

STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
PROCUREMENT AND CONTRACTS BRANCH

JUNE 29, 2020

INVITATION FOR BIDS

**No. IFB D20-172**

SEALED BIDS

TO

FURNISH TOTAL MAINTENANCE OF  
FIRE PROTECTION EQUIPMENT (FPE)  
AT VARIOUS HAWAII DEPARTMENT OF EDUCATION  
SCHOOLS  
ON THE ISLAND OF OAHU  
LEEWARD DISTRICT

**will be received through the Hawaii Electronic Procurement System (HlePRO) at  
<https://hiepro.ehawaii.gov/welcome.html> until 4:30 p.m., Hawaii Standard Time (HST)**

on

**JULY 13, 2020**

Offerors interested in responding to this electronic solicitation must be registered on the HlePRO (<https://hiepro.ehawaii.gov/welcome.html>) in order to participate in this procurement. Registration is free. Once registered, Offerors can login to view and respond to the HlePRO solicitation.

Questions relating to this solicitation may be directed to Louise Yasuda, Procurement and Contracts Support Specialist, at telephone (808) 675-0130, via facsimile (808) 675-0133, or via email at [louise-yasuda@k12.hi.us](mailto:louise-yasuda@k12.hi.us).

**FURNISH TOTAL MAINTENANCE OF FIRE PROTECTION EQUIPMENT  
AT VARIOUS HAWAII DEPARTMENT OF EDUCATION SCHOOLS ON THE ISLAND OF OAHU  
LEEWARD DISTRICT  
IFB D20-172**

Chief Procurement Officer  
State of Hawaii, Department of Education  
Honolulu, Hawaii 96813

To Whom It May Concern:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications, Special Conditions, and General Conditions, 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, but registered 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 a:

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: \_\_\_\_\_

Date: \_\_\_\_\_

Respectfully submitted:

Telephone No.: \_\_\_\_\_

\_\_\_\_\_  
Authorized (Original) Signature

Fax No.: \_\_\_\_\_

\_\_\_\_\_  
Name and Title (Type or Print)

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

\* \_\_\_\_\_  
**Exact Legal Name of Company (Offeror)**

\*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: \_\_\_\_\_

The following offer is hereby submitted:

|          |  | Leeward District |                |                 |
|----------|--|------------------|----------------|-----------------|
| Item No. | Description  | Est Qty          | Unit Bid Price | Total Bid Price |
| 1        | <b>Portable Fire Extinguishers</b>   |                  |                |                 |
|          | Annual Inspection & Maintenance  | 3,181            |                | \$ -            |
| 2        | <b>Fire Hose Cabinets (FHC)</b>  |                  |                |                 |
|          | Annual Inspection and Service of FHC   | 78               |                | \$ -            |
| 3        | <b>Standpipe Systems (SPS)</b>   |                  |                |                 |
|          | 5-Year Inspection and Test of Wet SPS  | 22               |                | \$ -            |
|          | 5-Year Inspection and Test of Dry SPS  | 3                |                | \$ -            |
| 4        | <b>Fire Sprinkler Systems (FSS)</b>  |                  |                |                 |
|          | Annual Inspection and Testing of Wet FSS   | 54               |                | \$ -            |
|          | Annual Inspection and Testing of Pre-Action FSS  | 8                |                | \$ -            |
| 5        | <b>Kitchen Hood Suppression Systems</b>  |                  |                |                 |
|          | Two Times (semi-annual) a year Inspection and Testing  | 31               |                | \$ -            |
|          | <b>TOTAL SUM BID PRICE (Items 1-5):</b>  |                  |                | <b>\$ -</b>     |
| 6        | <b>Labor Hourly Rate for Emergency Service, Authorized Extra Work and Repairs, and Trouble Calls (\$/hr)</b> | 200              |                | \$ -            |
| 7        | <b>Total Bid Price for "Additional Work and Equipment"</b>   | 30               | \$ -           | \$ -            |
|          | <b>TOTAL SUM BID PRICE (Items 1-7):</b>  |                  |                | <b>\$ -</b>     |

### ADDITIONAL WORK AND EQUIPMENT

In the event additional work and equipment are required, work must be authorized by the Contract Administrator and shall be performed in accordance with the attached Specifications. Additional work shall be billed separately from the contract and in accordance with the bid price provided below. Unit prices shall include delivery to school/offices.

|   | Description  | Qty  | Unit Bid Price |
|---|--|------|----------------|
| <b>1</b>  | <b>Furnish Fire Extinguishers</b>                    |      |                |
|   | a) ABC Type – 5 lb                                   | Each |                |
|   | b) ABC Type – 10 lb                                  | Each |                |
|   | c) BC Type – 5 lb                                    | Each |                |
|   | d) BC Type – 10 lb                                   | Each |                |
|   | e) CO2 – 5 lb  | Each |                |
|   | f) K Type – 6 liters                                 | Each |                |
| <b>2</b>  | <b>Recharge Fire Extinguishers</b>                   |      |                |
|   | a) Dry Chemical ABC/BC Type - 5 lb                   | Each |                |
|   | b) Dry Chemical ABC/BC Type - 10 lb                  | Each |                |
|   | c) CO2 – 5 lb  | Each |                |
|   | d) K Type – 6 liters                                 | Each |                |
| <b>3</b>  | <b>12-Year Hydrostatic Test (Fire Extinguishers)</b> |      |                |
|   | a) Dry Chemical Type                                 | Each |                |
|   | b) CO2 Type  | Each |                |
|   | a) K Type  | Each |                |
| <b>4</b>  | <b>Install Signs</b>                                 | Each |                |
| <b>5</b>  | <b>Mount Extinguishers</b>                           | Each |                |
| <b>6</b>  | <b>Removal &amp; Disposal of Fire Extinguishers</b>  | Each |                |
| <b>Total Unit Bid Price (#7 on the Offer Page) \$</b> |  |      | <b>-</b>       |

