittal and the subject submittal what portions of the resubmittal has been altered in order to meet the acceptance of the Engineer. Any other differences between the resubmittal and the prior submittal shall also be specifically described in the transmittal.

5.4.3.3 No mark or notation made by the Engineer on or accompanying the return of any submittal to the Contractor shall be considered a request or order for a change in work. If the Contractor believes any such mark or notation constitutes a request for a change in the work for which it is entitled to an adjustment in contract price and/or time, the Contractor must follow the same procedures established in Section 4.2 CHANGES for oral orders, directions, instructions, interpretations or determinations from the Engineer or else lose its right to claim for an adjustment.

5.5 COORDINATION OF CONTRACT DOCUMENTS - It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. The Contract Documents are complementary: any requirement occurring in one document is as binding as though occurring in all. In the event of conflict or discrepancy the priorities stated in the following subparagraphs shall govern:

5.5.1 Addenda shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda only to the extent specified.

5.5.2 SPECIAL CONDITIONS and Proposal shall govern over the GENERAL CONDITIONS and Specifications.

5.5.3 Specifications shall govern over drawings.

5.5.4 Specification Error - Should an error or conflict appear within the specification, the Contractor shall immediately notify the Engineer. The Engineer shall promptly issue instructions as to procedure. Any requirement occurring in one or more parts of the specification is as binding as though occurring in all applicable parts.

5.5.4.1 Should an error or conflict appear within a specification section, between a listed manufacturer / product and the performance requirements of the specification section, the performance requirements shall govern.

5.5.5 Drawings:

5.5.5.1 Schedules shall govern over all other notes and drawings.

5.5.5.2 Bottom elevations of footings shown on drawings shall govern over a general note such as: "All footings shall rest on firm, undisturbed soil and extend a minimum of a certain number of feet into natural or finish grade, whichever is lower."

5.5.5.3 Except for drawing schedules and bottom elevations as noted above, general notes shall govern over all other portions of the drawings:

5.5.5.4 Larger scale drawings shall govern over smaller scale drawings.

5.5.5.5 Figured or numerical dimensions shall govern over dimensions obtained by scaling. Measurements from the drawings when scaled shall be subject to the approval of the Engineer.

5.5.5.6 In cases of discrepancies in the figures or drawings, the discrepancies shall be immediately referred to the Engineer without whose decision said discrepancy shall not be corrected by the Contractor save at its own risk and in the settlement of any complications arising from such adjustment without the knowledge and consent of the Engineer, the Contractor shall bear all extra expense involved.

5.5.5.7 Items shown on the drawings that are completely void in terms of description, details, quality and / or performance standards in both the drawings and specifications to make a price determination shall be considered an omission and the Contractor shall immediately refer same to the Engineer for a decision.

5.5.5.8 Where there is a conflict between the architectural sheets and the civil or landscaping or electrical sheets, etc., the conflict shall be considered a discrepancy and the Contractor shall immediately refer same to the Engineer for a decision.

5.5.5.9 Any requirement occurring in one or more of the sheets is as binding as though occurring in all applicable sheets.

5.6 INTERPRETATION OF DRAWINGS AND SPECIFICATIONS - The Contractor shall carefully study and compare the Contract Documents with each other, with field conditions and with the information furnished by the State and shall at once report to the Engineer errors, conflicts, ambiguities, inconsistencies or omissions discovered. Should an item not be sufficiently detailed or explained in the Contract Documents, Contractor shall report and request the Engineer' clarification and interpretation. The Engineer will issue a clarification or interpretation that is consistent with the intent of and reasonably inferred from Contract Documents.

5.7 EXAMINATION OF DRAWINGS, SPECIFICATIONS, PROJECT SITE

5.7.1 The Contractor shall examine carefully the Project Site to become familiar with the conditions to be encountered in performing the Work and the requirements of the Contact Documents.

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

5.7.1.2 No extra compensation will be given by reason of the Contractor's misunderstanding or lack of knowledge when the existence of differing site, subsurface or physical conditions could have been reasonably discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the Bidding requirements or Contract Documents to be conducted by or for the Contractor.

5.7.2 When the Contract Drawings include a log of test borings showing a record of the data obtained by the Department's investigation of subsurface conditions, said log represents only the opinion of the Department as to the character of material encountered in its test borings and at only the location of each boring. The Contractor acknowledges that underground site conditions in Hawaii vary widely. There is no warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work or any part of it, or that other conditions may not occur.

5.7.3 Reference is made to the SPECIAL CONDITIONS for identification of subsurface investigations, reports, explorations and tests utilized by the State in preparation the Contract Documents. Such reports, drawings, boring logs etc. are not part of the Contract Documents.

5.8 COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT

5.8.1 Furnishing Drawings and Specifications - Contractor to supply copies of the Contract Drawings and Specifications. Contractor shall have and maintain at least one copy of the Contract Drawings and Specifications on the work site, at all times. Contractor shall cooperate with the Engineer, the Inspector(s), and other contractors in every possible way.

5.8.2 Superintendent - The Contractor shall have a competent superintendent or agent on the work site while work is being performed under the contract. The superintendent or agent shall be experienced in the type of project being undertaken and the work being performed. The superintendent or agent shall represent the Contractor and shall have the authority to act on behalf of the Contractor. Communications given to the superintendent or agent shall be as binding as if given to the Contractor.

5.8.2.1 If the superintendent or agent is not present at the work site, the Engineer shall have the right to suspend the work as described under Section 7.24 SUSPENSION OF WORK.

5.8.2.2 The Contractor shall file with the Engineer a written statement giving the name of the superintendent or agent assigned to the project. The Contractor shall be responsible for notifying the Engineer in writing of any change in the superintendent or agent.

5.8.2.3 The requirements of this subsection 5.8.2 may be waived by the Engineer.

5.8.3 Engineering Work - The Contractor shall properly and accurately lay out the work, perform all engineering work, and furnish all engineering materials and equipment required to establish and maintain all lines, grades, dimensions and elevations called for in the drawings or required in the progress of construction, unless otherwise noted in the contract documents. The Contractor will be held definitely and absolutely responsible for any errors in lines, grades, dimensions and elevations and shall at once, on instruction from the Engineer, correct and make good such errors or any errors, or faults in the work resulting from errors in engineering performed under the requirements of its contract to the entire satisfaction of the Engineer. Full compensation for the work shall be included in the prices paid for contract items of work. No additional allowance will be made for the correction of incorrect engineering work.

5.8.3.1 The Engineer shall furnish the requisite bench elevations.

5.8.3.2 The Contractor shall locate and verify all lines, grades, dimensions and elevations indicated on the drawings before any excavation, or construction begins. Any discrepancy shall be immediately brought to the attention of the Engineer, any change shall be made in accordance with the Engineer's instruction.

5.8.3.3 The Contractor shall verify all street survey monuments (horizontal and vertical alignment) prior to final acceptance by the Engineer in accordance with any governmental requirements.

5.8.3.4 The Contractor shall provide a surveyor or Civil Engineer licensed in the State of Hawaii to verify and establish all lines, grades, dimensions and elevations.

5.8.4 Use of Structure or Improvement - The Department shall have the right, at any time during construction of the structure or improvements, to enter same for the purpose of installing by government labor or by any other Contractor or utility any necessary work in connection with the installation of facilities, it being mutually understood and agreed, however, that the Contractors, utilities and the Department will, so far as possible work to the mutual advantage of all, where their several works in the above mentioned or in unforeseen instances touch upon or interfere with each other.

As a convenience to those involved, the Engineer shall allocate the work and designate the sequence of construction in case of controversy between Contractors on separate projects under State jurisdiction.

5.8.4.1 The Department shall also have the right to use the structure, equipment, improvement or any part thereof, at any time after it is considered by the Engineer as available. In the event that the structure, equipment or any part thereof is so used, the Department shall be responsible for all expenses incidental to such use and any damages resulting from the Department's use.

5.8.4.2 Equipment warranty will commence to run before the work is complete when and if the Department begins actual use of the equipment for the purpose for which the equipment was designed and installed.

5.8.4.3 If the Department enters the structure for construction and / or occupancy and the Contractor is delayed because of interference by the Department or by extra work resulting from damage which the Contractor is not responsible for, or by extraordinary measures the Contractor must take to accommodate the Department, the Contractor shall be granted an extension of time in accordance with Section 7.21 CONTRACT TIME. However, if such use increases the cost or delays the completion of the remaining portions of work, the Contractor shall be entitled to such extra compensation or extension of time or both, as the State may determine to be proper. Any additional work necessary will be paid in accordance with Section 8.3 PAYMENT FOR ADDITIONAL WORK.

5.9 INSPECTION - The Engineer, the Department's consultants, Inspectors employed by the Department and other representatives duly authorized by the Department shall at all times have access to the work during its construction and shall be furnished with every reasonable facility for ascertaining at any time that the materials and the workmanship are in accordance with the requirements and intentions of the contract. All work done and all materials furnished shall be subject to inspection and acceptance.

5.9.1 Such inspection and approval may extend to all or part of the work, and to the preparation, fabrication or manufacture of the materials to be used. By entering into a contract for the supply of materials, equipment or performance of labor in connection with the Work, such Material and Equipment Supplier or Labor Contractor consents to and is subject to the terms of this Section 5.9 to the same extent as the Contractor.

5.9.2 Authority to Suspend Operations - The Inspector shall have the authority to suspend operations of any work being improperly performed by issuing a written order giving the reason for shutting down the work. Should the Contractor disregard such written order, the work done thereafter will not be accepted nor paid for.

5.9.3 The inspection of the work shall not relieve the Contractor of any of its obligations to fulfill the contract as prescribed. Notwithstanding prior payment and acceptance by the Engineer, defective and nonconforming work shall be corrected to comply with the contract requirements. Unsuitable, unspecified or unapproved materials may be rejected.

5.9.4 Federal Agency Inspection - Projects financed in whole or in part with Federal funds shall be subject to inspection and corrective requirements at all times by the Federal Agency involved at no cost to the State.

5.10 REMOVAL OF DEFECTIVE, NON-CONFORMING AND UNAUTHORIZED WORK

5.10.1 All work which has been rejected as not conforming to the requirements of the Contract shall be remedied or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed for such removal or replacement. Any work done beyond the work limits shown on the drawings and specifications or established by the Engineer or any additional work done without written authority will be considered as unauthorized and will not be paid for. Work so done may be ordered removed at the Contractor expense.

5.10.2 Scheduling Corrective Work - The Contractor shall perform its corrective or remedial work at the convenience of the State and shall obtain the Engineer's approval of its schedule.

5.10.3 Failure to Correct Work -Upon failure on the part of the Contractor to comply promptly with any order of the Engineer made under the provisions of this Section 5.10, the Engineer shall have authority to cause defective work to be remedied or removed and replaced, and unauthorized work to be removed, at the Contractor's expense, and to deduct the costs from any monies due or to become due the Contractor.

5.11 VALUE ENGINEERING INCENTIVE

§3-132 HAR amended by Act 149 SLH 1999 - On projects with contract amounts in excess of $250,000, the following Value Engineering Incentive Clause shall apply to allow the Contractor to share in cost savings that ensue from cost reduction proposals it submits.

5.11.1 The Value Engineering Incentive Clause applies to all Value Engineering Change Proposals (cost reduction proposals, hereinafter referred to as (VECP) initiated and developed by the Contractor for changing the drawings, designs, specifications or other requirements of this contract. This clause does not, however apply to any VECP unless it is identified as such by the Contractor at the time of its submission to the Engineer.

5.11.2 Value Engineering Change Proposal - All VECP must:

5.11.2.1 Result in a savings to the State of at least four thousand dollars ($4,000) by providing less costly items than without impairing any essential functions and characteristics such as service life, reliability, economy of operation, ease of maintenance and all necessary features of the completed work.

5.11.2.2 Require, in order to be applied to this contract, a change order to this contract.

5.11.2.3 Not adversely impact on the schedule of performance or the contract completion date.

5.11.3 VECP Required Information - The VECP will be processed expeditiously and in the same manner as prescribed for any other change order proposal. As a minimum, the following information will be submitted by the Contractor with each proposal:

5.11.3.1 A description of the difference between the existing contract requirements and the VECP, and the comparative advantages and disadvantages of each including durability, service life, reliability, economy of operation, ease of maintenance, design safety standards, desired appearance, impacts due to construction and other essential or desirable functions and characteristics as appropriate;

5.11.3.2 An itemization of the requirements of the contract which must be changed if the VECP is adopted and a recommendation as to how to make each such change;

5.11.3.3 An estimate of the reduction in performance costs that will result from adoption of the VECP taking into account the costs of implementation by the Contractor, including any amounts attributable to subcontracts, and the basis for the estimate;

5.11.3.4 A prediction of any effects the VECP would have on other costs to the State, such as State furnished property costs, costs of related items, and costs of maintenance and operation over the anticipated life of the material, equipment, or facilities as appropriate; the construction schedule, sequence and time; and bid item totals used for evaluation and payment purposes;

5.11.3.5 A statement of the time by which a change order adopting the VECP must be issued so as to obtain the maximum cost reduction during the remainder of this contract noting any effect on the contract time; and

5.11.3.6 The dates of any previous submissions of the VECP, the numbers of any Government contracts under which submitted and the previous actions by the Government, if known.

5.11.4 Required Use of Licensed Architect or Engineer - When, in the judgment of the Engineer, a VECP alters the design prepared by a registered professional architect or engineer, the Contractor shall ensure the changes to be prepared are by or under the supervision of a licensed professional architect or engineer, and stamped and so certified.

5.11.5 Unless and until a change order applies a VECP to a contract, the Contractor shall remain obligated to perform in accordance with the terms of the contract and the Department shall not be liable for delays incurred by the Contractor resulting from the time required for the Department's determination of the acceptability of the VECP.

5.11.5.1 The determination of the Engineer as to the acceptance of any VECP under a contract shall be final.

5.11.6 Acceptance of VECP - The Engineer may accept in whole or in part any VECP submitted pursuant to this section by issuing a change order to the contract. Prior to issuance of the change order, the Contractor shall submit complete final contract documents similar to those of the original contract showing the accepted changes and the new design and features as well as the following:

5.11.6.1 Design calculations;

5.11.6.2 The design criteria used; and

5.11.6.3 A detailed breakdown of costs and expenses to construct or implement such revisions.

5.11.6.4 The change order will identify the final VECP on which it is based.

5.11.7 VECP Price Adjustments - When a VECP is accepted under a contract, an adjustment in the contract price shall be made in accordance with Section 4.4 PRICE ADJUSTMENT. The adjustment shall first be established by determining the effect on the Contractor's cost of implementing the change, including any amount attributable to subcontractors and to the Department's charges to the Contractor for architectural, engineering, or other consultant services, and the staff time required to examine and review the proposal. The contract price shall then be reduced by fifty percent (50%) of the net estimated decrease in the cost of performance.

5.11.8 The Contractor may restrict the Department's right to use the data or information or both, on any sheet of a VECP or of the supporting data, submitted pursuant to this paragraph, if it is stated on that sheet as follows:

5.11.8.1 "This data or information or both shall not be disclosed outside the Department or be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this VECP. This restriction shall not limit the Department's right to use this data or information or both if obtained from another source, or is otherwise available, without limitations. If this VECP is accepted by the Department by issuance of a change

order after the use of this data or information or both in such an evaluation, the Department shall have the right to duplicate, use and disclose any data or information or both pertinent to the proposal as accepted in any manner and for any purpose whatsoever and have others so do."

5.11.9 In the event of acceptance of a VECP, the Department shall have all rights to use, duplicate or disclose in whole or in part in any manner and for any purpose whatsoever, and to have or permit others to do so, any data or information or both reasonably necessary to fully utilize such proposal.

5.11.10 The Contractor shall submit with each VECP all required information and provide all additional information as may be required by the Engineer to evaluate and implement the VECP. The cost for preparing the VECP shall be the Contractor's responsibility, and any part of the Contractor's cost for implementing the change shall be due only when the proposal is accepted and a change order is issued.

5.11.11 If the services of the Department's architect, engineer or consultant is necessary to review and evaluate a VECP, the cost therefore shall be paid for by the Contractor.

5.11.12 Each VECP shall be evaluated as applicable to this contract, and past acceptance on another Department project for a similar item shall not be automatic grounds for approval.