**WAGE CERTIFICATE**

Subject: Project No. IFB D20-172

Description of Project: Furnish Total Maintenance of Fire Protection Equipment at Various Hawaii Department of Education Schools on the Island of Oahu Leeward District

Pursuant to §103-55, HRS, I hereby certify that, if awarded a contract in excess of \$25,000.00, the services to be performed will be performed in accordance with the following conditions:

1. The services to be rendered shall be performed by employees paid at wages or salaries not less than wages paid to the public officers and employees for similar work, if similar positions are listed in the classification plan of the public sector.

Services Performed by Laborers and Mechanics:

The CONTRACTOR or the CONTRACTOR's subcontractor shall give a copy of the rates of wages to each laborer and mechanic employed under the contract by the CONTRACTOR at the time each laborer and mechanic is employed; provided that the CONTRACTOR does not have to provide the CONTRACTOR's employees the wage rate schedules where there is a collective bargaining agreement.

2. All applicable laws of the Federal and State governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

CONTRACTOR shall be obliged to notify its employees performing work under this contract of the provisions of §103-55, HRS, and the current wage rate for public employees performing similar work. The CONTRACTOR may meet this obligation by posting a notice to this effect in the CONTRACTOR'S place of business accessible to all employees, or the CONTRACTOR may include such notice with each paycheck or pay envelope furnished to the employee

I understand that, in addition to the base wages required by §103-55, HRS, all payments required by Federal and State laws that employers must make for the benefit of their employees shall be paid.

Offeror: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## SPECIFICATIONS

### DESCRIPTION OF WORK

#### A. Portable Fire Extinguishers

Work included under this agreement shall consist of a full-service maintenance contract; work shall be in accordance with the current National Fire Protection Agency's (NFPA) requirements for Portable Fire Extinguishers. Work performed shall further be subject, where applicable, to all laws, statutes, ordinances, rules and regulations of the Federal, State and Local Governments or any of their departments or agencies.

Work shall consist of furnishing all labor, materials, tools and incidentals necessary for recharging, replacing, cleaning, inspecting, mounting, reporting, tagging and testing of fire extinguishers. All equipment must be checked and verified to include tags with the last date inspection was completed. Also included is the installation and removal of external signs, furnishing and installing missing or additional fire extinguishers, and disposal of old fire extinguishers. CONTRACTOR shall have additional approved fire extinguishers and signs available for installation within 48 hours of notification request (STATE will no longer furnish extinguishers and signs).

Unless otherwise specified, the CONTRACTOR shall perform the service at all school buildings in which extinguishers are located.

Loaners. In the event any extinguisher is removed from the premises for any work by the CONTRACTOR for any length of time, the CONTRACTOR shall provide a loaner at no cost to the STATE until the original extinguisher is returned to its respective location, building or service area.

All services performed by the CONTRACTOR shall include, but is not limited to the following:

1. "Inspect" extinguishers by performing the following:
  - a. Perform an annual inspection in accordance with current NFPA requirements. Report and correct all fire extinguisher discrepancies as noted by fire inspectors. Payment for correcting discrepancies shall be based on the unit bid price indicated on the appropriate offer page.
  - b. Perform annual maintenance in accordance with current NFPA requirements. The inspection and maintenance shall be performed within same month for each school and shall cover all extinguishers within the school.
  - c. Perform the record keeping in accordance with current NFPA requirements.
  - d. Perform 6-year maintenance (including cleaning, if required) and 12-year hydrostatic testing of fire extinguishers in accordance with current NFPA requirements.  
  
Upon completion of the service conducted on a fire extinguisher (6 Year Maintenance/12 Year Hydrostatic test), an appropriate service collar shall be utilized for the specific size of the fire extinguisher being serviced. The service collar shall be placed with the fire extinguisher valve handle removed.
  - e. Perform recharging requirements in accordance with current NFPA requirements.
2. CONTRACTOR notifies STATE if a replacement sign is needed. CONTRACTOR installs new and replacement signs as requested/required to schools listed on the Inventory List.
3. Mount extinguishers as requested/required and as listed on Inventory List with brackets. Mount extinguishers inside the classroom away from the door and in the "front" of the room. The top of the

fire extinguisher shall not exceed five (5) feet in height per Fire Department requirement.

4. Recharge extinguishers as requested/required and as listed on Inventory List and any other(s) determined to be low on charge. Recharge extinguishers in accordance with current NFPA's requirements. Recharging extinguishers will be paid based on the unit prices indicated on the appropriate offer page.
5. Each individual extinguisher shall have a tag or label securely attached that indicates the month and year the maintenance was performed and shall identify the person performing the service. The same record tag or label shall indicate whether or not recharging was also performed.

**B. Fire Hose Cabinets and Standpipe Systems**

1. Work shall consist of furnishing all labor, materials, tools and incidentals necessary for cleaning, inspecting, mounting, reporting, tagging, and testing of standpipes and hose cabinet systems. Work shall conform to all current NFPA requirements.
2. Perform annual hose cabinet inspections for tests and maintenance in accordance with the current NFPA requirements. Work shall include the but not limited to the following:
  - a. Inspect hose valves for leaks or clogs.
  - b. Remove, inspect and reinstall hoses and nozzles; install new gaskets in couplings, both at the hose valves and at the nozzles.
  - c. Certify and tag hose and cabinet components.
3. Perform five (5) year standpipe systems inspections for testing and maintenance in accordance with the current NFPA requirements. Certify and tag standpipes systems.
4. Repairs to all components of the fire hose cabinets and standpipes shall be performed by the CONTRACTOR. Payment for repairs and replacement of damaged and missing components shall be invoiced separately from the annual inspection service costs. CONTRACTOR shall submit separate invoices for each repair as necessary after each inspection.

**C. Fire Sprinkler System**

1. Work shall consist of performing an annual inspection and test of all fire sprinkler system within the school, whether listed or not. Work shall be in accordance to to all current NFPA requirements.. Compensation shall be based on the unit prices indicated on the offer proposal form. Certify and securely tag the fire sprinkler system.
2. Repairs to all components of the fire sprinkler system shall be performed by the CONTRACTOR. Payment for repairs and replacement of damaged and missing components shall be invoiced separately from the annual inspection service costs. CONTRACTOR shall submit separate invoices for each repair as necessary after each inspection.

**D. Kitchen Hood Suppression System**

1. Work shall consist of performing a semi-annual inspection of all kitchen hood suppression systems within the school, and certify each system, whether listed or not. However, the STATE has a few systems which are obsolete (dry chemical) and are in the process of changing them out. Until that occurs, the CONTRACTOR is required to inspect, maintain and certify those systems until they are changed. Compensation shall be based on the unit prices indicated on the offer proposal form.
2. Fusible links shall be replaced at least annually. Other protective devices shall be serviced or

replaced in accordance with the manufacturer's instructions.

3. Insure instructions for manually operating the fire extinguishing system is posted at a conspicuous location within the kitchen.
4. In addition to the fixed system, insure that a dry chemical portable extinguisher with a rating not less than 40 BC is installed near the kitchen hood.
5. Repairs to all components of the kitchen hood suppression system shall be performed by the CONTRACTOR. Payment for repairs and replacement of damaged and missing components shall be invoiced separately from the semi-annual inspection service costs. CONTRACTOR shall submit separate invoices for each repair as necessary after each inspection.
6. When 12 Year Hydrostatic Test on cylinders in the Kitchen Hood Suppression system are required, CONTRACTOR will advise STATE. Upon approval of request, CONTRACTOR will proceed with test and will invoice STATE separately from the semi-annual inspection services cost.

### **INVENTORY LIST**

The attached inventory list includes the estimated total of all Fire Extinguishers, Fire Hose Cabinets and Standpipes, Fire Sprinkler Systems and Kitchen Hood Suppression Systems in the Leeward District. A more detailed listing can be provided upon issuance of the notice to proceed. It shall be the Offeror's responsibility to scrutinize the list to identify the various items covered under the resultant contract. See attached Exhibit C for the listing of equipment.

### **MISSED EQUIPMENT AND/OR SYSTEMS**

Annual maintenance and inspection of all equipment and/or systems shall not be missed. Annual maintenance and inspection for missed equipment and/or systems shall be performed by the CONTRACTOR immediately after discovery or after notification, and shall be paid based on the unit prices indicated on the appropriate offer pages and no additional cost shall be paid by the STATE.

### **FOR ALL PORTABLE FIRE EXTINGUISHERS, FIRE HOSE CABINETS AND STANDPIPE SYSTEMS KITCHEN HOOD SUPPRESSION SYSTEMS:**

All trouble calls shall be separate from the Annual Inspection and Maintenance Services costs and will be paid based on the unit prices indicated on the offer form, regardless of distance. CONTRACTOR shall respond to trouble calls within 48 hours of notification. All trouble calls shall have a Work Order (WO) form and WO number assigned, which will be emailed or faxed to the CONTRACTOR, and must be signed by the CONTRACTOR and School representative when work is completed. Completed WO form shall be returned to CA along with invoice for the trouble call work.

Monthly inspection/maintenance reports and invoices shall be sent to the CA for every school serviced. Report shall be in the format specified in the Exhibit B (attached). No payment will be made without the required completed reports. All completed and certified reports shall also be provided to the schools at the completion of the work at the school for their records and for the fire inspector's review.