5.11.13 The method by which the Contractor will share a portion of the cost savings from an accepted VECP shall be for this contract only, and no consideration shall be made for future acquisition, royalty type payment or collateral savings.

5.11.13.1 The Department may accept the proposed VECP in whole or in part. The Engineer shall issue a contract change order to identify and describe the accepted VECP.

5.12 SUBCONTRACTS - Nothing contained in the contract documents shall create a contractual relationship between the State and any subcontractor. The contractor may subcontract a portion of the work but the contractor shall remain responsible for the work that is subcontracted.

5.12.1 Replacing Subcontractors - Contractors may enter into subcontracts only with subcontractors listed in the offer form. The contractor will be allowed to replace a listed subcontractor if the subcontractor:

5.12.1.1 Fails, refuses or is unable to enter into a subcontract consistent with the terms and conditions of the subcontractor's offer presented to the contractor; or

5.12.1.2 Becomes insolvent; or

5.12.1.3 Has any license or certification necessary for performance of the work suspended or revoked; or

5.12.1.4 Has defaulted or has otherwise breached the subcontract in connection with the subcontracted work; or

5.12.1.5 Agrees to be substituted by providing a written release; or

5.12.1.6 Is unable or refuses to comply with other requirements of law applicable to contractors, subcontractors, and public works projects.

5.12.2 Notice of Replacing Subcontractor – The contractor shall provide a written notice to the Contracting Officer when it wishes to replace a subcontractor, including in the notice, the reasons for replacement. The contractor agrees to defend, hold harmless and indemnify the State against all claims, liabilities, or damages whatsoever, including attorneys fees arising out of or related to the replacement of a subcontractor. The contractor may not replace the subcontractor until the Contracting Officer approves of the replacement.

5.12.3 Adding Subcontractors – The Contractor may enter into a subcontract with a subcontractor that is not listed in the offer form only after this contract becomes enforceable and only after the Contracting Officer has approved the subcontractor.

5.12.4 Subcontracting - Contractor shall perform with its own organization, work amounting to not less than twenty (20%) of the total contract cost, exclusive of costs for materials and equipment the Contractor purchases for installation by its subcontractors, except that any items designated by the State in the contract as "specialty items" may be performed by a subcontract and the cost of any such specialty items so performed by the subcontract may be deducted from the total contract cost before computing the amount of work required to be performed by the Contractor with its own organization.

ARTICLE 6 - Control of Materials and Equipment

6.1 MATERIALS AND EQUIPMENT - Contractor shall furnish, pay for and install all material and equipment as called for in the drawings and specifications. Materials and equipment shall be new and the most suitable for the purpose intended unless

otherwise specified. The State does not guarantee that the specified or pre-qualified product listed in the drawings and specifications are available at the time of bid or during the contract period.

6.2 SOURCE OF SUPPLY AND QUALITY OF MATERIALS

6.2.1 Only materials conforming to the drawings and specifications and, when required by the contract have been accepted by the Engineer, shall be used. In order to expedite the inspection and testing of materials, at the request of the Engineer, the Contractor shall identify its proposed sources of materials within ten (10) days after notification by the Engineer.

6.2.2 At the option of the Engineer, the materials may be accepted by the Engineer at the source of supply before delivery is started. Representative preliminary samples of the character and quantity prescribed shall be submitted by the Contractor or producer for examination and tested in accordance with the methods referred to under samples and tests.

6.2.3 Engineer's Authorization to Test Materials - Materials proposed to be used may be inspected and tested whenever the Engineer deems necessary to determine conformance to the specified requirements. The cost of testing shall be borne by the Contractor. However, should test results show that the material(s) is in compliance with the specified requirements, the cost of the testing will be borne by the State.

6.2.4 Unacceptable Materials - In the event material(s) are found to be unacceptable, the Contractor shall cease their use, remove the unacceptable material(s) that have already been installed or applied, and furnish acceptable materials all at no additional cost to the State. No material which is in any way unfit for use shall be used.

6.3 SUBSTITUTION AFTER CONTRACT AWARD

6.3.1 Materials, equipment, articles and systems noted on the drawings and specifications, establish a standard of quality, function, performance or design requirements and shall not be interpreted to limit competition. Should trade names, makes, catalog numbers or brand names be specified, the contractor shall infer that these items indicate the quality, style, appearance or performance of the material, equipment, article, or systems to be used in the project. The contractor is responsible to use materials, equipment, articles or systems that meet the project requirements. Unless specifically provided otherwise in the contract documents, the contractor may, at its option, use any material equipment, article or system that, in the judgment of the Contracting officer, is equal to that required by the contract documents.

6.3.1.1 If after installing a material, equipment, article or system a variance is discovered, the contractor shall immediately replace the material, equipment, article or system with one that meets the requirements of the contract documents.

6.3.2 Substitution After Contract Award - Subject to the Contracting Officer's determination; material, equipment, article or system with a variant feature(s) may be allowed as a substitution, provided it is in the State's best interest. The State may deny a substitution; and if a substitution is denied, the contractor is not entitled to any additional compensation or time extension.

6.3.2.1 The contractor shall include with the submittal, a notification that identifies all deviations or variances from the contract documents. The notice shall be in a written form separate from the submittal. The variances shall be clearly shown on the shop drawing, descriptive sheet, and material sample or color sample; and the contractor shall certify that the substitution has no other variant features. Failures to identify the variances are grounds to reject the related work or materials, notwithstanding that the Contracting Officer accepted the submittal. If the variances are not acceptable to the Contracting Officer, the contractor will be required to furnish the item as specified on the contract documents at no additional cost or time.

6.3.2.2 Acceptance of a variance shall not justify a contract price or time adjustment unless the contractor requests an adjustment at the time of submittal and the adjustments are explicitly agreed to in writing by the Contracting Officer. Any request shall include price details and proposed scheduling modifications. Acceptance of a variance is subject to all contract terms, and is without prejudice to all rights under the surety bond.

6.3.2.3 The contractor can recommend improvements to the project, for materials, equipment, articles, or systems by means of a substitution request, even if the improvements are at an additional cost. The Contracting Officer shall make the final determination to accept or reject contractor's proposed improvements. If the proposal material, equipment, article or system cost less than the specified item, the Department will require a sharing of cost similar to value engineering be implemented. State reserves its right to deny a substitution; and if a substitution is denied, the contractor is not entitled to additional compensation or time extension.

6.3.2.4 If the specified material and / or equipment inadvertently lists only a single manufacturer.

6.3.3 A substitution request after Contract Award shall be fully explained in writing. Contractor shall provide brochures showing that the substitute material and / or equipment is equal or better in essential features and also provide a matrix showing comparison of the essential features. Contractor shall justify its request and include quantities and unit prices involved, respective supplier's price quotations and such other documents necessary to fully support the request. Any savings in cost will be credited to the Department. Contractor shall absorb any additional cost for the substitute item(s) or for its installation. Submitting a substitution request, does not imply that substitutions, for brand name specified materials and equipment, will be allowed. The Engineer may reject and deny any request deemed irregular or not in the best interest of the Department. A request for substitution shall not in any way be grounds for an extension of contract time. At the discretion of the Engineer, a time extension may be granted for an approved substitution.

6.4 ASBESTOS CONTAINING MATERIALS - The use of materials or equipment containing asbestos is prohibited under this contract. Contractor warrants that all materials and equipment incorporated in the project are asbestos-free.

6.5 TEST SAMPLES

6.5.1 The Engineer may require any or all materials to be tested by means of samples or otherwise. Contractor shall collect and forward samples requested by the Engineer. Contractor shall not use or incorporate any material represented by the samples until all required tests have been made and the material has been accepted. In all cases, the Contractor shall furnish the required samples without charge. Where samples are required from the completed work, the Contractor shall cut and furnish samples from the completed work. Samples so removed shall be replaced with identical material and refinished. No additional compensation will be allowed for furnishing test samples and their replacement with new materials.

6.5.2 Tests of the material samples will be made in accordance with the latest standards of the American Society for Testing and Materials (ASTM), as amended prior to the contract date unless otherwise provided. In cases where a particular test method is necessary or specifications and serial numbers are stipulated, the test shall be made by the method stated in the above-mentioned publication. Where the test reference is the American Association of State Highway and Transportation Officials (AASHTO), it means the specifications and serial numbers of the latest edition and amendments prior to the bid date.

6.5.3 The Engineer may retest any materials which have been tested and accepted at the source of supply after the same has been delivered to the work site. The Engineer shall reject all materials which, when retested, do not meet the requirements of the contract.

6.6 MATERIAL SAMPLES

6.6.1 The Contractor shall furnish all samples required by the drawings and specifications or that may be requested by the Engineer of any and all materials or equipment it proposes to use. Unless specifically required, samples are not to be submitted with the bid.

6.6.2 No materials or equipment of which samples are required shall be used on the Work until the Engineer has received and accepted the samples. If the Contractor proceeds to use such materials before the Engineer accepts the samples, the Contractor shall bear the risk.

6.6.3 Contractor shall furnish two (2) copies of a transmittal letter with each shipment of samples, The letter shall provide a list of the samples, the name of the building or work for which the materials are intended and the brands of the materials and names of the manufacturers. Also, each sample submitted shall have a label indicating the material represented, its place of origin, the names of the producer, the Contractor and the building or work for which the material is intended. Samples of finished materials shall be marked to indicate where the materials represented are required by the drawings or specifications.

6.6.4 Acceptance of any sample(s) shall be only for the characteristics or for the uses named in such acceptance and for no other purpose. Acceptance of samples shall not change or modify any contract requirement. All samples will be provided by the Contractor at no extra cost to the Department. See also Section 5.4 SHOP DRAWINGS AND OTHER SUBMITTALS.

6.7 NON-CONFORMING MATERIALS - All materials not conforming to the requirements of these contract documents, whether in place or not, shall be rejected and removed immediately from the site of work unless otherwise permitted by the Engineer in writing. No rejected material which has subsequently been made to conform shall be used unless and until written acceptance has been given by the Engineer. If the Contractor fails to comply forthwith with any order of the Engineer made under the provisions of this Section 6.7, the Engineer shall have the authority to remove and

replace non-conforming materials and charge the cost of removal and replacement to the Contractor.

6.8 HANDLING MATERIALS - Contractor shall handle all materials to preserve their quality and fitness for work. Transport aggregates from the source or storage site to the work in tight vehicles to prevent loss or segregation of materials after loading and measuring.

6.9 STORAGE OF MATERIALS - Contractor shall store all materials to preserve their quality and fitness for the work. Unless otherwise provided, any portion of the project site within the Project Contract Limit not required for public travel, may be used for storage purposes and for the Contractor's plant and equipment. Any additional space required shall be provided by the Contractor at its expense subject to the Engineer's acceptance. Contractor shall store materials on wooden platforms or other hard, clean surfaces and covered to protect it from the weather and damage. Stored materials shall be located to allow prompt inspection.

6.10 PROPERTY RIGHTS IN MATERIALS - Nothing in the contract shall be construed to vest in the Contractor any right to any materials and equipment after such materials and equipment have been attached, affixed to, or placed in the work.

6.11 ASSIGNMENT OF ANTITRUST CLAIMS FOR OVERCHARGES FOR GOODS PURCHASED - Contractor (or Vendor) and the Department recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Department. Therefore, Contractor hereby assigns to the Department any and all claims for such overcharges as to goods 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 the Department, subject to the aforementioned exception.

ARTICLE 7 - Prosecution and Progress
(Including Legal Relations and Responsibility)

7.1 PROSECUTION OF THE WORK

7.1.1 After approval of the contract by the Department of Defense, a Notice to Proceed will be given to the Contractor as described in Section 3.10 NOTICE TO PROCEED. The Notice to Proceed will indicate the date the Contractor is expected to begin the construction and from which date contract time will be charged.

7.1.2 The Contractor shall begin work no later than ten (10) working days from the date in the Notice to Proceed and shall diligently prosecute the same to completion within the contract time allowed. The Contractor shall notify the Engineer at least three (3) working days before beginning work.

7.1.3 If any subsequent suspension and resumption of work occurs, the Contractor shall notify the Engineer at least twenty-four (24) hours before stopping or restarting actual field operations.

7.1.4 Working Prior to Notice to Proceed - The Contractor shall not begin work before the date in the Notice to Proceed. Should the Contractor begin work before receiving the Notice to Proceed, any work performed in advance of the specified date will be considered as having been done at the Contractor's risk and as a volunteer and subject to the following conditions:

7.1.4.1 Under no circumstances shall the Contractor commence work on site until it has notified the Engineer of its intentions and has been advised by the Engineer in writing that the project site is available to the Contractor. The project site will not be made available until the Contractor has complied with commencement requirements under Section 7.2 COMMENCEMENT REQUIREMENTS.

7.1.4.2 In the event the contract is not executed, the Contractor shall, at its own expense, do such work as is necessary to leave the site in a neat condition to the satisfaction of the Engineer. The Contractor shall not be reimbursed for any work performed.

7.1.4.3 All work done prior to the Notice to Proceed shall be performed in accordance with the contract documents, but will only be considered authorized work and be paid for as provided in the contract after the Notice to Proceed is issued.

7.1.5 For repairs and/or renovations of existing buildings, unless otherwise permitted by the Engineer, the Contractor shall not commence with the physical construction unless all or sufficient amount of materials are available for either continuous construction or completion of a specified portion of the work. When construction is started, the Contractor shall work expeditiously and pursue the work diligently until it is complete. If only a portion of the work is to be done in stages, the Contractor shall leave the area safe and usable for the user agency at the end of each stage.

7.2 COMMENCEMENT REQUIREMENTS - Prior to beginning work on site, the Contractor shall submit the following to the Engineer:

7.2.1 Identification of the Superintendent or authorized representative on the job site. Refer to Section 5.8 COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT.

7.2.2 Proposed Working Hours on the job. Refer to Section 7.5 NORMAL WORKING HOURS.

7.2.3 Permits and Licenses. Refer to Section 7.4 PERMITS AND LICENSES.

7.2.4 Schedule of Prices to be accepted for the agreed Monthly Payment Application. Unless the proposal provides unit price bids on all items in this project, the successful Bidder will be required, after the award of contract, to submit a schedule of prices for the various items of construction included in the contract. For projects involving more than a single building and / or facility, the breakdown cost shall reflect a separate schedule of prices for the various items of work for each building and/or facility. The sum of the prices submitted for the various items must equal the lump sum bid in the Bidder's proposal. This schedule will be subject to acceptance by the Engineer who may reject same and require the bidder to submit another or several other schedules if in the Engineer's opinion the prices are unbalanced or not sufficiently detailed. This schedule of prices shall be used for the purpose of determining the value of monthly payments due the Contractor for work installed complete in place; and may be used as the basis for determining cost and credit of added or deleted items of work, respectively.

7.2.4.1 The Contractor shall estimate at the close of each month the percentage of work completed under each of the various construction items during such month and submit the Monthly Payment Application to the Engineer for review and approval. The Contractor shall be paid the approved percentage of the price established for each item less the retention provided in Section 8.4 PROGRESS PAYMENTS.

7.2.5 Proof of Insurance Coverage. Certificate of Insurance or other documentary evidence satisfactory to the Contracting Officer that the Contractor has in place all insurance coverage required by the contract. The Certificate of Insurance shall contain wording which identifies the Project number and Project title for which the certificate of insurance is issued. Refer to Section 7.3 INSURANCE REQUIREMENTS.

7.2.6 Until such time as the above items are processed and approved, the Contractor shall not be allowed to commence on any operations unless authorized by the Engineer.

7.3 INSURANCE REQUIREMENTS

7.3.1 Obligation of Contractor - Contractor shall not commence any work until it obtains, at its own expense, all required herein insurance. Such insurance shall be provided by an insurance company authorized by the laws of the State to issue such insurance in the State of Hawaii. Coverage by a "Non-Admitted" carrier is permissible provided the carrier has a Best's Rating of "A-VII" or better.

7.3.2 All insurance described herein will be maintained by the Contractor for the full period of the contract and in no event will be terminated or otherwise allowed to lapse prior to written certification of final acceptance of the work by the State.

7.3.3 Certificate(s) of Insurance acceptable to the State shall be filed with the Engineer prior to commencement of the work. Certificates shall identify if the insurance company is a "captive" insurance company or a "Non-Admitted" carrier to the State of Hawaii. The best's rating must be stated for the "Non-Admitted" carrier. Certificates shall contain a provision that coverage's being certified will not be cancelled or materially changes without giving the Engineer at least thirty (30) days prior written notice. If the State is to be an Additional Insured on any of the required insurance, it shall be so noted on the certificate. Should any policy be canceled before final acceptance of the work by the State, and the Contractor fails to immediately procure replacement insurance as specified, the State, in addition to all other remedies it may have for such breach, reserves the right to procure such insurance and deduct the cost thereof from any money due to the Contractor.

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

7.3.5 All insurance described herein shall be primary and cover the insured for all work to be performed under the contract, all work performed incidental thereto or directly or indirectly connected therewith, including

traffic detour work or other work performed outside the work area and all change order work.

7.3.6 The Contractor shall, from time to time, furnish the Engineer, when requested, satisfactory proof of coverage of each type of insurance required covering the work. Failure to comply with the Engineer's request may result in suspension of the work, and shall be sufficient grounds to withhold future payments due the Contractor and to terminate the contract for Contractor's default.

7.3.7 Types of Insurance - Contractor shall purchase and maintain insurance described below which shall provide coverage against claims arising out of the Contractor's operations under the contract, whether such operations be by the Contractor itself or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

7.3.7.1 Worker's 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.

7.3.7.2 General Liability - The Contractor shall obtain General Liability insurance with a limit of not less than $2,000,000 per occurrence and in the Aggregates. The General liability insurance shall include the State as an Additional Insured. The required limit of insurance may be provided by a single policy or with a combination of primary and excess polices. Refer to SPECIAL CONDITIONS for any additional requirements.

7.3.7.3 Auto 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 occurrence. The required limit of insurance may be provided by a single policy or with a combination of primary and excess polices. Refer to SPECIAL CONDITIONS for any additional requirements.

7.3.7.4 Property Insurance (Builders Risk)

(1) New Building(s) - The Contractor shall obtain Property Insurance covering building(s) being constructed under this Contract. The limit shall be equal to the completed value of the building(s) and shall insure against all-loss excluding earthquakes and floods. The coverage shall be provided by a company authorized to write insurance in the State of Hawaii as an insurer.

(2) Building Renovation and / or Installation Contract - The Contractor shall obtain Property Insurance with a limit equal to the completed value of the work or property being installed and shall insure against all-loss excluding earthquakes and floods. The coverage shall be provided by a company authorized to write insurance in the State of Hawaii as an insurer. Refer to SPECIAL CONDITIONS for any additional requirements.

(3) The Contractor is not required to obtain property insurance for contracts limited to site development

7.4 PERMITS AND LICENSES

7.4.1 The State or its representative may process Federal (e.g. Corps of Engineers), State and County Permit applications. The Contractor shall pick up the pre-processed Permits at the appropriate governmental agency and pay the required fees. Other permits necessary for the proper execution of the work such as utility connection permits, elevator installation permits etc., unless processed by the State and paid for by the Contractor, shall be obtained and paid for by the Contractor.

7.4.2 Until such time as the above permits are approved, the Contractor shall not be allowed to commence any operations without written approval of the Engineer.

7.4.3 The Engineer reserves the right to waive application and processing of the building permit.

7.5 NORMAL WORKING HOURS - Prior to beginning operations, unless otherwise established by the State, the Contractor shall notify the Engineer in writing of the time in hours and minutes, A.M. and P.M. respectively, at which it desires to begin and end the day's work. If the Contractor desires to change the working hours, it shall request the Engineer's approval three (3) consecutive working days prior to the date of the change.

7.6 HOURS OF LABOR (Section 104-2 Hawaii Revised Statutes)

7.6.1 No laborer or mechanic employed on the job site of any public work of the Department or any political sub-division thereof shall be permitted or required to work on Saturday, Sunday or a legal holiday of the State or in excess of eight hours on any other day unless the laborer or mechanic receives overtime compensation for all hours worked on Saturday, Sunday and a legal holiday of the State or in excess of eight hours on any

other day. For the purposes of determining overtime compensation under this Section 7.6, the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined by the Department of Labor and Industrial Relations to be the prevailing basic hourly rate for corresponding classes of laborers and mechanics on projects of similar character in the Department.

7.6.2 Overtime compensation means, compensation based on one and one-half times the laborers or mechanics basic hourly rate of pay plus the cost to an employer of furnishing a laborer or mechanic with fringe benefits.

7.7 PREVAILING WAGES - (§ 104-2 HRS)

7.7.1 The Contractor shall at all times observe and comply with all provisions of Chapter 104, HRS, the significant requirements of which are emphasized in the Department of Labor and Industrial Relations Publication No. H104-3 entitled 'Requirements of Chapter 104, HRS Wages and Hours of Employees on Public Works Law'.

7.7.2 Wage Rate Schedule - The wage rate schedule is not physically enclosed in the bid documents. However, the wage rate schedule is incorporated herein by reference and made a part of the Bid and Contract Documents. Said wage rate schedule may be obtained from the Contracts Office, Department of Accounting and General Services, 1151 Punchbowl Street, Room 422, Honolulu, Hawaii or, via the FAX-ON-DEMAND system of the Department of Labor and Industrial Relations, phone number (808) 586-8695. When the bid documents are made available on respective neighbor islands, copies of the wage rate schedule may also be obtained from the office of the respective neighbor island DAGS District Office.

7.7.3 The Contractor or its subcontractor(s) shall pay all laborers and mechanics employed on the job site, unconditionally and not less often than once a week, and without deduction or rebate on any account except as allowed by law, the full amounts of their wages including overtime, accrued to not more than five (5) working days prior to the time of payment, at wage rates not less than those stated in the contract, regardless of any contractual relationship which may be alleged to exist between the Contractor and subcontractor and such laborers and mechanics. The wages stated in the contract shall not be less than the minimum prevailing wages (basic hourly rate plus fringe benefits), as determined by the Director of Labor and Industrial Relations and published in wage rate schedules. Any increase in wage rates, as determined by the Director of Labor and Industrial Relations and issued in the wage rate schedule, shall be applicable during the performance of the contract, in accordance with section 104-2(a) and (b), Hawaii Revised Statutes. Notwithstanding the provisions of the original contract, if the Director of Labor and Industrial Relations determines that prevailing wages have increased during the performance of the contract, the rate of pay of laborers and mechanics shall be raised accordingly.

7.7.4 Posting Wage Rate Schedule - The rates of wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the job site and a copy of such wages required to be posted shall be given to each laborer and mechanic employed under the contract by the Contractor at the time the person is employed thereunder, provided that where there is a collective bargaining agreement, the Contractor does not have to provide its employees the wage rate schedules. Any revisions to the schedule of wages issued by the Director of Labor and Industrial Relations during the course of the contract shall also be posted by the Contractor and a copy provided to each laborer and mechanic employed under the contract as required above.

7.7.5 The Engineer may withhold from the Contractor so much of the accrued payments as the Engineer may consider necessary to pay to laborers and mechanics employed by the Contractor or any subcontractor on the job site. The accrued payments withheld shall be the difference between the wages required by this contract and the wages actually received by such laborers or mechanics.

7.8 FAILURE TO PAY REQUIRED WAGES (§ 104-4, HRS) - If the Department finds that any laborer or mechanic employed on the job site by the Contractor or any subcontractor has been or is being paid wages at a rate less than the required rate by the contract, or has not received their full overtime compensation, the Department may, by written notice to the Contractor, terminate its right, or the right of any subcontractor, to proceed with the work or with the part of the work on which the required wages or overtime compensation have not been paid and may complete such work or part by contract or otherwise, and the Contractor and its sureties shall be liable to the Department for any excess costs occasioned thereby.

7.9 PAYROLLS AND PAYROLL RECORDS (§ 104-3 HRS)

7.9.1 A certified copy of each weekly payroll shall be submitted to the Engineer within seven (7) calendar days after the end of each weekly payroll period. Failure to do so on a timely basis shall be cause for disqualification from bidding in accordance with the provisions of Section 2.12 DISQUALIFICATION OF BIDDERS. The Contractor shall be responsible for the timely submission of certified copies of payrolls of all

subcontractors. The certification shall affirm that payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision, any amendments thereto during the period of the contract, and that the classifications set forth for each laborer and mechanic conform with the work they performed.

7.9.2 Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the General Contractor and its subcontractors, if any, during the course of the work and preserved for a period of four (4) years thereafter. Such records shall contain the name of each employee, their correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. Such records shall be made available for inspection at a place designated by the Engineer, the Director of Labor and any authorized persons who may also interview employees during working hours on the job site.

7.9.3 Note that the falsification of certifications noted in this Section 7.9 may subject the Contractor or subcontractor to penalties and debarment under the laws referenced in Section 7.14 LAWS TO BE OBSERVED and / or criminal prosecution.

7.9A APPRENTICESHIP AGREEMENT CERTIFICATION (HRS §103-55.6)

7.9A.1 For the duration of a contract awarded and executed utilizing the apprenticeship agreement preference, the Contractor shall certify for each month that work is being conducted on the project, that it continues to be a participant in the relevant registered apprenticeship program for each trade it employs.

7.9A.2 Monthly certification shall be made by completing the *Monthly Report of Contractor's Participation – Form 2* made available by the State Department of Labor and Industrial Relations, the original to be signed by the respective apprenticeship program sponsors authorized official, and submitted by the Contractor to the Engineer with its monthly payment requests. The *Monthly Report of Contractor's Participation – Form 2* is available on the DLIR website at: http://hawaii.gov/labor/wdd.

7.9A.3 Should the Contractor fail or refuse to submit its *Monthly Report of Contractor's Participation – Form 2,* or at any time during the duration of the contract, cease to be a party to a registered apprenticeship agreement for any of the apprenticeable trades the Contractor employs, or will employ, the Contractor will be subject to the following sanctions:

7.9A.3.1 Withholding of the requested payment until all of the required *Monthly Report of Contractor's Participation – Form 2*s are properly completed and submitted.

7.9A.3.2 Temporary or permanent cessation of work on the project, without recourse to breach of contract claims by the Contractor; provided the Department shall be entitled to restitution for nonperformance or liquidated damages claims; or

7-9A.3.3 Proceedings to debar or suspend pursuant to HRS §103D-702.

7.9A.4 If events such as "acts of God", acts of public enemy, acts of the State or any other governmental body in its sovereign or contractual capacity, fires, floods, epidemics, freight embargoes, unusually severe weather, or strikes or other labor disputes prevent the Contractor from submitting the *Monthly Report of Contractor's Participation - Form 2*, the Contractor shall not be penalized as provided herein, provided the Contractor completely and expeditiously complies with the certification process when the event is over.

7.10 OVERTIME AND NIGHT WORK

7.10.1 Overtime work shall be considered as work performed in excess of eight (8) hours in any one day or work performed on Saturday, Sunday or legal holiday of the State. Overtime and night work are permissible when approved by the Engineer in writing, or as called for elsewhere within these GENERAL CONDITIONS.

7.10.2 Overtime Notification - Contractor shall notify the Engineer in writing at least two (2) working days prior to doing overtime and night work, to insure proper inspection will be available. The notification shall address the specific work to be done. A notification is not required when overtime work and night work are included as normal working hours in the contract and in the contractor's construction schedule.

7.10.3 In the event that work other than that contained in the above notification is performed and for which the Engineer determines State inspection services were necessary but not available because of the lack of notification, the Contractor may be required to remove all such work and perform the work over again in the presence of State inspection personnel.

7.10.4 Any hours worked in excess of the normal eight (8) working hours per day or on Saturdays, Sundays or legal State holidays will not be considered a working day.

7.10.5 The State hereby reserves the right to cancel the overtime, night, Saturday, Sunday or legal State holiday work when it is found that work during these periods is detrimental to the public welfare or the user agency.

7.11 OVERTIME AND NIGHT PAYMENT FOR STATE INSPECTION SERVICE

7.11.1 The Department is responsible for overtime or night time payments for Department's inspection services, including Department's Inspector, State staff personnel and the Department's Consultant(s) engaged on the project, when overtime and night work are included as normal working hours in the contract and in the contractor's construction schedule.

7.11.2 Whenever the Contractor's operations require the State's inspection and staff personnel to work overtime or at night, the Contractor shall reimburse the State for the cost of such services unless otherwise instructed in the Contract. The Engineer will notify the Contractor of the
minimum number of required Department employees and other personnel engaged by the Department prior to the start of any such work. The costs chargeable to the Contractor shall include but not be limited to the following:

7.11.2.1 The cost of salaries which are determined by the State and includes overtime and night time differential for the Department's staff and inspection personnel. In addition to the cost of the salaries, the Contractor shall reimburse the State's share of contributions to the employee's retirement, medical plan, social security, vacation, sick leave, worker's compensation funds, per diem, and other applicable fringe benefits and overhead expenses.

7.11.2.2 The transportation cost incurred by the Department's staff and inspection personnel which are based on established rental rates or mileage allowance in use by the Department for the particular equipment or vehicle.

7.11.2.3 Fees and other costs billed the State by Consultants engaged on the project for overtime and/or night time work.

7.11.3 Payment for Inspection Services - The monies due the Department for staff and inspection work and use of vehicles and equipment as determined in subsection 7.11.2 shall be deducted from the monies due or to become due the Contractor. In any and all events, the Contractor shall not pay the Department's employees directly.

7.12 LIMITATIONS OF OPERATIONS

7.12.1 Contractor shall at all times conduct the work in such manner and in such sequence as will insure the least practicable interference with pedestrian and motor traffic passageways. The Contractor shall furnish convenient detours and provide and plan all other appropriate signs, flashers, personnel, warnings, barricades and other devices for handling pedestrian and motor traffic.

7.12.2 In the event that other contractors are also employed on the job site, the Contractor shall arrange its work and dispose of materials so as not to interfere with the operations of the other contractors engaged upon adjacent work. The Contractor shall join its work to that of others and existing buildings in a proper manner, and in accordance with the drawings and specifications, and perform its work in the proper sequence in relation to that of others, all as may be directed by the Engineer.

7.12.3 Each Contractor shall be responsible for any damage done by it to work performed by another contractor. Each Contractor shall so conduct its operations and maintain the work in such condition that adequate drainage shall be in effect at all times.

7.12.4 In the event that the Contractor fails to prosecute its work as provided in this Section 7.12 or disregards the directions of the Engineer, the Engineer may suspend the work until such time as the Contractor provides for the prosecution of the work with minimum interference to traffic and passageways or other contractors, adequate drainage, the repair of damage and complies with the direction of the Engineer. No payment will be made for the costs of such suspension.

7.13 ASSIGNMENT OR CHANGE OF NAME §3-125-14 HAR

7.13.1 Assignment - The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of this contract or any part hereof or any right, title or interest herein or any monies due or to become due hereunder without the prior written consent of the Engineer.

7.13.2 The Contractor may assign money due or to become due it under the contract and such assignment will be recognized by the Department, if given proper notice thereof, to the extent permitted by law; but any assignment of monies shall be subject to all proper set-offs in favor of the State and to all deductions provided in the contract and particularly all monies withheld or unpaid, whether assigned or not, shall be to use by the Department for the completion of the work in the event that the Contractors should be in default therein.

7.13.3 Recognition of a Successor in Interest; Assignment - When in the best interest of the State, a

successor in interest may be recognized in an assignment agreement in which the transferor and the transferee and the State shall agree that:

7.13.3.1 The transferee assumes all of the transferor's obligations;

7.13.3.2 Transferor remains liable for all obligations under the contract but waives all rights under the contract against the State; and

7.13.3.3 The transferor shall continue to furnish, and the transferee shall also furnish, all required bonds.

7.13.4 Change of Name - When a Contractor requests to change the name in which it holds a contract with the State, the Engineer shall, upon receipt of a document indicating such change of name (for example: an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting Contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.

7.13.5 All change of name or novation agreements effected hereunder other than by the Engineer shall be reported to the Engineer within thirty (30) days of the date that the agreement becomes effective.

7.13.6 Notwithstanding the provisions of paragraphs 7.13.3.1 through 7.13.3.3 above, when a Contractor holds contracts with more than one purchasing agency of the State, the novation or change of name agreements herein authorized shall be processed only through the Department of Defense, State of Hawaii.

7.14 LAWS TO BE OBSERVED

7.14.1 The Contractor at all times shall observe and comply with all Federal, State and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, and the conduct of the work. The Contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto before and after the date of this contract.