### **REPORTS**

Prepare a comprehensive maintenance report of all Fire Protection Equipment (FPE), for each school by district. Itemize all inspections including any new and/or not listed in the inventory. Report shall be in the format specified by the NFPA Inspection, Test and Maintenance Report Form. Date of inspection, CONTRACTOR and inspector's names shall be included on form. Report form shall be forwarded to the appropriate fire chief and to the CA.



## ANNUAL UPDATED INVENTORY

The CONTRACTOR shall submit an annual updated inventory of all equipment and/or systems in Microsoft Excel File Format to the CA every year by the end of March. The updated inventory shall put together all the inspections performed and shall follow the format specified by the NFPA Inspection, Test and Maintenance Form.

## WORK SCHEDULE

Upon issuance of the notice to proceed, the CONTRACTOR shall submit the following within seven (7) business days in writing to the CA for approval:

1. A proposed work schedule (schools to be serviced per month)
2. Other proposed forms/checklists to be used for this work

The CONTRACTOR shall provide weekly updates to the STATE showing the actual work schedule verses the proposed schedule which indicates any changes or proposed changes to the original schedule while progressing with the work. This is to insure that the CONTRACTOR will complete the work within the required timeframe.

The required information above shall be submitted in detail to document and substantiate the CONTRACTOR'S ability to perform under the terms of this contract. The STATE reserves the right to provide preprinted maintenance forms or worksheets to be used and completed by the CONTRACTOR.

All maintenance tasks described herein shall be performed between the hours of 7:30 A.M. to 4:00 P.M. on normal working days, Monday through Friday, excluding State holidays. The CONTRACTOR is required to follow the school's procedure for visitors, which include reporting to the office upon arrival. The CONTRACTOR is required to schedule his work to accommodate and prevent disruption of school operations as much as possible. Although the CONTRACTOR may be required to return at a more appropriate time, the CONTRACTOR shall be advised that all work must be performed and at no additional cost to the STATE.

Maintenance tasks shall be performed during the months of **June** through **October**, normal working days, or as coordinated by the CA. In this initial contract period, the CONTRACTOR may spread the work throughout the new specified period, but services shall be performed NOT later than the previous year schedule, and shall maintain the same schedule for each successive year. Maintenance Report Forms shall be certified (signed) by a school representative and the service person. All maintenance service **must** be completed prior to October 1 of each contract period.

Upon issuance of the notice to proceed, the CONTRACTOR shall coordinate with and obtain the approval of the CA in setting up a schedule for the services specified herein. Fire inspection officials will be inspecting schools during the month of October. Therefore, services must be completed by September 30<sup>th</sup> for each 12 month contract period.

The CONTRACTOR shall provide sufficient staff to properly perform the work and within the time period specified/agreed. The CONTRACTOR shall complete all work at a school before starting work at the next school. The CONTRACTOR is required to follow the school's procedure for visitors, including reporting to the office upon arrival.

## INSPECTIONS

All work done and all materials furnished shall be subject to random periodic inspection and testing by the CA or a representative of the STATE so as to ascertain that the services rendered are in accordance with requirements and intentions of the Specifications and Special Conditions. The STATE reserves the right to have the CONTRACTOR present at such inspections as scheduled by the STATE. The CA may require additional information as necessary to maintain a record of the service rendered. The CONTRACTOR shall

correct all deficiencies within **48 hours** after notification by the CA, including compliance with contract requirements and as instructed by CA.

### **EMERGENCY SERVICE, AUTHORIZED EXTRA WORK AND REPAIRS AND TROUBLE CALLS**

Emergency service, authorized extra work and repairs and trouble calls are required between the regular inspection and maintenance service shall be rendered within two (2) working days after the CONTRACTOR is notified (non-work days excluded). The CONTRACTOR shall respond to the CA within two (2) hours to acknowledge notification of the emergency service. Cost for emergency service or authorized extra work shall be based on the unit bid price/hour indicated in 6. Emergency Service, Authorized Extra Work and Repairs and Trouble Calls on the offer page, plus material costs for other repair work. As emergency/repair jobs are progressing/completed, the CONTRACTOR must notify the CA daily of the status of repairs and estimated completion times.

When emergency services, authorized extra work and repairs and trouble calls are necessary, the CONTRACTOR shall provide a cost estimate to the CA within 24 hours of the notification of the emergency service, authorized extra work and repairs and trouble calls. CONTRACTOR shall request the CA's approval prior to performing work over three (3) hours labor or \$300.00 total cost.

The cost estimate shall contain the following minimum information:

- a. Description of work to be done, breakdown of material and parts, and estimated labor hours and costs.
- b. Extra costs such as air freight (if applicable).
- c. Completion date.
- d. Work order number

The STATE reserves the right to have emergency services, authorized extra work and repairs and trouble calls performed on the weekends or after normal operating hours. Whenever the STATE exercises this right, the STATE will compensate the CONTRACTOR for one-half (½) the hourly rate in addition to the rate provided by the CONTRACTOR in 6. Emergency Service, Authorized Extra Work and Repairs and Trouble Call Response bid price/hour. This rate shall include applicable fringe benefit, mileage, travel, and tax costs. The CONTRACTOR shall be responsible for all other costs as if the work was performed during normal working hours.

The CONTRACTOR shall notify the STATE when parts are not readily available to accomplish the repairs. The STATE reserves the right to have the parts sent by air freight at the expense of the STATE.