7.14.2 The Contractor shall defend, protect, hold harmless and indemnify the State and its Departments and Agencies and all their officers, representatives, employees or agents against any claim or liability arising from or based on the violation of any such laws, ordinances, rules and regulations, orders or decrees, whether such violation is committed by the Contractor or its Subcontractor(s) or any employee of either or both. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the Contractor shall forthwith report the same to the Engineer in writing.

7.14.3 While the Contractor must comply with all applicable laws, attention is directed to: Wage and Hours of Employees on Public Works, Chapter 104, Hawaii Revised Statutes (HRS); Hawaii Public Procurement Code, Authority to debar or suspend, Section 103D-702, HRS; Hawaii Employment Relations Act, Chapter 377, HRS; Hawaii Employment Security Law, Chapter 383, HRS; Worker's Compensation Law, Chapter 386, HRS; Wage and Hour Law, Chapter 387, HRS; Occupational Safety and Health, Chapter 396, HRS; and Authority to Debar or Suspend, Chapter 126, subchapter 2, Hawaii Administrative Rules (HAR).

7.15 PATENTED DEVICES, MATERIALS AND PROCESSES - If the Contractor desires to use any design, device, material, or process covered by letters of patent or copyright, the right for such use shall be procured by the Contractor from the patentee or owner. The Contractor shall defend, protect, indemnify and hold harmless the State and its Departments and Agencies, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright in connection with the work to be performed under the contract, shall defend, protect, indemnify and hold harmless the State and its Departments and Agencies for any costs, expenses and damages which it may be obligated to pay by reason of any such infringement at any time during the prosecution or after the completion of the work. This section shall not apply to any design, device, material or process covered by letters of patent or copyright, which the Contractor is required to use by the drawings or specifications.

7.16 SANITARY, HEALTH AND SAFETY PROVISIONS

7.16.1 The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements of the State and local Boards of Health, or other bodies or tribunals having jurisdiction. Unless otherwise stated in the drawings or specifications, the Contractor shall install toilet facilities conveniently located at the job site and maintain same in a neat and sanitary condition for the use of the employees on the job site for the duration of the contract. The toilet facilities shall conform to the requirements of the State

Department of Health. The cost of installing, maintaining and removing the toilet facilities shall be considered incidental to and paid for under various contract pay items for work or under the lump sum bids as the case may be, and no additional compensation will be made therefore. These requirements shall not modify or abrogate in any way the requirements or regulations of the State Department of Health.

7.16.2 Attention is directed to Federal, State and local laws, rules and regulations concerning construction safety and health standards. The Contractor shall not require any worker to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to their health or safety.

7.17 PROTECTION OF PERSONS AND PROPERTY

7.17.1 Safety Precautions and Programs - The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

7.17.1.1 All persons on the Work site or who may be affected by the Work;

7.17.1.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor and its subcontractors; and

7.17.1.3 Other property at the site or adjacent thereto, including trees, shrubs lawns walks pavement, roadways structures, and utilities not designated for removal, relocation or replacement in the course of construction.

7.17.2 Contractor shall give notices and comply with applicable laws, ordinances, regulations, rules, and lawful orders of any public body having jurisdiction for the safety of persons or property or their protection from damage, injury or loss; and the Contractor shall erect and maintain reasonable safeguards for safety and protection, including posting danger signs, or other warnings against hazards.

7.17.3 The Contractor shall notify Owners of adjacent properties and of underground (or overhead) utilities when performing work, which may affect the Owners; and shall cooperate with the Owners in the protection, removal and replacement of their property.

7.17.4 All damage, injury or loss to any property referred to in paragraphs 7.17.1.2 and 7.17.1.3 caused by the fault or negligence or damage or loss attributable to acts or omissions directly or indirectly in whole or part by the Contractor a subcontractor or any one directly or indirectly employed by them, or by anyone for whose acts they might be liable, shall be remedied promptly by the Contractor.

7.17.5 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the protection of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor

7.17.6 The Contractor shall not load or permit any part of the construction to be loaded so as to endanger its safety. The Contractor shall not injure or destroy trees or shrubs nor remove or cut them without permission of the Engineer. Contractor shall protect all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed.

7.17.7 In the event the Contractor encounters on the site, material reasonably believed to be asbestos or other hazard material that has not been rendered harmless, the Contractor shall stop work in the area and notify the Engineer promptly. The work in the affected area shall be resumed in the absence of hazard materials or when the hazard has been rendered harmless.

7.17.8 Emergencies - In an emergency affecting the safety and protection of persons or the Work or property at the site or adjacent thereto, Contractor without special instructions or authorization from the Engineer, shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Contractor shall give the Engineer prompt written notice of the emergency and actions taken. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined under the provisions of Section 7.25 DISPUTES AND CLAIMS.

7.18 ARCHAEOLOGICAL SITES

7.18.1 Should historic sites such as walls, platforms, pavements and mounds, or remains such as artifacts, burials, concentration of charcoal or shells be encountered during construction, work shall cease in the immediate vicinity of the find and the find shall be protected from further damage. The Contractor shall immediately notify the Engineer and contact the State Historic Preservation Division which will assess the significance of the find and recommend the appropriate mitigation measures, if necessary.

7.18.2 When required, the Contractor shall provide and install any temporary fencing as shown on the drawings to protect archaeological sites within the project. The fencing shall be installed prior to any construction activity and shall be maintained by the Contractor for the duration of the project. Fence installation and maintenance shall be to the satisfaction of the Engineer. The Contractor shall remove the fencing upon completion of construction, or as directed by the Engineer.

7.18.3 No work shall be done within the temporary fencing area. If any construction work is done within the temporary fencing, the Contractor shall notify the Engineer immediately; and if the Contractor entered the archaeological site area without permission, it shall stop work in this area immediately. The Engineer shall notify the archaeologist to assess any damage to the area. The Contractor shall allow the archaeologist sufficient time to perform the field investigation.

7.18.4 Any site requiring data recovery within the project shall not be disturbed until data recovery is completed.

7.19 RESPONSIBILITY FOR DAMAGE CLAIMS; INDEMNITY

7.19.1 The Contractor shall indemnify the State and the Department against all loss of or damage to the State's or the Department's existing property and facilities arising out of any act or omission committed in the performance of the work by the Contractor, any subcontractor or their employees and agents. Contractor shall defend, hold
harmless and indemnify the Department and the State, their employees, officers and agents against all losses, claims, suits, liability and expense, including but not limited to attorneys' fees, arising out of injury to or death of persons (including employees of the State and the Department, the Contractor or any subcontractor) or damage to property resulting from or in connection with performance of the work and not caused solely by the negligence of the State or the Department, their agents, officers and employees. The State or the Department may participate in the defense of any claim or suit without relieving the Contractor of any obligation hereunder. The purchase of liability insurance shall not relieve the Contractor of the obligations described herein.

7.19.2 The Contractor agrees that it will not attempt to hold the State and its Departments and Agencies and their officers, representatives, employees or agents, liable or responsible for any losses or damages to third parties from the action of the elements, the nature of the work to be done under these GENERAL CONDITIONS or from any unforeseen obstructions, acts of God, vandalism, fires or encumbrances which may be encountered in the prosecution of the work.

7.19.3 The Contractor shall pay all just claims for materials, supplies, tools, labor and other just claims against the Contractor or any subcontractor in connection with this contract and the surety bond will not be released by final acceptance and payment by the Department unless all such claims are paid or released. The
Department may, but is not obligated to, withhold or retain as much of the monies due or to become due the Contractor under this contract considered necessary by the Engineer to cover such just claims until satisfactory proof of payment or the establishment of a payment plan is presented.

7.19.4 The Contractor shall defend, indemnify and hold harmless the State and its Departments and Agencies and their officers, representatives, employees or agents from all suits, actions or claims of any character brought on account of any claims or amounts arising out of or recovered under the Workers' Compensation Laws or violation of any other law, by-law, ordinance, order or decree.

7.20 CHARACTER OF WORKERS OR EQUIPMENT

7.20.1 The Contractor shall at all times provide adequate supervision and sufficient labor and equipment for prosecuting the work to full completion in the manner and within the time required by the contract.

7.20.2 Character and Proficiency of Workers - All workers shall possess the proper license and / or certification, job classification, skill and experience necessary to properly perform the work assigned to them. All workmen engaged in special work or skilled work such as bituminous courses or mixtures, concrete pavement or structures, electrical installation, plumbing installation, or in any trade shall have sufficient experience in such work and in the operation of the equipment required to properly and satisfactorily perform all work. All workers shall make due and proper effort to execute the work in the manner prescribed in these GENERAL CONDITIONS, otherwise, the Engineer may take action as prescribed herein.

7.20.2.1 Any worker employed on the project by the Contractor or by any subcontractor who, in the opinion of the Engineer, is not careful and competent, does not perform its work in a proper and skillful manner or is disrespectful, intemperate, disorderly or neglects or refuses to comply with directions given, or is otherwise objectionable shall at the written request of the Engineer,

be removed forthwith by the Contractor or subcontractor employing such worker and shall not be employed again in any portion of the work without the written consent of the Engineer. Should the Contractor or subcontractor continue to employ, or again employ such person or persons on the project, the Engineer may withhold all payments which are or may become due, or the Engineer may suspend the work until the Engineer's orders are followed, or both.

7.20.3 Insufficient Workers - A sufficient number of workers shall be present to ensure the work is accomplished at an acceptable rate. In addition, the proper ratio of apprentice to journey worker shall be maintained to ensure the work is properly supervised and performed. In the event that the Engineer finds insufficient workers are present to accomplish the work at an acceptable rate of progress or if a adequate number of journey workers are not present and no corrective action is taken by the Contractor after being informed in writing, the Engineer may terminate the contract as provided for under Section 7.27 TERMINATION OF CONTRACT FOR CAUSE.

7.20.4 Equipment Requirements - All equipment furnished by the Contractor and used on the work shall be of such size and of such mechanical condition that the work can be performed in an acceptable manner at a satisfactory rate of progress and the quality of work produced will be satisfactory.

7.20.4.1 Equipment used on any portion of the project shall be such that no injury to the work, persons at or near the site, adjacent property or other objects will result from its use.

7.20.4.2 If the Contractor fails to provide adequate equipment for the work, the contract may be terminated as provided under Section 7.27 TERMINATION OF CONTRACT FOR CAUSE.

7.20.4.3 In the event that the Contractor furnishes and operates equipment on a force-account basis, it shall be operated to obtain maximum production under the prevailing conditions.

7.21 CONTRACT TIME

7.21.1 Time is of the essence for this contract.

7.21.2 Calculation of Contract Time - When the contract time is on a working day basis, the total contract time allowed for the performance of the work shall be the number of working days shown in the contract plus any additional working days authorized in writing as provided hereinafter. Refer to Article 1 DEFINITIONS for the definition of Working Day. The count of elapsed working days to be charged against contract time shall begin from the date of Notice to Proceed and shall continue consecutively to the date of Project Acceptance determined by the Engineer. When the contract completion time is a fixed calendar date, it shall be the date on which all work on the project shall be completed. Maintenance periods are not included within the contract time unless specifically noted in the Contract Documents.

7.21.3 Modifications of Contract Time
§3-125-4 HAR

7.21.3.1 Extensions - For increases in the scope for work caused by alterations and additional work made under Section 4.2 CHANGES, the Contractor will be granted a time extension only if the changes increase the time of performance for the Contract. If the Contractor believes that an extension of time is justified and is not adequately provided for in a Field Order, it must request the additional time sought in writing when the detailed cost breakdown required by Section 4.2 CHANGES, is submitted. The Contractor must show how the time of performance for the critical path will be affected and must also support the time extension request with schedules and statements from its subcontractors, suppliers, and/or manufacturers. Compensation for any altered or additional work will be paid as provided in Section 4.2 CHANGES.

7.21.3.2 The Department may direct changes to the work at any time until the work is finally accepted. The issuance of a Field Order at any time may alter or modify the contract duration only by the days specified therein; or if not specified therein, for the days the critical path must be extended for the change. Additional time to perform the extra work will be added to the time allowed in the contract without regard to the date the change directive was issued, even if the contract completion date has passed. A change requiring time will not constitute a waiver of pre-existing Contractor delay.

7.21.4 Delay for Permits - For delays beyond the control of the Contractor in obtaining necessary permits, one day extension for each day delay may be granted by the Engineer, provided the Contractor notifies the Engineer that the permits are not available, as soon as the delay occurs. Time extensions shall be the exclusive relief granted on account of such delays. No additional compensation will be paid for these time extensions.

7.21.5 Delays Beyond Contractor's Control
§3-125-18(4) - For delays affecting the critical path caused by acts of God, or the public enemy, fire, unusually severe weather, earthquakes, floods, epidemics, quarantine restrictions, labor disputes, freight embargoes and other reasons beyond the Contractor's

control, the Contractor may be granted an extension of time provided that:

7.21.5.1 The Contractor notifies the Engineer in writing within five (5) work days after the occurrence of the circumstances described above and states the possible effects on the completion date of the contract.

7.21.5.2 No time extension will be granted for weather conditions other than unusually severe weather occurrences, and floods.

7.21.5.3 The Contractor, if requested, submits to the Engineer within ten (10) work days after the request, a written statement describing the delay to the project. The extent of delay must be substantiated as follows:

(a) State specifically the reason or reasons for the delay and fully explain in a detailed chronology the effect of this delay to the work and/or the completion date.

(b) Submit copies of purchase order, delivery tag, and any other pertinent documentation to support the time extension request.

(c) Cite the period of delay and the time extension requested.

(d) A statement either that the above circumstances have been cleared and normal working conditions restored as of a certain day or that the above circumstances will continue to prevent completion of the project.

7.21.5.4 Time extensions shall be the exclusive relief granted and no additional compensation will be paid the Contractor for such delays.

7.21.6 Delays in Delivery of Materials - For delays in delivery of materials and / or equipment which occur as a result of unforeseeable causes beyond the control and without fault or negligence of both the Contractor, its subcontractor(s) or supplier(s), the Contractor may be granted an extension of time provided that it complies with the following procedures.

7.21.6.1 The Contractor must notify the Engineer in writing within five (5) consecutive working days after it first has any knowledge of delays or anticipated delays and state the effects such delays may have on the completion date of the contract.

7.21.6.2 The Contractor, if requested, must submit to the Engineer within ten (10) working days after a firm delivery date for the material and equipment is established, a written statement as to the delay to the progress of the project. The delay must be substantiated as follows:

(a) State specifically the reason or reasons for the delay. Explain in a detailed chronology the effect of this delay to the other work and / or the completion date.

(b) Submit copies of purchase order(s), factory invoice(s), bill(s) of lading, shipping manifest(s), delivery tag(s) and any other pertinent correspondence to support the time extension request.

(c) Cite the start and end date of the delay and the days requested therefore. The delay shall not exceed the difference between the originally scheduled delivery date versus the actual delivery date.

7.21.6.3 Time extensions shall be the exclusive relief granted and no additional compensation will be paid the Contractor on account of such delay.

7.21.7 Delays For Suspension of Work - Delay during periods of suspension of the work by the Engineer shall be computed as follows:

7.21.7.1 When the performance of the work is totally suspended for one or more days (calendar or working days, as appropriate) by order of the Engineer in accordance with paragraphs 7.24.1.1, 7.24.1.2, 7.24.1.4 or 7.24.1.6 the number of days from the effective date of the Engineer's order to suspend operations to the effective date of the Engineer's order to resume operations shall not be counted as contract time and the contract completion date will be adjusted. Should the Contractor claim for additional days in excess of the suspension period, Contractor shall provide evidence justifying the additional time. During periods of partial suspensions of the work, the Contractor will be granted a time extension only if the partial suspension affects the critical path. If the Contractor believes that an extension of time is justified for a partial suspension of work, it must request the extension in writing at least five (5) working days before the partial suspension will affect the critical operation(s) in progress. The Contractor must show how the critical path was increased based on the status of the work and must also support its claim, if requested, with statements from its subcontractors. A suspension of work will not constitute a waiver of pre-existing Contractor delay.

7.21.8 Contractor Caused Delays - No time extension will be considered for the following:

7.21.8.1 Delays in performing the work caused by the Contractor, subcontractor and / or supplier.

7.21.8.2 Delays in arrival of materials and equipment caused by the Contractor, subcontractor and / or supplier in ordering, fabricating, delivery, etc.

7.21.8.3 Delays requested for changes which the Engineer determines unjustifiable due to the lack of supporting evidence or because the change is not on the critical path.

7.21.8.4 Delays caused by the failure of the Contractor to submit for review and acceptance by the Engineer, on a timely basis, shop drawings, descriptive sheets, material samples, color samples, etc. except as covered in subsection 7.21.5 and 7.21.6.

7.21.8.5 Failure to follow the procedure within the time allowed to qualify for a time extension.

7.21.8.6 Days the Contractor is unable to work due to normal rainfall or other normal bad weather day conditions.

7.21.9 Reduction in Time - If the Department deletes any portion of the work, an appropriate reduction of contract time may be made in accordance with Section 4.2 CHANGES.

7.22 CONSTRUCTION SCHEDULE

7.22.1 The Contractor shall submit its detailed construction schedule to the Engineer prior to the start of the work. The purpose of the schedule is to allow the Engineer to monitor the Contractor's progress on the work. The schedule shall account for normal inclement weather, unusual soil or other conditions that may influence the progress of the work, schedules and coordination required by any utility, off or on site fabrications, and all other pertinent factors that relate to progress.

7.22.2 Submittal of and the Engineer's receipt of the construction schedule shall not imply the Department's approval of the schedule's breakdown, its individual elements, and any critical path that may be shown. Any acceptance or approval of the schedule 1) shall be for general format only and not for sequences or durations thereon, and 2) shall not be deemed an agreement by the Department that the construction means, methods and resources shown on the schedule will result in work that conforms to the contract requirements. The Contractor has the risk of all elements (whether or not shown) of the schedule and its execution. Additional compensation shall not be due the Contractor in the event that deviations from the Contractor's schedule, caused by any design revisions required to resolve site conditions or State, County, or utility requirements, affect the efficiency of its operations.

7.22.3 In the event the Contractor submits and the Department receives an accelerated schedule (shorter than the contract time), such will not constitute an agreement to modify the contract time or completion date, nor will the receipt, acceptance or approval of such a schedule incur any obligation by the Department.

7.22.4 Caution - The Department will not be responsible if the Contractor does not meet its accelerated schedule.

7.22.5 The requirements of this Section 7.22 CONSTRUCTION SCHEDULE may be waived by the Engineer.

7.23 STATEMENT OF WORKING DAYS - For all contracts on a working day basis, the Contractor will submit a statement of the number of working days for each month together with the Monthly Payment Application. The Monthly Payment Application will not be processed without the statement of working days.

7.24 SUSPENSION OF WORK §3-125-7 HAR

7.24.1 Procedure to be followed - The Engineer may, by written order, suspend the performance of the Work up to thirty (30) days and the Engineer, for an unlimited number of days, either in whole or in part for any cause, including but not limited to:

7.24.1.1 Weather or excess bad weather days, considered unsuitable by the Engineer for prosecution of the work; or

7.24.1.2 Soil Conditions considered unsuitable by the Engineer for prosecution of the work; or

7.24.1.3 Failure of the Contractor to:

(1) Correct conditions unsafe for the general public or for the workers;

(2) Carry out orders given by the Engineer;

(3) Perform the work in strict compliance with the provisions of the contract; or

(4) Provide a qualified Superintendent on the jobsite as described under Section 5.8 COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT.

7.24.1.4 When any redesign is deemed necessary by the Engineer; or

7.24.1.5 Disturbance due to noise, odors or dust arising from the construction even if such disturbance does not

violate the section on Environmental Protection contained in the specifications; or

7.24.1.6 The convenience of the State.

7.24.2 Partial, Total Suspension of Work - Suspension of work on some but not all items of work shall be considered a partial suspension. Suspension of work on the entire work at the job site shall be considered total suspension. The period of suspension shall be computed as set forth in subsection 7.21.7 -Delays for Suspension of Work.

7.24.3 Payment §3-125-7 HAR

7.24.3.1 In the event that the Contractor is ordered by the Engineer in writing as provided herein to suspend all work under the contract in accordance with paragraphs 7.24.1.4 or 7.24.1.6, the Contractor may be reimbursed for actual direct costs incurred on work at the jobsite, as authorized in writing by the Engineer, including costs expended for the protection of the work. Payment for equipment which must standby during such suspension of work shall be made as described in clause 8.3.4.5. (e). No payment will be made for profit on any suspension costs. An allowance of five percent (5%) will be paid on any reimbursed actual costs for indirect categories of delay costs, including extended branch and home-office overhead and delay impact costs.

7.24.3.2 However, no adjustment to the contract amount or time shall be made under this Section 7.24 for any suspension, delay, or interruption:

(a) To the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or

(b) For which an adjustment is provided for or excluded under any other provision of this Contract.

7.24.3.3 Any adjustment in contract price made pursuant to this subsection shall be determined in accordance with this Section 7.24 and Section 4.2 CHANGES.

7.24.3.4 Claims for such compensation shall be filed with the Engineer within ten (10) calendar days after the date of the order to resume work or such claims will be waived by the Contractor. Together with the claim, the Contractor shall submit substantiating documents supporting the entire amount shown on the claim. The Engineer may make such investigations as are deemed necessary and shall be the sole judge of the claim and the Engineer's decision shall be final.

7.24.4 Claims Not Allowed - No claim under this Section 7.24 shall be allowed:

7.24.4.1 For any direct costs incurred more than twenty (20) days before the Contractor shall have notified the Engineer in writing of any suspension that the Contractor considered compensable. This requirement shall not apply as to a claim resulting from a suspension order under paragraphs 7.24.1.4 or 7.24.1.6, and

7.24.4.2 Unless the claim is asserted in writing within ten (10) calendar days after the termination of such suspension, delay, or interruption, but in no case not later than the date of final payment under the contract.

7.24.4.3 No provision of this Section 7.24 shall be construed as entitling the Contractor to compensation for delays due to failure of surety, for suspensions made at the request of the Contractor, for any delay required under the Contract, for partial suspension of work or for suspensions made by the Engineer under the provisions of paragraphs 7.24.1.1, 7.24.1.2, 7.24.1.3 and 7.24.1.5.

7.25 DISPUTES AND CLAIMS §3-126-31 HAR

7.25.1 Required Notification - As a condition precedent for any claim, the Contractor must give notice in writing to the Engineer in the manner and within the time periods stated in Section 4.2 CHANGES for claims for extra compensation, damages, or an extension of time due for one or more of the following reasons:

7.25.1.1 Requirements not clearly covered in the contract, or not ordered by the Engineer as an extra;
7.25.1.2 Failure by the State and Contractor to agree to an Oral Order or an adjustment in price or contract time for a Field Order or a Change Order issued by the State;

7.25.1.3 An action or omission by the Engineer requiring performance changes beyond the scope of the contract;

7.25.1.4 Failure of the State to issue a Field Order for controversies within the scope of Section 4.2 CHANGES.

7.25.1.5 For any other type of claim, the Contractor shall give notice within the time periods set forth in contract provisions pertaining to that event. If no specific contract provisions pertain to the claim, then the written notice of claim must be submitted within fifteen (15) days of the event giving rise to the claim.

7.25.2 Continued Performance of Work - The Contractor shall at all times continue with performance of the contract in full compliance with the directions of the Engineer. Continued performance by the Contractor shall not be deemed a waiver of any claim for additional compensation, damages, or an extension of time for

completion, provided that the written notice of claim is submitted in accordance with subsection 7.25.1

7.25.3 The requirement for timely written notice shall be a condition precedent to the assertion of a claim.

7.25.4 Requirements for Notice of Claim -The notice of claim 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 it is entitled. At a minimum, it shall provide the following:

7.25.4.1 Date of the protested order, decision or action;

7.25.4.2 The nature and circumstances which caused the claim;

7.25.4.3 The contract provision that support the claim;

7.25.4.4 The estimated dollar cost, if any, of the protested work and how that estimate was determined; and

7.25.4.5 An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

7.25.5 If the protest or claim is continuing, the information required in subsection 7.25.4 above shall be supplemented as requested by the Engineer.

7.25.6 Final Statement for Claim - The Contractor shall provide a final written statement of the actual adjustment in contract price and/or contract time requested for each notice of claim. Such statement shall clearly set forth that it is the final statement for that notice of claim. All such final statements shall be submitted within thirty (30) days after completion of the work that is the subject of the claim, but in no event no later than thirty (30) days after the Project Acceptance Date or the date of termination of the Contractor, whichever comes first.

7.25.7 All claims of any nature are barred if asserted after final payment under this contract has been made, except as provided under Section 8.9 CLAIMS ARISING OUT OF PAYMENT FOR REQUIRED WORK.

7.25.8 Contractor may protest the assessment or determination by the Engineer of amounts due the State from the Contractor by providing a written notice to the Engineer within thirty (30) days of the date of the Engineer's written assessment or determination. Said notice shall comply with all requirements of subsections 7.25.4 and 7.25.6 above. The requirement of such notice cannot be waived and it is a condition precedent to any claim by the Contractor. Failure to comply with these notice provisions constitutes a waiver of any claim.

7.25.9 In addition to the requirements of subsections 7.25.4, 7.25.6, and 7.25.8, all final written statements of claim shall be certified. This certification requirement applies to the Contractor without exception, including, but not limited to, situations involving "pass through" claims of subcontractors or suppliers. The certification must be executed by a person duly authorized to bind the Contractor with respect to the claim. The certification shall state as follows:

7.25.9.1 "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the State is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

7.25.10 Decision on Claim / Appeal - The Contracting Officer shall decide all controversies between the State and the contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement. The decision of the Contracting Officer on the claim shall be final and conclusive, unless fraudulent or unless the contractor delivers to the Adjutant General a written appeal of the Contracting Officer's decision no later than 30 days after the date of the Contracting Officers decision. The Adjutant General's decision shall be final and conclusive, unless fraudulent or unless the contractor brings an action seeking judicial review of the Adjutant General's decision in an appropriate circuit court of this State within six months from the date of the Adjutant General's decision.

7.25.10.1 If the contractor delivers a written request for a final decision concerning the controversy, the Adjutant General shall issue a final decision within 90 days after receipt of such a request; provided that if the Adjutant General does not issue a written decision within 90 days or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received. Both parties to this contract agree that the period of up to 30 days to appeal the Contracting Officer's decision to the Adjutant General shall not be included in the 90 day period to issue a final decision.

7.25.11 Payment and Interest - The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting Contractor action concerning appeal. Such payments shall be without prejudice to the rights of either party. Interest on amounts ultimately determined to be due to a

Contractor shall be payable at the Statutory rate applicable to judgments against the State under Chapter 662, HRS from the date of receipt of a properly certified final written statement of actual adjustment required until the date of decision; except, however, that if an action is initiated in circuit court, interest under this Section 7.25 shall only be calculated until the time such action is initiated. Interest on amounts due the State from the Contractor shall be payable at the same rate from the date of issuance of the Engineer's notice to the Contractor. Where such payments are required to be returned by a subsequent decision, interest on such payments shall be paid at the statutory rate from the date of payment.

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

7.26 FAILURE TO COMPLETE THE WORK ON TIME

7.26.1 Completion of the work within the required time is important because delay in the prosecution of the work will inconvenience the public and interfere with the State's business. In addition, the State will be damaged by the inability to obtain full use of the completed work and by increased engineering, inspection, superintendence, and administrative services in connection with the work. Furthermore, delay may detrimentally impact the financing, planning, or completion of other State projects because of the need to devote State resources to the project after the required completion date. The monetary
amount of such public inconvenience, interference with State business, and damages, is difficult, if not impossible, to accurately determine and precisely prove. Therefore, it is hereby agreed that the amount of such damages shall be the appropriate sum of liquidated damages as set forth below.

7.26.1.1 When the Contractor fails to complete the Work or any portion of the Work within the time or times fixed in the contract or any extension thereof, it is agreed the Contractor shall pay liquidated damages to the Department based upon the amount stated in the Offer form.

7.26.1.2 If the Contractor fails to correct Punch list deficiencies as required by Section 7.32 PROJECT ACCEPTANCE DATE, the State will be inconvenienced and damaged, therefore, it is agreed that the Contractor shall pay liquidated damages to the Department based upon the amount stated in the Offer Form. Liquidated damages shall accrue for all days after the Contract Completion Date or ay extension thereof until the date the Punchlist items are corrected and accepted by the Engineer.

7.26.1.3 If the Contractor fails to submit final documents as required by Section 7.33 FINAL SETTLEMENT OF THE CONTRACT, the State will be inconvenienced and damaged, therefore, it is agreed that the Contractor shall pay liquidated damages to the Department based upon the amount stated in the Offer Form. Liquidated damages shall accrue for all days after the Contract Completion Date or any extension thereof, until the date the final documents are received by the Engineer.

7.26.1.4 The Engineer shall assess the total amount of liquidated damages in accordance with the amount stated in the Offer Form and provide written notice of such assessment to the Contractor.

7.26.2 Acceptance of Liquidated Damages -The assessment of liquidated damages by the Engineer shall be accepted by the parties hereto as final, unless the Contractor delivers a written appeal of the Engineer's decision in accordance with subsection 7.25.10 requirements. Any allowance of time or remission of charges or liquidated damages shall in no other manner affect the rights or obligations of the parties under this contract nor be construed to prevent action under Section 7.27 TERMINATION OF CONTRACT FOR CAUSE. If the Department terminates the Contractor's right to proceed, the resulting damage will include such liquidated damages for such time as may be required for final completion of the work after the required contract completion date.

7.26.3 Payments for Liquidated Damages -Liquidated damages shall be deducted from monies due or that may become due to the Contractor under the contract or from other monies that may be due or become due to the Contractor from the State.

7.27 TERMINATION OF CONTRACT FOR CAUSE §3-125-18 HAR

7.27.1 Default - If the Contractor refuses or fails to perform the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this contract, or any extension thereof, fails to complete the work within such time, or commits

any other material breach of this contract, and further fails within seven (7) days after receipt of written notice from the Engineer to commence and continue correction of the refusal or failure with diligence and promptness, the Engineer may, by written notice to the Contractor, declare the Contractor in breach and terminate the Contractor's right to proceed with the work or the part of the work as to which there has been delay or other breach of contract. In such event, the Department may take over the work and perform the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, the materials, appliances, and plant as may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, the Contractor and the Contractor's sureties shall be liable for any damage to the Department resulting from the Contractor's refusal or failure to complete the work within the specified time.

7.27.2 Additional Rights and Remedies - The rights and remedies of the Department provided in this contract are in addition to any other rights and remedies provided by law.

7.27.3 Costs and Charges

7.27.3.1 All costs and charges incurred by the Department, together with the cost of completing the work under contract, will be deducted from any monies due or which would or might have become due to the Contractor had it been allowed to complete the work under the contract. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay the Department the amount of the excess.

7.27.3.2 In case of termination, the Engineer shall limit any payment to the Contractor to the part of the contract satisfactorily completed at the time of termination. Payment will not be made until the work
has satisfactorily been completed and the tax clearance required by Section 8.8 FINAL PAYMENT is submitted by the Contractor. Termination shall not relieve the Contractor or Surety from liability for performance liquidated damages.

7.27.4 Erroneous Termination for Cause - If, after notice of termination of the Contractor's right to proceed under this Section 7.27, it is determined for any reason that good cause did not exist to allow the Department to terminate as provided herein, the rights and obligations of the parties shall be the same as, and the relief afforded the Contractor shall be limited to, the provisions contained in Section 7.28 TERMINATION FOR CONVENIENCE.

7.28 TERMINATION FOR CONVENIENCE

§3-125-22 HAR

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

7.28.2 Contractor's Obligations - The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the State's approval. The Engineer 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.

7.28.3 Right to Construction and Goods - The Engineer may require the Contractor to transfer title and delivery to the State in the manner and to the extent directed by the Engineer, the following:

7.28.3.1 Any completed work; and

7.28.3.2 Any partially completed construction, goods, materials, parts, tools, dies, jigs, fixtures, drawings, information, and contract rights (hereinafter called "construction material") that the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

7.28.3.3 The Contractor shall protect and preserve all property in the possession of the Contractor in which the State has an interest. If the Engineer does not elect to retain any such property, the Contractor shall use its best efforts to sell such property and construction material for the Department's account in accordance with the standards of section 490:2-706, HRS.

7.28.4 Compensation

7.28.4.1 Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by subchapter 15, chapter 3-122, HAR. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Engineer may pay the Contractor, if at all, an amount set in accordance with paragraph 7.28.4.3.