CONTRACTOR shall bill such emergency services, authorized extra work and trouble calls separately from the contract price. Cost of such services shall be paid based on the unit bid price indicated in 6. Emergency Service, Authorized Extra Work and Repairs and Trouble Calls on the offer page. All trouble calls shall be documented on a WO (Worker Order) Form issued by the STATE. The WO Form with an assigned work order number will be faxed to the CONTRACTOR and signed by both the CONTRACTOR and a school representative when work is completed. Completed WO Form shall be returned to CA with an invoice. Unless the CONTRACTOR is given a separate purchase order authorizing him to make such repairs, the STATE shall not be held responsible for payment of any such work performed by the CONTRACTOR.

### **PARTS AND MATERIAL**

The CONTRACTOR shall restore to serviceability all parts that are found to cost more to be restored than to be replaced with a new part. Where parts are worn out and cannot be restored, the CONTRACTOR shall replace these parts with new parts. Only new, standard parts manufactured by the maker of each unit or parts of equal quality shall be used. All parts, labor and materials costs shall be included in the bid prices and provided at no additional cost to the STATE.

The CONTRACTOR shall maintain a supply of parts and materials that are required for normal repairs of the fire extinguishers and other systems specified. The CONTRACTOR shall notify the STATE whenever parts are not locally available to accomplish the repairs. The STATE reserves the right to request the parts be shipped by air freight at the expense of the STATE and cost shall not include CONTRACTOR mark-up. Should the CONTRACTOR elect to purchase parts from the mainland at reduced prices, even though the part is available locally, the STATE reserves the right to require the CONTRACTOR to air express (next day delivery) the parts at the CONTRACTOR'S expense.

### **ALLOWABLE COSTS FOR PARTS**

If replacement parts or materials are required for emergency services, authorized extra work and repairs and trouble calls, the STATE shall compensate the CONTRACTOR for the part(s) at the CONTRACTOR'S cost, plus labor. The CONTRACTOR'S material cost mark-up shall not exceed 20%, which shall include shipping, overhead, profit, taxes, and any other incidental expenses. If a subcontractor service is required, the CONTRACTOR'S mark-up shall be limited to 10%, which shall include all the above mentioned expenses. The CONTRACTOR shall substantiate all costs by submitting copy of part or material invoices with their invoice to the STATE. The CONTRACTOR shall use only new, standard parts or material as manufactured by the maker of each unit or part of equal quality.

### **CLEANUP AND WORK PRACTICES**

The CONTRACTOR shall keep the job site free of debris, litter, refuse, etc. and shall clean all fluids, oil, grease drippings or spills during the daily progress of work. The CONTRACTOR shall remove all tools, used parts, fluids and lubricants, and equipment from the service area upon completion of the work. CONTRACTOR shall legally dispose of used parts, fluids and lubricants, and fire extinguishers, whether hazardous or not, in accordance with EPA and/or other government regulations including providing written records as required. The CONTRACTOR shall support and protect the STATE legally and financially with regard to these regulations.

CONTRACTOR shall exercise caution during the progress of his maintenance and repair work to prevent damage to any of the building or campus structures. CONTRACTOR shall restore all damages, caused by the CONTRACTOR'S negligence, at his own expense as requested by the STATE.

### **SAFETY PRECAUTIONS**

Whenever maintenance and repair work is performed during school hours and the site is accessible to school children, the CONTRACTOR shall not perform work until all safety type barricades are in place. The CONTRACTOR shall comply with all applicable safety regulations promulgated by OSHA, EPA and other governmental agencies.

### **SECURITY REQUIREMENTS**

The CONTRACTOR must be aware of the heightened security conditions at all schools covered by this contract. The CONTRACTOR must be aware of and report any suspicious activity or obvious breach of security in relation to or in the course of their work at any of the school facilities; this shall be reported to the CA with as much detailed information as possible. The CONTRACTOR must keep their work areas closed and secure; before, during and after performing work.

The CONTRACTOR must schedule and coordinate maintenance service, emergencies or repair work at school facilities in advance before work can commence. A letter from STATE to the respective school(s) may be required. Upon issuance of the notice to proceed, the CONTRACTOR shall submit to the STATE a list of personnel assigned to this contract, submitted on its company letterhead. The STATE reserves the right to request that background security checks be provided for each individual assigned to this contract.

The CONTRACTOR'S vehicles and personnel shall be properly identified via use of company signage/logos, uniforms, name tags or identification cards.

SPECIFICATIONS  
IFB D20-172

**WARRANTY**

The CONTRACTOR shall provide and submit to the STATE, a written warranty for the replacement of any integral part of equipment listed herein, including labor, for a one year period from the date of installation.

## **SPECIAL CONDITIONS**

### **GENERAL INFORMATION**

#### **1. Addenda and Interpretations**

Discrepancies, omissions, or questions related to this solicitation shall be communicated in writing to the STATE, Department of Education, Procurement and Contracts Branch (PCB) via facsimile at (808) 675-0133 or e-mail to [louise.yasuda@k12.hi.us](mailto:louise.yasuda@k12.hi.us) for interpretation and must be received no later than seven (7) calendar days prior to the date fixed for the close of bids.

Interpretation(s) if any and any supplemental instructions will be in the form of written addenda that will be made available to all HlePRO registered Offerors prior to the date fixed for the close of bids. Failure of any Offeror to receive any such addenda or interpretations shall not relieve the Offeror of any obligation under this solicitation. All addenda issued shall be incorporated into the resulting contract.

#### **2. Scope**

Work under this agreement shall consist of Total Maintenance of Fire Protection Equipment at Various Hawaii Department of Education Schools on the Island of Oahu Leeward District and shall be in accordance with these Special Conditions, the attached Specifications, and the General Conditions AG-008 (latest revision).

#### **3. Contract Administrator**

For purposes of this contract, Jeremy Koki, Administrator, OSFSS, Auxiliary Services Branch, or his successor, is designated Contract Administrator (CA). He can be contacted by telephone at 808-586-3452 or via e-mail at [jeremy.koki@k12.hi.us](mailto:jeremy.koki@k12.hi.us).

The CA is responsible for:

- o the terms, conditions, quantities, specifications, scope of services, other contract terms, and all decisions relating to the contract;
- o monitoring the CONTRACTOR's work, documenting that CONTRACTOR maintains the required insurance coverage (if applicable), resolving contract disputes and discrepancies, evaluating the work of the CONTRACTOR, assuring the services or goods are delivered as required in the contract, and processing payment for services rendered; and
- o notifying STATE, Department of Education, PCB in the event of change in scope of work, change in the performance period, increase or decrease in total compensation, and/or changes in any other contract terms.

Notwithstanding the responsibilities set forth hereinabove, any coordination of services falling outside those articulated above shall remain with the head of the purchasing agency, as set forth in the attached General Conditions (see General Conditions, paragraph 1, entitled "Coordination of Services by the STATE").

The CA has designated Benjamin Miura, Engineer, OSFSS, Facilities Maintenance Branch, as Point-of-Contact (POC) for this contract. As such, the POC should be the initial contact on all matters related to this contract. He can be contacted by telephone at 808-831-7952, by fax at 808-831-6750 or by e-mail at [benjamin.miura@k12.hi.us](mailto:benjamin.miura@k12.hi.us).

#### **4. Contract Period**

This contract shall commence on upon full execution of the contract and shall end on July 31, 2021, subject to availability of funds as specified in the General Conditions.

Beyond July 31, 2021, this contract may be extended for not more than four (4) additional twelve (12)-month periods upon mutual written agreement of the parties, prior to expiration. As each option(s) to extend is mutually agreed upon, the CONTRACTOR shall be required to execute a supplement to the contract for each additional period. The contract price for the extended period shall remain the same or lower than the initial contract price, subject to any price adjustment allowed by the contract.

## **OFFEROR INFORMATION**

### **5. Offeror's Authority to Submit an Offer**

The STATE will not participate in determinations regarding a Offeror's authority to perform a service. If there are any questions or doubts regarding an Offeror's right or ability to obtain and sell a product or to render a service, the Offeror should resolve those issues prior to submitting a bid. If the Offeror's offer meets specifications and is acceptable and the bid price submitted is the lowest bid, the contract will be awarded to that Offeror.

### **6. Offeror Qualification**

In addition to meeting legal and any other requirements of this solicitation, Offeror must meet these qualifications to be considered for award.

#### Experience

The Offeror shall have a minimum of five (5) consecutive years of experience (immediately prior to the bid opening date) in the field of maintenance and testing of the specified FPE. If Offeror is owned by a parent company in which the parent company has the required five (5) years of experience, the Offeror shall also qualify for the experience required pending verification. All Offerors must be able to produce documented maintenance and repair experience to substantiate their claim of experience upon request.

#### Contractor's License

Prior to the start of the contract and throughout the contract period, Offeror shall have a valid State of Hawaii Contractor's Specialty License, Subclassification C-20 and C-20a, issued by the Department of Commerce and Consumer Affairs (DCCA) to do fire protection contracting, and shall provide the license number on Exhibit A. The license must be kept in force during the duration of this contract and for any extension(s) that may be agreed upon.

Prior to the start of the contract and throughout the contract period, personnel assigned to service FPE must have current licenses issued by the Fire Prevention Bureau (FPB), Fire Department, County of Honolulu. Offeror shall provide its personnel's' information with their license number on Exhibit A where indicated. The licenses must be kept in force during the duration of this contract and for any extension(s) that may be agreed upon.

#### Office Location

Offeror shall have a permanent office/service facility on the island of Oahu from where business is conducted, and is accessible to telephone calls, complaints or emergency service requests. Office/service facility shall include warehousing of spare parts and materials required for the maintenance and repair of the specified FPE listed and from where personnel are dispatched to perform the work specified in this contract. Office/service facility information shall be furnished on Exhibit A.

#### Personnel

Offeror shall have sufficient personnel and equipment necessary to perform and complete the work specified herein within the time period indicated. Offeror shall designate personnel on Exhibit A. Personnel shall be regular employees of the Offeror at the time of bid submission. This is to insure that there will be adequate personnel to provide the required services.