7.28.4.2 The Engineer and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of construction, supplies, and construction materials under paragraph 7.28.3.3 of this Section, and the contract price of the work not terminated.

7.28.4.3 Absent complete agreement, the Engineer shall pay the Contractor the following amounts, less any payments previously made under the contract.

(a) The cost of all contract work performed prior to the effective date of the notice of termination work plus a five percent (5%) markup on the actual direct costs, including amounts paid to subcontractor, less amounts previously paid or to be paid for completed portions of such work; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss. No anticipated profit or consequential damage will be due or paid.

(b) Subcontractors shall be paid a markup of ten percent (10%) on their direct job costs incurred to the date of termination. No anticipated profit or consequential damage will be due or paid to any subcontractor. These costs must not include payments made to the Contractor for subcontract work during the contract period.

(c) In any case, the total sum to be paid the Contractor shall not exceed the total contract price reduced by the amount of any sales of construction supplies, and construction materials.

7.28.4.4 Costs claimed, agreed to, or established by the State shall be in accordance with chapter 3-123, HAR.

7.29 CORRECTING DEFECTS - If the Contractor fails to commence to correct any defects of any nature, within ten (10) working days after the correction thereof has been requested in writing by the State, and thereafter to expeditiously complete the correction of said defects, the Engineer may without further notice to the Contractor or surety and without termination of contract, correct the defects and deduct the cost thereof from the contract price.

7.30 FINAL CLEANING - Before final inspection of the work, the Contractor shall clean all ground occupied by the Contractor in connection with the Work of all rubbish, excess materials, temporary structures and equipment, and all parts of the work must be left in a neat and presentable condition to the satisfaction of the Engineer. However, the Contractor shall not remove any warning and directional signs prior to the formal acceptance by the Engineer. Full compensation for final cleaning will be included in the prices paid for the various items of work or lump sum bid, as the case may be, and no separate payment will be made therefore.

7.31 SUBSTANTIAL COMPLETION, AND FINAL INSPECTION - Before the Department accepts the project as being completed, unless otherwise stipulated by the Engineer, the following procedure shall be followed:

7.31.1 Substantial Completion:

7.31.1.1 The Contractor and its subcontractors shall inspect the project to confirm whether the Project is Substantially Complete. This inspection effort shall include the testing of all equipment and providing a Punch list that identifies deficiencies which must be corrected. Contractor shall make the corrections and if required repeat the procedure. Also, the Contractor shall schedule final Building, Plumbing, Electrical, Elevator, Fire and other required inspections and obtain final approvals.

(a) When in compliance with the above requirements, the Contractor shall notify the Engineer in writing that project is Substantially Complete and ready for a Final Inspection. Along with the Substantial Completion notification, the Contractor shall provide its Punch list(s) with the status of the deficiencies and dates when the deficiencies were corrected. The Project Inspector and / or the Engineer shall make a preliminary determination whether project is Substantially Complete.

(b) If the Project is not Substantially Complete, the Engineer shall inform the Contractor. The Contractor shall identify deficiencies which must be corrected, update its Punch list, make the necessary corrections and repeat the previous step. After completing the necessary work, the Contractor shall notify the Engineer in writing that Punch list deficiencies have been corrected and the project is ready for a Final Inspection.

(c) If the Project is Substantially Complete, the Engineer shall schedule a Final Inspection within fifteen (15) days of the Contractor's notification letter or as otherwise determined by the Engineer.

7.31.1.2 In addition, and to facilitate closing of the project, the Contractor shall also proceed to obtain the following closing documents (where applicable) prior to the Final Inspection:

(1) Field-Posted As-Built Drawings.

(2) Maintenance Service Contract and two (2) copies of a list of all equipment.

(3) Operating and maintenance manuals.

(4) Air conditioning test and balance reports.

(5) Any other final submittal required by the technical sections of the contract.

7.31.2 Final Inspection: If at the Final Inspection the Engineer determines that all work is completed, the Engineer shall notify the Contractor in accordance with Section 7.32 PROJECT ACCEPTANCE DATE. Should there be remaining deficiencies which must be corrected, the Contractor shall provide an updated Punch list to the Engineer, within five (5) days from the Final Inspection Date. The Contractor shall make the necessary corrections.

7.31.2.1 The Engineer shall confirm the list of deficiencies noted by the Contractor's punch list(s) and will notify the Contractor of any other deficiencies that must be corrected before final settlement.

7.31.3 The Engineer may add to or otherwise modify the Punch list from time to time. The Contractor shall take immediate action to correct the deficiencies.

7.31.4 Revoking Substantial Completion - At any time before final Project Acceptance is issued, the Engineer may revoke the determination of Substantial Completion if the Engineer finds it was not warranted. The Engineer shall notify the Contractor in writing with the reasons and outstanding deficiencies negating the declaration. Once notified, the Contractor shall make the necessary corrections and repeat the required steps noted in subsections 7.31.1 and 7.31.2.

7.32 PROJECT ACCEPTANCE DATE

7.32.1 If upon Final Inspection, the Engineer finds that the project has been satisfactorily completed in compliance with the contract, the Engineer shall declare the project completed and accepted and will notify the Contractor in writing of the acceptance by way of the Project Acceptance Notice.

7.32.2 Protection and Maintenance - After the Project Acceptance Date, the Contractor shall be relieved of maintaining and protecting the work EXCEPT that this does not hold true for those portions of the work which have not been accepted, including Punch list deficiencies. The State shall be responsible for the protection and maintenance of the accepted facility.

7.32.3 The date of Project Acceptance shall determine:

7.32.3.1 End of Contract Time.

7.32.3.2 Commencement of all guaranty periods except as noted in Section 7.34 CONTRACTOR'S RESPONSIBILITY FOR WORK: RISK OF LOSS.

7.32.3.3 Commencement of all maintenance services except as noted in Section 7.34 CONTRACTOR'S RESPONSIBILITY FOR WORK: RISK OF LOSS.

7.32.4 Punch list Requirements - If a Punch list is required under Section 7.31 SUBSTANTIAL COMPLETION AND FINAL INSPECTION, the Project Acceptance Notice will include the Engineer's Punch list and the date when correction of the deficiencies must be completed.

7.32.4.1 Punch list corrective work shall be completed prior to Contract Completion Date, or extension thereof.

7.32.5 Upon receiving the Punch list, the Contractor shall promptly devote the required time, labor, equipment, materials and incidentals necessary to correct the deficiencies expeditiously.

7.32.6 For those items of work that cannot be completed by the established date, the Contractor shall submit a schedule in writing to the Engineer for approval along with documentation to justify the time required, no later than five (5) working days before the date stipulated for completion of the Punch list work. A Proposed schedule submitted after the five (5) day period will not be considered.

7.32.7 Failure to Correct Deficiencies - If the Contractor fails to correct the deficiencies within the time established in paragraph 7.32.4.1, the Contracting Officer shall assess liquidated damages as required by Section 7.26 - FAILURE TO COMPLETE THE WORK ON TIME.

7.32.8 If the Contractor fails to correct the deficiencies and complete the work by the established or agreed to date, the State also reserves the right to correct the deficiencies by whatever method it deems necessary and deduct the cost from the final payment due the contractor.

7.32.9 The Contractor may further be prohibited from bidding in accordance with Section 2.12 - DISQUALIFICATION OF BIDDERS. In addition, assessment of damages shall not prevent action under

Section 7.27 - TERMINATION OF CONTRACT FOR CAUSE.

7.33 FINAL SETTLEMENT OF CONTRACT - The contract will be considered settled after the project acceptance date and when the following items have been satisfactorily submitted, where applicable:

7.33.1 Necessary Submissions in addition to the items noted under paragraph 7.31.1.2.

7.33.1.1 All written guarantees required by the contract.

7.33.1.2 Complete and certified weekly payrolls for the Contractor and its Subcontractor(s).

7.33.1.3 Certificate of Plumbing and Electrical Inspection.

7.33.1.4 Certificate of Building Occupancy.

7.33.1.5 Certificates for Soil Treatment and Wood Treatment.

7.33.1.6 Certificate of Water System Chlorination.

7.33.1.7 Certificate of Elevator Inspection, Boiler and Pressure Pipe installation.

7.33.1.8 All other documents required by the Contract.

7.33.2 Failure to Submit Closing Documents - The Contractor shall submit the final Payment Application and the above applicable closing documents within sixty (60)
days from the date of Project Acceptance or the agreed to Punch list completion date. Should the Contractor fail to comply with these requirements, the Engineer may terminate the Contract for cause. The pertinent provisions of Section 7.27 TERMINATION OF CONTRACT FOR CAUSE shall be applicable.

7.33.3 In addition, should the Contractor fail to furnish final closing documents within the required time period, the Engineer shall assess performance liquidated damages as required by Section 7.26 FAILURE TO COMPLETE THE WORK ON TIME.

7.34 CONTRACTOR'S RESPONSIBILITY FOR WORK; RISK OF LOSS

7.34.1 Until the establishment of the Project Acceptance Date or Beneficial Occupancy whichever is sooner, the Contractor shall take every necessary precaution against injury or damage to any part of the work caused by the perils insured by an All Risk policy excluding earthquakes and floods, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore and make good all injuries or damage to any portion of the work occasioned by the perils insured by an All Risk policy before the date of final acceptance and shall bear the risk and expense thereof.

7.34.2 After the Project Acceptance Date or Beneficial Occupancy whichever is sooner, the Contractor shall be relieved of maintaining and protecting the work except for those portions of the work which have not been accepted including Punch list deficiencies.

7.34.3 The risk of damage to the work from any hazard or occurrence that may be covered by a required Property Insurance policy is that of the Contractor, unless such risk of loss is placed elsewhere by express language in the contract documents. No claims for any loss or damage shall be recognized by the Department, nor will any such loss or damage excuse the complete and satisfactory performance of the contract by the Contractor.

7.35 GUARANTEE OF WORK

7.35.1 In addition to any required manufacturers warranties, all work and equipment shall be guaranteed by the Contractor against defects in materials, equipment or workmanship for one year from the Project Acceptance Date or as otherwise specified in the Contract Documents, whichever is earlier.

7.35.2 Repair of Work - If, within any guarantee period, repairs or changes are required in connection with the guaranteed work, which in the opinion of the Engineer is necessary due to materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract, the Contractor shall within five (5) working days and without expense to the Department commence to:

7.35.2.1 Place in satisfactory condition in every instance all such guaranteed work and correct all defects therein; and

7.35.2.2 Make good and repair or replace to new or pre-existing condition all damages to the building, facility, work or equipment or contents thereof, resulting from such defective materials, equipment or installation thereof.

7.35.3 Manufacturer's and Installer's Guarantee- Whenever a manufacturer's or installer's guarantee on any product specified in the respective Specification sections, exceeds one year, this guarantee shall become part of this contract in addition to the Contractor's guarantee. Contractor shall complete the guarantee forms in the name of the Department and submit such

forms to the manufacturer within such time required to validate the guarantee. Contractor shall submit to the Department a photocopy of the completed guarantee form for the Department's record as evidence that such guarantee form was executed by the manufacturer.

7.35.4 If a defect is discovered during a guarantee period, all repairs and corrections to the defective items when corrected shall again be guaranteed for the original full guarantee period. The guarantee period shall be tolled and suspended for all work affected by the defect. The guarantee period for work affected by the defect shall restart for its remaining duration upon confirmation by the Engineer that the deficiencies have been repaired or remedied.

7.35.5 If guarantee is specified for greater than two (2) years, two (2) years shall prevail except for manufacturer's warranties. Manufacturer's warranties shall remain as specified in their respective Specification sections.

7.35.5.1 However, the number of years specified in the technical specifications shall prevail only if it is stated that the number of years for guarantee supersedes this provision.

7.36 WORK OF AND CHARGES BY UTILITIES

7.36.1 The Contractor shall be responsible for scheduling and coordinating the work with the utility companies and applicable Governmental agencies for permanent service installation and connections or modifications to existing utilities. The Contractor shall make available all portions of the work necessary for the Utility companies to do their work. The Department shall not bear the risk of any damage to the contract work caused by any utility company, and work of repairing such damage and delay costs must be resolved between the Contractor and the utility company and their insurers.

7.36.2 Unless stated as an allowance item to be paid by the Contractor, the Department will pay the utility companies and applicable governmental agencies directly for necessary modifications and connections. Contractor charges for overhead, supervision, coordination, profit, insurance and any other incidental expenses shall be included in the Contractor's Bid whether the utility is paid directly by the Department or by an allowance item in the Contract.

7.37 RIGHT TO AUDIT RECORDS

7.37.1 Pursuant to Section 103D-317 HRS the State, at reasonable times and places, may audit the books and records of a Contractor, prospective contractor, subcontractor and prospective subcontractor relating to the Contractor's or subcontractor's cost or pricing data. The books and records shall be maintained by the Contractor and subcontractor(s) for a period of four (4) years from the date of final payment under the contract.

7.37.2 The Contractor shall insure that its subcontractors comply with this requirement and shall bear all costs (including attorney's fees) of enforcement in the event of its subcontractor's failure or refusal to fully cooperate.

7.37.3 Additionally, Sections 231-7, 235-108, 237-39 and other HRS chapters through reference, authorizes the Department of Taxation to audit all taxpayers conducting business within the State. Contractors must make available to the Department of Taxation all books and records necessary to verify compliance with the tax laws.

7.38 RECORDS MAINTENANCE, RETENTION AND ACCESS

7.38.1 The Contractor and any subcontractor whose contract for services is valued at $25,000 or more shall, in accordance with generally acceptable accounting practices, maintain fiscal records and supporting documents and related files, papers, and reports that adequately reflect all direct and indirect expenditures and management and fiscal practices related to the Contractor and subcontractor's performance of services under this Agreement.

7.38.2 The representative of the Department, the Adjutant General of the State of Hawaii, the Attorney General, (the Federal granting agency, the Comptroller General of the United States, and any of their authorized representatives when federal funds are utilized), and the Legislative Auditor of the State of Hawaii shall have the right of access to any book, document, paper, file, or other record of the Contractor and any subcontractor that is related to the performance of services under this Agreement in order to conduct an audit or other examination and / or to make copies, excerpts and transcripts for the purposes of monitoring and evaluating the Contractor and subcontractor's performance of services and the Contractor and subcontractor's program, management, and fiscal practices to assure the proper and effective expenditure of funds and to verify all costs associated with any claims made under this Agreement.

7.38.3 The right of access shall not be limited to the required retention period but shall last as long as the records are retained. The Contractor and subcontractor shall retain all records related to the Contractor and subcontractor's performance of services under this Agreement for four (4) years from the date of final

payment, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the four (4) year period, the Contractor and subcontractors shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the four (4)) year retention period, whichever occurs later. Furthermore, it shall be the Contractor's responsibility to enforce compliance with this provision by any subcontractor.

ARTICLE 8 - Measurement and Payment

8.1 MEASUREMENT OF QUANTITIES

8.1.1 All work completed under the Contract shall be measured by the Engineer according to United States standard measures, or as stated in this Contract. The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the contract shall conform to good engineering practice. These measurements shall be considered correct and final unless the Contractor has protested same to the Engineer and has demonstrated the existence of an error by actual physical measurement before the work has progressed in a manner which would prohibit a proper check.

8.1.2 All measurements of the area of the various surface, pavement and base courses will be made in the horizontal projection of the actual surface and no deductions will be made for fixtures or structures having an area of nine (9) square feet or less. All measurements of headers, curbs, fences and any other type of construction which is to be paid for by its length, will be made in the horizontal projection of the actual driven length from toe to top of cutoff, except where slope exceeds ten percent (10%) and for piles, which will be by actual length. All materials which are specified for measurement by the cubic yard "Loose Measurement" or "Measured in the Vehicle" shall be hauled in approved vehicles and measured therein at the point of delivery. Approved vehicles for this purpose may be of any type or size satisfactory to the Engineer, provided that the body is of such type that the actual contents may be readily and accurately determined. Unless all approved vehicles on a job are of a uniform capacity each approved vehicle must bear a plainly legible identification mark indicating the specific approved capacity. The Inspector may reject all loads not hauled in such approved vehicles.