Failure on the Offeror's part to meet these requirements may result in rejection of offer. These requirements must remain in effect during the entire contract period. Failure to maintain these requirements may result in cancellation of award.

## 7. References

Offeror shall list at least three (3) references in the State of Hawaii for whom Offeror has or is performing maintenance services of FPE on a regular basis on Exhibit A. Services shall be similar in nature and volume to the services specified in this bid in order to qualify Offeror to perform the project.

## 8. Site Inspection

Prior to submittal of a bid, Offeror may inspect the project site to become thoroughly familiar with existing conditions, rules and regulations, and the extent and nature of work to be performed.

Offeror inspection is not mandatory; however, bid submission shall be evidence that the Offeror understands the scope of the project and shall comply with all requirements stated herein, if awarded the contract. Offerors must contact the CA to arrange for an inspection visit. No additional compensation, subsequent to bid opening, shall be allowed by reason of any misunderstanding or error regarding site conditions or work to be performed.

## 9. Responsibility of Offerors

Offeror is advised that if awarded a contract under this solicitation, Offeror must furnish proof of compliance with the requirements of §103D-310(c), HRS as a pre-requisite to receiving a contract:

1. Chapter 237, General Excise Tax Law;
2. Chapter 383, Hawaii Employment Security Law;
3. Chapter 386, Workers' Compensation Law;
4. Chapter 392, Temporary Disability Insurance;
5. Chapter 393, Prepaid Health Care Act; and
6. Chapter 103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

Offeror should refer to the "Contract Execution" provision for further information regarding the above-mentioned requirements.

## **OFFER PREPARATION**

**10. Offer Page OF-1.** Offeror is requested to submit the bid under the company's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, and to indicate exact legal name in the appropriate space on Offer Page OF-1. Failure to do so may delay proper execution of the contract.

The authorized signature on the hard copy Offer Page OF-1 shall be an **original signature in ink**. Ink signatures are not required for electronic submission of a bid on HlePRO. The submission of the bid on HlePRO shall indicate the Offeror's intent to be bound.

**11. Taxable Transaction.** Unless the HRS exempts a person from paying the applicable general excise tax, work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS and Chapter 238, HRS, where applicable. Both out-of-state and Hawaii-based companies are advised that the gross receipts derived from this contract are subject to the general excise tax imposed by Chapter 237, HRS, at the current rate and, where applicable, to tangible property imported into the State of Hawaii for resale, subject to the applicable use tax imposed by Chapter 238, HRS.

Information on Hawaii State Taxes Administered by the Department of Taxation is available online at <http://tax.hawaii.gov>

**12. Tax Exempt Transaction.** If, however, an Offeror is a person exempt by the HRS from paying the general excise tax and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

For evaluation purposes, pursuant to §103D-1008, HRS, a tax-exempt offer submitted in response to a solicitation shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

**13. Bid Price.** Unit Bid Price shall include labor, equipment, materials, transportation, mileage, supervision, overhead, profit, all applicable taxes, and any other incidental and operational expenses incurred in the performance of all obligations hereunder. Bid price shall be the all-inclusive cost to the STATE and no other charges will be honored. In case of error in extension of bid price, unit bid price shall govern.

**14. Offeror Information.** Offeror shall provide information regarding its office location and STATE's point-of-contact on Exhibit A.

**15. License.** License number(s) shall be provided on Exhibit A. Offeror shall provide a copy of the license to the STATE within three (3) business days upon STATE's request.

**16. Wage Certificate.** Offeror shall complete and submit a *Wage Certificate* by which the Offeror certifies that services required will be performed pursuant to §103-55, HRS. Accordingly, Offeror should consider the public sector wage rates and/or benefits when preparing this bid, **as applicable**.

Although **Item 1** of the *Wage Certificate* may not be applicable to this solicitation if there are no STATE or public sector employees performing work similar to the requirements herein or if services are not performed by laborers and mechanics, **Item 2** of the certificate is applicable in all situations. Offeror is therefore advised that submission of the *Wage Certificate* is required.

Offeror shall refer to the *Wage Certificate* clause for additional information regarding this requirement.

**17. Liability Insurance.** Work included under this agreement requires the provision of liability and property damage insurance, to remain in full force and effect during the life of this contract. Offeror shall refer to *Liability Insurance* clause for additional information regarding this requirement.

Accordingly, Offeror should consider these insurance requirements when preparing their offer.

**18. Offer Guaranty.** An offer guaranty (bid bond) is not required for this IFB.

## **OFFER SUBMITTAL**

### **19. Submission of Offer**

**Offers will be received through the State of Hawaii eProcurement System (HlePRO) Public Procurement Notices Website at <https://hiepro.ehawaii.gov/welcome.html> no later than the date and time stated on the HlePRO.**

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

Before submitting a bid, each Offeror must:

1. examine the solicitation documents thoroughly for defects and questionable or objectionable material. Solicitation documents include this IFB, any attachments, plans referred to herein, and any other relevant documentation. Comments must be submitted in writing and received by the STATE, Department of Education, PCB no later than seven (7) calendar days prior to the date fixed for the close of bids. This will allow for issuance of addenda, if necessary.



2. become familiar with State, local, and federal laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work.