8.2 NO WAIVER OF LEGAL RIGHTS - The Engineer shall not be precluded or estopped by any measurements, estimate or certificate made either before or after the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement estimate or certificate is untrue or incorrectly made, or rejecting the work or materials that do not conform in fact to the contract. The Engineer shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor and its sureties such damages as the Department may sustain by reason of the Contractor's failure to comply with the terms of the contract. Neither the acceptance by the Engineer or any representative of the Engineer, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, or any possession taken by the Engineer, shall operate as a waiver of any portion of the contract, or of any power herein reserved, or any right to damage herein provided. A waiver of any notice requirement or breach of the contract shall not be held to be a waiver of any other notice requirement or subsequent breach.

8.3 PAYMENT FOR ADDITIONAL WORK

8.3.1 Payment for Changed Conditions – A contract modification or change order complying with section 4.4 PRICE ADJUSTMENT and section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT shall be issued for all changes that are directed under Section 4.2 CHANGES. No payment for any change including work performed under the force account provisions will be made until a change order is issued or contract modification is executed.

8.3.1.1 At the completion of the force account work or at an intermediate interval approved by the Engineer, the contractor shall submit its force account cost proposal, including; approved daily force account records with any attached invoices or receipt, to the Engineer for processing a contract modification or change order.

8.3.2 On credit proposals and proposals covering both increases and decreases, the application of overhead and profit shall be on the net change in direct costs for the performance of the work.

8.3.3 When payment is to be made for additional work directed by a field order, the total price adjustment as specified in the field order or if not specified therein for the work contained in the related change order shall be considered full compensation for all materials, labor, insurance, taxes, equipment use or rental and overheads, both field and home office including extended home and branch office overhead and other related delay impact costs.

8.3.4 Force Account Method - When, for the convenience of the Department, payment is to be made

by the Force Account method, all work performed or labor and materials and equipment furnished shall be paid for as described below. Payment by the Force Account method will not alter any rights, duties and obligations under the contract.

8.3.4.1 Labor - For all hourly workers, the Contractor will receive the rate of wage including fringe benefits when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work, which shall be agreed upon in writing before beginning work for each and every hour that said labor is actually engaged in said work.

(a) All markups for overhead and profit shall be added subject to limitations established in Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.

(b) No allowance for overtime compensation will be given without the written approval of the Engineer prior to performance of such work.

8.3.4.2 Insurance and Taxes - The Contractor and subcontractor(s) will also receive the actual additional costs paid for property damage, liability, workers compensation insurance premiums, State unemployment contributions, Federal unemployment taxes, social security and Medicare taxes to which a markup of up to six percent (6%) may be added.

8.3.4.3 Materials - For materials accepted by the Engineer and used, the Contractor and subcontractor(s) shall receive the actual cost of such materials delivered and incorporated into work, plus a markup allowed under Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.

8.3.4.4 Subcontractors - Subcontractor costs shall be the actual costs of the subcontractor marked up as defined in this Section 8.3 plus a markup allowed under Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.

8.3.4.5 Equipment

(1) For machinery or special equipment (other than small tools as herein defined in clause 8.3.4.5.(h) owned or leased by the Contractor or a related entity, the use of which has been authorized by the Engineer:

(a.) The Contractor will be paid at the per-hour rental rates based on the monthly rate established for said machinery or equipment in the then-current edition of the Rental Rate Blue Book for Construction Equipment including the estimated operating cost per hour and regional correction provided therein.

(b.) If no rate is listed for a particular kind, type or size of machinery or equipment, then the monthly, hourly rates shall be as agreed upon in writing by the Contractor and the Engineer prior to the use of said machinery or equipment. If there is no agreement, the Engineer will set a rate. The Contractor may contest the rate pursuant to Section 7.25 DISPUTES AND CLAIMS.

(c.) Rental rates which are higher than those specified in the aforesaid Rental Rate Blue Book publication may be allowed where such higher rates can be justified by job conditions such as work in water and work on lava, etc. Request for such higher rates shall be submitted in writing to the Engineer for approval prior to the use of the machinery or equipment in question.

(2) For machinery or special equipment (other than small tools as herein defined in clause 8.3.4.5.(h) rented by the Contractor or a related entity specifically for the Force Account work, the use of which has been authorized by the Engineer; The Contractor will be paid the actual rental cost for the machinery or equipment, including mobilization and demobilization costs. A receipt from the equipment supplier shall be submitted to the Engineer.

(3) For machinery or special equipment (other than small tools as herein defined in clause 8.3.4.5. (h) rented by the Contractor or a related entity for use in the project, but which will also be used for the Force Account work, the use of which has been authorized by the Engineer; The Contractor will be paid the actual rental cost for the machinery or equipment. No additional mobilization and demobilization costs will be paid. A receipt from the equipment supplier shall be submitted to the Engineer.

(4) The rental rate for trucks not owned by the Contractor shall be those as established under the Hawaii State Public Utilities Commission, which will be paid for as an equipment item pursuant to paragraph 8.3.4.5. Rental rates for Contractor-owned trucks not listed in the Rental Rate Blue Book shall be agreed upon in writing by the Contractor and Engineer prior to the use of said trucks. If there is no agreement, the Engineer shall set the rate. The Contractor may contest the rate

pursuant to Section 7.25 DISPUTES AND CLAIMS.

(5) The rental period shall begin at the time equipment reaches the site of work, shall include each day that the machinery or equipment is at the site of the work and shall terminate at the end of the day on which the equipment is no longer needed. In the event the equipment must standby due to work being delayed or halted by reason of design, traffic, or other related problems uncontrollable by the Contractor, excluding Saturdays, Sundays and Legal Holidays, unless the equipment is used to perform work on such days, the rental shall be two hours per day until the equipment is no longer needed.

(5.1) The rental time to be paid will be for the time actually used. Any hours or operation in excess of 8 hours in any one day must be approved by the Engineer prior to the performance of such work.

(5.2) Rental time will not be allowed or credited for any day on which machinery or equipment is inoperative due to its breakdown. On such days, the Contractor will be paid only for the actual hours, if any, that the machinery or equipment was in operation.

(5.3) In the event the Force Account work is completed in less than 8 hours, equipment rental shall nevertheless be paid for a minimum 8 hours.

(5.4) For the purpose of determining the rental period the continuous and consecutive days shall be the normal 8-hour shift work day, Monday through Friday excluding legal holidays. Any work day to be paid less than 8 hours shall not be considered as continuous, except for equipment removed from rental for fuel and lubrication.

(5.5) No additional premium beyond the normal rates used will be paid for equipment over 8 hours per day or 40 hours per week.

(6) All rental rates for machinery and equipment shall include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs, maintenance, tire wear, depreciation, storage, and all other incidentals.

(7) All machinery and equipment shall be in good working condition and suitable for the purpose for which the machinery and equipment is to be used.

(8) Individual pieces of equipment or tools having a replacement value of one thousand dollars ($1,000) or less, whether or not consumed by use, shall be considered to be small tools and included in the allowed markup for overhead and profit and no separate payment will be made therefore.

(9) The total of all Force Account rental charges accrued over the duration of the contract for a specific item of equipment shall not exceed the replacement cost of that equipment.

(9.1) The Contractor shall provide the cost of replacement to the Engineer prior to using the equipment. If the Engineer does not agree with the replacement cost, the Engineer shall set the replacement cost. The Contractor may contest the replacement cost pursuant to Section 7.25 DISPUTES AND CLAIMS.

(10) Should the item of equipment be rented from an unrelated entity, the rental cost will be treated as an equipment cost under paragraph 8.3.4.5.

(11) Transportation and/or Mobilization: The following provisions shall govern in determining the compensation to be paid to the Contractor for use of equipment or machinery on the Force Account method:

(11.1) The location from which the equipment is to be moved or transported shall be approved by the Engineer.

(11.2) Where the equipment must be transported to the site of the force account work, the Department will pay the reasonable cost of mobilizing and transporting the equipment, including its loading and unloading, from its original location to the site of force account work. Upon completion of the work the Department will pay the reasonable cost of mobilizing and transporting the equipment back to its original location or to another location, whichever cost is less.

(11.3) The cost of transporting the equipment shall not exceed the rates established by the Hawaii State Public Utilities Commission. If such rates are nonexistent, then the rates will be determined by the Engineer based upon the prevailing rates charged by established haulers within the locale.

(11.4) Where the equipment is self-propelled, the Department will pay the cost of moving the equipment by its own power from its original location to the site of the force account work. Upon completion of the work the Department will pay the reasonable cost of moving of the Equipment back to its original or another location, whichever cost is less.

(11.5) At the discretion of the Engineer, when the Contractor desires to use such equipment for other than Force Account work, the costs of mobilization and transportation shall be prorated between the Force Account and non Force Account work.

(l2) Pickup trucks, vans, storage trailers, unless specifically rented for the Force Account work, shall be considered incidental to the Force Account work and the costs therefore are included in the markup allowed under Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.

8.3.4.6 State Excise (Gross Income) Tax and Bond - A sum equal to the current percentage rate for the State excise (Gross Income) tax on the total sum determined in paragraphs 8.3.4.1, 8.3.4.2, 8.3.4.3 and 8.3.4.4 above, and the bond premium shall be added as compensation to the Contractor. The actual bond premium not to exceed one percent (1%) shall be added to items covered by paragraphs 8.3.4.1, 8.3.4.2, 8.3.4.3 and 8.3.4.4 when applicable.

(1) The compensation as determined in paragraphs 8.3.4.1, 8.3.4.2, 8.3.4.3, 8.3.4.4 and 8.3.4.5 above shall be deemed to be payment in full for work paid on a force account basis.

8.3.4.7 Records - The Contractor and the Engineer shall compare records of the labor, materials and equipment rentals paid by the Force Account basis at the end of each day. These daily records, if signed by both parties, shall thereafter be the basis for the quantities to be paid for by the Force Account method. The Contractor shall not be entitled to payment for Force Account records not signed by the Engineer.

8.3.4.8 Statements - No payment will be made for work on a Force Account basis until the Contractor has submitted to the Engineer, duplicate itemized statements of the cost of such Force Account work detailed as follows:

(a) Laborers - Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman and also the amount of fringe benefits payable if any.

(b) Equipment - Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.

(c) Materials

(c.1) Quantities of materials, prices and extensions

(c.2) Costs of transporting materials, if such cost is not reflected in the prices of the materials.

(c.3) Statements shall be accompanied and supported by receipted invoices for all materials used and transportation charges. However, if materials used on the Force Account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractors shall submit an affidavit certifying that such materials were taken from stock and that the amount claimed represents the actual cost to the Contractor.

(d) Insurance - Cost of property damage, liability and worker's compensation insurance premiums, unemployment insurance contributions, and social security tax.

8.4 PROGRESS AND / OR PARTIAL PAYMENTS

8.4.1 Progress Payments - The Contractor will be allowed progress payments on a monthly basis upon preparing the Monthly Payment Application forms and submitting them to the Engineer. The monthly payment shall be based on the items of work satisfactorily completed and the value thereof at unit prices and/or lump sum prices set forth in the contract as determined by the Engineer and will be subject to compliance with Section 7.9 PAYROLLS AND PAYROLL RECORDS.

8.4.2 In the event the Contractor or any Subcontractor fails to submit certified copies of payrolls in accordance with the requirements of Section 7.9 PAYROLLS AND PAYROLL RECORDS, the Engineer may retain the amount due for items of work for which payroll affidavits have not been submitted on a timely basis notwithstanding satisfactory completion of the work until such records have been duly submitted. The Contractor shall not be due any interest payment for any amount thus withheld.

8.4.3 Payment for Materials - The Contractor will also be allowed payments of the manufacturer's, supplier's, distributor's or fabricator's invoice cost of accepted materials to be incorporated in the work on the following conditions:

8.4.3.1 The materials are delivered and properly stored at the site of Work; or

8.4.3.2 For special items of materials accepted by the Engineer, the materials are delivered to the Contractor or subcontractor(s) and properly stored in an acceptable location within a reasonable distance to the site of Work.

8.4.4 Partial payments shall be made only if the Engineer finds that:

8.4.4.1 The Contractor has submitted bills of sale for the materials or otherwise demonstrates clear title to such materials.

8.4.4.2 The materials are insured for their full replacement value to the benefit of the Department against theft, fire, damages incurred in transportation to the site, and other hazards.

8.4.4.3 The materials are not subject to deterioration.

8.4.4.4 In case of materials stored off the project site, the materials are not commingled with other materials not to be incorporated into the project.

8.5 PROMPT PAYMENT §3-125-23 HAR

8.5.1 Any money paid to a Contractor for work performed by a subcontractor shall be disbursed to such subcontractor within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the Engineer has withheld payment.

8.5.2 Upon final payment to the Contractor, full payment to all subcontractors shall be made within ten (10) days after receipt of the money, provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

8.5.3 All sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the contracting officer to the contractor and subsequently, upon receipt from the contracting officer, by the contractor to the subcontractor within the applicable time periods specified in subsection 8.5.2 and section 103-10 HRS.

8.5.3.1 Where a subcontractor has provided evidence to the contractor of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in subsection (8.5.5) of this section, and;

8.5.3.1.a Has provided to the contractor an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 8.6 RETAINAGE; or

8.5.3.1.b The following has occurred:

8.5.3.1.b.1 A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to contractor and the surety, as provided for in section 103D-324 HRS; and

8.5.3.1.b.2 The subcontractor has provided to the contractor:

8.5.3.1.b.2.1 An acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the contractor.

8.5.3.1.b.2.2 Any other bond acceptable to the contractor; or

8.5.3.1.b.2.3 Any other form of mutually acceptable collateral.

8.5.4 If the contracting officer or the contractor fails to pay in accordance with this section, a penalty of one and one-half per cent per month shall be imposed upon the outstanding amounts due that were not timely paid by the responsible party. The penalty may be withheld from future payment due to the contractor, if the contractor was the responsible party. If a contractor has violated subsection 8.5.2 three or more times within two years of the first violation, the contractor shall be referred by the contracting officer to the contractor license board for action under section 444-17(14) HRS.

8.5.5 Final Payment Request. A properly documented final payment request from a subcontractor, as required by subsection 8.5.3, shall include:

8.5.5.1 Substantiation of the amounts requested;

8.5.5.2 A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:

8.5.5.2.a The amounts requested are only for performance in accordance with the specification, terms, and conditions of the subcontract;

8.5.5.2.b The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

8.5.5.2.c The payment request does not include any amounts that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and

8.5.5.2.d The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

8.5.6 The Engineer shall return any final payment request that is defective to the contractor within seven days after receipt, with a statement identifying the defect.

8.5.7 A payment request made by a contractor to the Engineer that includes a request for sums that were withheld or retained from a subcontractor and are due to a subcontractor may not be approved under subsection 8.5.3 unless the payment request includes:

8.5.7.1 Substantiation of the amounts requested; and

8.5.7.2 A certification by the contractor, to the best of the contractor's knowledge and belief, that:

8.5.7.2.a The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

8.5.7.2.b The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the contract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

8.5.7.2.c The payment request does not include any amounts that the contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

8.5.8 The Engineer shall return any final payment request that is defective to the contractor within seven days after receipt, with a statement identifying the defect.

8.5.9 This section shall not be construed to impair the right of a contractor or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under subsection 8.5.3 of this section; provided that any such payments withheld shall be withheld by the Engineer.

8.6 RETAINAGE – The Department will retain a portion of the amount due under the contract to the contractor, to ensure the proper performance of the contract.

8.6.1 The sum withheld by the Department from the contractor shall not exceed five percent (5%) of the total amount due the contractor and that after fifty percent (50%) of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the Engineer may continue to withhold as retainage, sums not exceeding five percent (5%) of the amount due the contractor.

8.6.2 The retainage shall not include sums deducted as liquidated damages from moneys due or that may become due the contractor under the contract.

8.6.3 General Obligation Bonds – The contractor may withdraw retainage monies in whole or in part by providing a general obligation bond of the State or its political subdivisions suitable to the Department. The contractor shall endorse over to the Department and deposit with the Department any general obligation bond suitable to the Department, but in no case with a face value less than the value established by law, of the amount to be withdrawn. The Department may sell the bond and use the proceeds in the same way as it may use monies directly retained from progress payments or the final payment.

8.6.4 Any retainage provided for in this section or requested to be withheld by the contractor shall be held by the Engineer.

8.6.5 A dispute between a contractor and subcontractor of any tier shall not constitute a dispute to which the State or any county is a party, and there is no right of action against the State or any county. The State and a county may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

8.6.6 The retention amount withheld by the contractor from its subcontractor shall be not more than the same percentage of retainage as that of the contractor (also applies to subcontractors who subcontract work to other subcontractors) where a subcontractor has provided evidence to the contractor of:

8.6.6.1 A valid performance and a payment bond for the project that is acceptable to the contractor and executed by a surety company authorized to do business in this State;

8.6.6.2 Any other bond acceptable to the contractor; or

8.6.6.3 Any other form of collateral acceptable to the contractor.

8.6.7 A written notice of any withholding shall be issued to a subcontractor, with a copy to the procurement officer, specifying the following:

8.6.7.1 The amount to be withheld;

8.6.7.2 The specific causes for the withholding under the terms of the subcontract; and

8.6.7.3 The remedial actions to be taken by the subcontractor to receive payment of the amounts withheld.

8.6.8 The provisions of this section shall not be construed to require payment to subcontractors of retainage released to a contractor pursuant to an agreement entered into with the contracting officer meeting the requirements of subsection 8.6.3.

8.7 WARRANTY OF CLEAR TITLE - The Contractor warrants and guarantees that all work and materials covered by progress payments made thereon shall be free and clear of all liens, claims, security interests or encumbrances, and shall become the sole property of the Department. This provision shall not, however, be construed as an acceptance of the work nor shall it be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Department to require the fulfillment of all the items of the contract.

8.8 FINAL PAYMENT

8.8.1 Upon final settlement, the final payment amount, less all previous payments and less any sums that may have been deducted in accordance with the provisions of the contract, will be paid to the Contractor, provided the Contractor has submitted a Tax Clearance Certificate from the Department of Taxation and the Internal Revenue Service to the effect that all taxes levied or accrued under Federal and State Statutes against the contractor have been paid.

8.8.2 Sums necessary to meet any claims of any kind by the State may be retained from the sums due the Contractor until said claims have been fully and completely discharged or otherwise satisfied.

8.9 CLAIMS ARISING OUT OF PAYMENT FOR REQUIRED WORK - If the Contractor disputes any determination made by the Engineer regarding the amount of work satisfactorily completed, or the value thereof, or the manner in which payment therefore is made or calculated, it shall notify the Engineer in writing of the specific facts supporting the Contractor's position. Such notice shall be delivered to the Engineer no later than thirty (30) days after the Contractor has been tendered payment for the subject work, or, if no payment has been tendered, not later than fifty (50) days after it has submitted the Monthly Payment Application required under Section 8.4 PROGRESS PAYMENTS herein to the Engineer for the work that is the subject of the dispute. The delivery of the written notice cannot be waived and shall be a condition precedent to the filing of the claim. No claim for additional compensation for extra work or change work shall be allowed under this provision, unless the notice requirements of Article 4 SCOPE OF WORK have been followed. Acceptance of partial payment of a Monthly Payment Application amount shall not be deemed a waiver of the right to make a claim described herein provided the notice provisions are followed. The existence of or filing of a payment claim herein shall not relieve the Contractor of its duty to continue with the performance of the contract in full compliance with the directions of the Engineer. Any notice of claim disputing the final payment made pursuant to Section 8.8 FINAL PAYMENT must be submitted in writing not later than thirty (30) days after final payment that is identified as such has been tendered to the Contractor.

ARTICLE 9 - CONFIDENTIALITY OF PERSONAL INFORMATION

9.1 Definitions. "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

1. Social Security number,
2. Driver's license number or Hawaii identification card number; or
3. Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state or local government records. "Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

9.2 Confidentiality of Material.

(1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.

(2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.

(3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.

(4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.

(5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.

(6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

9.3 Security Awareness Training and Confidentiality Agreements.

(1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.

(2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

(a) The personal information collected, used or maintained by the CONTRACTOR will be treated as confidential;

(b) Access to the personal information will be allowed only as necessary to perform the Contract; and

(c) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

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

(1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or

(2) Immediately terminate this Contract.

9.5 Records Retention.

(1) Upon any termination of this Contract, CONTRACTOR shall pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

(2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall not be disclosed without the prior written approval of the STATE. After the three (3) year retention period has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS.

ADDITIONAL GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS

The following sections of the Hawaii Administrative Rules, Chapter §3-125 are hereby incorporated and made a part of the General Conditions.

CHANGES FOR CONSTRUCTION CONTRACTS - §HAR 3-125-4

1. Change Order. The procurement officer, at any time, and without notice to any surety in a signed writing designated or indicated to be a change order, may make changes in the work within the scope of the contract as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the contractor will perform the work as changed, as though it had been part of the original contract. Minor changes in the work may be directed by the procurement officer with no change in contract price or time or performance.

2. 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 may 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 a contractor from proceeding with the contract as changed, provided that the State promptly and duly makes such provisional adjustments in payments or time for the direct costs of the work as changed as the State deems reasonable. The right of the contractor to dispute the contract price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the notice requirements for disputes and claims established by the contract or these rules.

3. Time Period for Claim. Within thirty days after receipt of a written change order under paragraph (1), unless such period is extended by the procurement officer in writing, the contractor shall file a notice of intent to assert claim for an adjustment. The requirement for timely written notice cannot be waived and shall be a condition precedent to the assertion of a claim.

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

5. Claims not barred. In the absence of such a change order, nothing in this clause shall restrict the contractor's right to pursue a claim under the contract or for breach of contract.

PRICE ADJUSTMENT FOR CONSTRUCTION CONTRACTS - §HAR 3-125-13.

1. 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 agree upon;
   c. Whenever there is a variation in quantity for any work covered by any line item in breakdown costs provided by the contractor pursuant to contractual pre-work submittal requirements, by the procurement officer, at the procurement officer's discretion, adjusting the lump sum price proportionately;
   d. In such other manner as the parties may mutually agree;
   e. At the sole option of the procurement officer, by the costs attributable to the event or situation covered by the change, plus appropriate profit or fee; or
   f. 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).

2. Determining the cost or credit. In determining the cost or credit to the State resulting from a change, the allowances for all overhead, extended overhead resulting from adjustments to contract time (including home office and field overhead) and profit combined, shall not exceed the percentages set forth below:

   a. For the contractor, for any work performed by its own labor forces, fifteen per cent of the cost;
   b. For each subcontractor involved, for any work performed by its own forces, fifteen per cent of the cost;
   c. For the contractor or any subcontractor, for work performed by their subcontractors, ten per cent of the amount due the performing subcontractor.

3. Percentages for fee and overhead. Not more than three line item percentages for fee and overhead, not to exceed the maximum percentages shown above, will be allowed regardless of the number of tier subcontractors.

PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS – §HAR 3-125-23

1. Prompt payment clause. Any money, other than retainage, paid to a contractor shall be dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and, upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be

made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

CHANGES TO THE GENERAL CONDITIONS

1. Under ARTICLE 1 – DEFINITIONS, insert the following:

   "1.70 CONTRACTING OFFICER REPRESENTATIVE (COR): The Department of Defense Project Manager (PM)."

2. Under ARTICLE 2 - PROPOSAL REQUIREMENTS AND CONDITIONS, modify section 2.6 - SUBSTITUTION OF MATERIALS AND EQUIPMENT BEFORE BID OPENING, by renaming section 2.6 - SUBSTITUTION BEFORE CONTRACT AWARD and deleting subsections 2.6.1, through 2.6.6 and substitute the following three new subsections and related paragraphs 2.6.1 through 2.6.3:

   "2.6.1 For Substitutions after the Letter of Award is issued; refer to Section 6.3 SUBSTITUTION AFTER CONTRACT AWARD.

   2.6.2 Unless specifically required otherwise in the contract documents, Offerors shall not submit products, materials, equipment, articles or systems for review or approval prior to submitting their Offers.

   2.6.3 Offerors shall prepare their Offer forms based on the performance requirements of the materials, equipment, articles or systems noted on the drawings and specifications. If trade names, makes, catalog numbers or brand names are specified, Offerors shall infer that these items indicate the quality, style, appearance or performance of the material, equipment, article, or systems to be used in the project. The products and equipment of manufacturers listed throughout the specifications and other manufacturers are acceptable provided they meet or exceed the materials and construction requirements specified and are installed as specified."

3. Under Article 6, delete subsections 6.3.2.4 and 6.3.3.

STATE OF HAWAII

SPECIAL CONDITIONS

1. **Non-Liability of STATE Employees.**
The HOPA and any of the HOPA's duly authorized representatives and subordinates, in carrying out the provisions of this Agreement or in exercising any power or authority granted herein, shall not be held personally liable in any way, it being understood that in such matters they act as agents and representatives of the STATE.

2. **Amendment to Section 7.3 INSURANCE REQUIREMENTS**
The Construction General Conditions is amended by adding and/or amending the following subsection:

"7.3.7.1 Worker's Compensation - The Contractor shall maintain workers' compensation insurance as required by the Hawaii Revised Statutes (HRS) Title 21, Section 386. This coverage shall ensure compliance with state laws regarding the provision of benefits to employees for work-related injuries or illnesses, and Employer's Liability: Coverage shall be maintained with the following minimum limits:
- $100,000 per accident for bodily injury.
- $500,000 disease-policy limit.
- $100,000 disease limit per employee.

7.3.7.2 Commercial General Liability (CGL) - Coverage shall be maintained with limits of no less than $2 million per occurrence and $2 million in aggregate. This insurance shall protect against claims arising from bodily injury, personal injury, and property damage that may result from or be related to the performance of services under the contract. The STATE shall be named as additional insured.

7.3.7.3 Automobile Liability - Coverage shall include a limit of no less than $1 million per accident, covering claims for bodily injury and property damage resulting from the ownership, maintenance, or use of any owned, hired, or non-owned vehicles used in the performance of the contract. The STATE shall be named as additional insured.

7.3.7.4 Property Insurance
(1) The contractor shall obtain property insurance for its property/equipment on the demolition site equivalent to the replacement cost of all its own property/equipment with the State being a loss payee.

7.3.7.5 Waiver of Subrogation - Contractor agrees to a waiver of any right to subrogation against the State of Hawaii and their respective employees and agents by each insurer under each required policy described herein except for the Professional Liability (Errors and Omission) policy. When required by the insurer, or should a policy condition not permit the Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, Contractor shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should the Contractor enter into such an agreement on a pre-loss basis."

In addition, Contractor's insurance policies, with the exception of the Worker's Compensation and Professional Liability policies, shall contain the following clauses:
1. The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii.
2. It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy.

Furthermore, the Certificate of Insurance shall contain the reference to the project name and the project number.

3. **BUY AMERICAN ACT AND BUILD AMERICA, BUY AMERICA ACT COMPLIANCE**

STATE OF HAWAII

SPECIAL CONDITIONS

a. Build America, Buy America Act (BABA) – Infrastructure Projects

For any federally funded infrastructure project, as defined under BABA, including but not limited to highways, bridges, water systems, broadband infrastructure, public transit, and similar:

(i) The Contractor shall ensure that all iron and steel products, manufactured products, and construction materials used in the project are produced in the United States, as specified in OMB Memorandum M-22-11 and relevant agency guidance.

(ii) The definition of "produced in the United States" includes melting, pouring, manufacturing, and final processing stages, depending on the product category.

b. Waivers

Requests for waivers to the above requirements may be granted only under the following conditions:

(i) Public Interest Waiver: Application of the requirement would be inconsistent with the public interest;

(ii) Non-Availability Waiver: The required material or product is not produced in the United States in sufficient and reasonably available quantities or satisfactory quality;

(iii) Unreasonable Cost Waiver: The cost of using domestic materials will increase the overall project cost by more than 25 percent.

All waiver requests must be submitted in writing, with detailed justification and supporting documentation, to the Contracting Officer or designated State representative. Final approval is subject to applicable federal agency determination and public notice requirements.

c. Flow-Down Requirements

The Contractor shall incorporate this clause, and all its requirements, without modification, into all subcontracts, sub-agreements, purchase orders, or other lower-tier agreements issued in connection with this contract, regardless of tier, where federal funds are involved. The Contractor shall be responsible for ensuring that all such lower-tier participants comply fully with these requirements.

d. Documentation and Compliance Verification

The Contractor shall maintain complete and accurate records demonstrating compliance with the Build America, Buy America Act, including origin documentation for all materials, invoices, certifications, and any correspondence related to waiver requests.

These records shall be made available upon request to the State of Hawaii, the awarding federal agency, or their authorized representatives for audit or inspection purposes throughout the life of the contract and for a minimum of three (3) years following final payment or project closeout, whichever is later.

e. Remedies for Non-Compliance

Failure to comply with the requirements of this clause shall constitute a material breach of contract and may result in the withholding of payment, termination for default, suspension or debarment, or other remedies available under state or federal law.

4. DAVIS-BACON ACT COMPLIANCE

a. Applicability

For any contract that is partially or wholly funded with federal funds and involves construction, alteration, or repair (including painting and decorating) of public buildings or public works in excess of $2,000.00 the Contractor and all subcontractors shall comply with the requirements of the **Davis-Bacon Act** (40 U.S.C. §§ 3141–3148), as amended, and all applicable regulations issued by the U.S. Department of Labor (DOL).

b. Prevailing Wage Requirements

The Contractor shall pay all laborers and mechanics employed under this contract wages at rates not less than those determined by the Secretary of Labor to be prevailing for the corresponding classes of labor in

the locality where the work is performed, as specified in the applicable **wage determination** incorporated into this contract.

The Contractor shall ensure:

(i) Each worker is classified correctly by trade or labor category;
(ii) Each worker receives the full prevailing wage rate and fringe benefits required for their classification;
(iii) No portion of the wage due to any worker is withheld or diverted.

c. Certified Payroll Reporting

The Contractor shall submit **weekly certified payroll records** for all laborers and mechanics employed under the contract using **Form WH-347** or a DOL-approved equivalent. Each payroll shall include:

(i) Worker name and classification
(ii) Daily and weekly hours worked
(iii) Rates of pay
(iv) Deductions and net wages paid
(v) A signed "Statement of Compliance" shall accompany each submission, attesting to compliance with DBA requirements.

d. Subcontractor Compliance

The Contractor is responsible for ensuring that all subcontractors at any tier are aware of and comply with the requirements of the Davis-Bacon Act. This includes ensuring subcontractors:

(i) Receive the applicable wage determination
(ii) Maintain and submit certified payrolls
(iii) Comply with worker classification and wage standards

This clause shall be incorporated into all subcontracts and lower-tier agreements.

e. Enforcement and Remedies

The U.S. Department of Labor and/or the State of Hawaii, as applicable, may audit payroll records or conduct site inspections. Failure to comply with the Davis-Bacon Act may result in:

(i) Withholding of contract funds
(ii) Recovery of back wages due to workers
(iii) Termination of the contract
(iv) Suspension or debarment from future federal contracts

f. Recordkeeping

The Contractor shall maintain payroll records and all related documentation for a period of **three (3) years** after the project's completion and shall make them available to authorized state or federal representatives upon request.

5. WARRANTY

The Contractor warrants that all Materials furnished and all Work performed under the Contract shall be free from defects in materials, workmanship, and construction for a period of one (1) year from the date of final completion and acceptance of the Work, unless a longer warranty period is required by the Contract or applicable law.

During the warranty period, the Contractor shall, at its sole cost and expense, promptly correct, repair, replace, or otherwise remedy any defective Materials or Work covered by this warranty upon written notice from the State. The Contractor shall bear all costs associated with such corrective work, including labor, materials, equipment, transportation, and disposal.

STATE OF HAWAII

SPECIAL CONDITIONS

6. INCORPORATION OF SOLICITATION DOCUMENTS

a. All solicitation documents issued in connection with this Contract, including without limitation the solicitation, proposal/qualification/bid, specifications, scope of work, statements of requirements, exhibits, attachments, addenda, amendments, questions and answers, and any other documents or materials issued by the STATE as part of the solicitation process (collectively, the "Solicitation Documents"), are hereby incorporated into and made a part of this Contract by reference as if fully set forth herein.

b. In the event of any conflict, inconsistency, or ambiguity between the Solicitation Documents and this Contract, the terms of this Contract shall control, unless expressly provided otherwise herein. The parties acknowledge that the Solicitation Documents form an integral part of the parties' agreement and shall be binding upon the parties to the same extent as the terms expressly set forth in this Contract.

7. Conflict.

a. If there is a conflict between this Attachment — S5 (Special Conditions) and the General Conditions or any other term and condition documents, this Attachment — S5 (Special Conditions) shall govern and control unless otherwise specified.