All bids shall be made through the HlePRO (<https://hiepro.ehawaii.gov/welcome.html>) on the solicitation document(s) available on the HlePRO. Offers shall be completed in accordance with the solicitation instructions, and addenda, if any.

The Specifications, Special Conditions, General Conditions and other documents referenced in or attached to the offer shall be considered a part of the offer submitted, whether or not attached to the offer at the time of submission. Such documents shall not be altered in any way; any alterations so made by the Offeror may result in rejection of the offer.

Offers will be received only until the hour and date set for the close of bids. Unless otherwise stated, Offeror shall submit only one (1) offer. If more than one offer is submitted, all offers shall be rejected for that item.

Hard copies of ALL ORIGINAL OFFER PAGES AND ANY OTHER APPLICABLE DOCUMENTS AS STATED IN THE SOLICITATION must also be received by the Hawaii State Department of Education, Procurement and Contracts Branch, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797, within five (5) working days after the bid closing date.

## **20. Confidential Information**

If an Offeror believes that any portion of his proposal contains information that should be withheld as confidential, then the STATE, Department of Education, PCB should be so advised in writing.

Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Such data shall accompany the bid, be clearly marked, and shall be readily separable from the bid in order to facilitate eventual public inspection of the non-confidential portion of the bid.

Pursuant to Section 3-122-58, Hawaii Administrative Rules (HAR), the head of the purchasing agency or designee shall consult with the Attorney General and make a written determination in accordance with Chapter 92F, Hawaii Revised Statutes (HRS). If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with Section 92F-42(12), HRS.

## **21. Certification of Independent Cost Determination**

By submitting a bid in response to this solicitation, Offeror certifies as follows:

1. The costs in this IFB have been arrived at independently, without consultation, communication, or agreement with any other Offeror, as to any matter relating to such costs for the purpose of restricting competition.
2. Unless otherwise required by law, the costs which have been quoted in this IFB have not been knowingly disclosed by the Offeror prior to award, directly or indirectly, to any other Offeror or competitor prior to the award of the contract.
3. No other attempt has been made or will be made by the Offeror to indicate any other person or firm to submit or not to submit for the purpose of restricting competition.

## **22. Acceptance of Offer**

Acceptance of bid, if any, will be made within sixty (60) calendar days after the close of bids and the prices quoted by the Offeror shall remain firm for the sixty day period.

## **OFFER EVALUATION**

### **23. Disqualification of Offers**

Any one (1) or more of the following causes will be considered as sufficient for disqualification of the offer:

- a) Hard copy offer not signed by an authorized individual.
- b) More than one (1) offer from an individual, firm, corporation or joint venture under the same or different names.
- c) Evidence of collusion among Offerors or prices obviously unbalanced, lack of responsibility and cooperation as shown by past work, being in arrears on existing contracts with the State of Hawaii, or defaulting on previous contract(s).
- d) Lack of proper equipment and/or sufficient experience to perform the work contemplated.
- e) Offer received after specified deadline for close of offers.
- f) Evidence of any noncompliance with any applicable law, any unauthorized additions or deletions, of submission of conditional offer, incomplete offer, or irregularities of any kind which may make the offer incomplete, indefinite, or ambiguous as to its meaning.

### **24. Method of Award**

Award, if made, shall be to the responsive, responsible Offeror submitting the lowest estimated Total Sum Bid. However, if the Total Sum Bid of the qualified low offer exceeds allotted funds, the STATE shall have the option to shorten the contract period or delete location(s) to allow award to be made within the allotted funds. Offeror must bid on all items to qualify for award.

For purposes of this bid, "Emergency Service and Authorized Extra Work and Repairs and Trouble Calls", and "Additional Work and Equipment", the STATE will issue a purchase order for this work on an "as-needed-basis".

### **25. Protest**

Pursuant to §103D-701, HRS and §3-126, HAR, "Legal and Contractual Remedies", an actual or prospective offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. Any protest shall be submitted in writing to the Hawaii State Department of Education's Chief Procurement Officer, c/o the Procurement Office at the Waipahu Civic Center, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797.

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract.

The notice of award(s) if any, resulting from this solicitation shall be posted on the HlePRO and shall be posted on the Hawaii Awards and Notices Data System (HANDS) website at <https://hands.ehawaii.gov/hands/awards>.

## **CONTRACT EXECUTION**

### **26. Contract Award**

CONTRACTOR receiving award(s) of \$25,000 or more shall be required to enter into a formal written contract. Performance bonds are not required for this IFB. Upon execution of contract, the STATE, Department of Education will issue a fully executed copy to the CONTRACTOR. No work will be undertaken by the CONTRACTOR prior to the commencement date specified on the contract. The STATE is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the CONTRACTOR prior to official starting date.

## **27. Responsibility of Contractor**

CONTRACTOR shall furnish proof of compliance with these requirements of §3-122-112, HAR:

1. Chapter 237, General Excise Tax Law;
2. Chapter 383, Hawaii Employment Security Law;
3. Chapter 386, Workers' Compensation Law;
4. Chapter 392, Temporary Disability Insurance;
5. Chapter 393, Prepaid Health Care Act; and
6. One of the following:
  1. Be registered and incorporated or organized under the laws of the State of Hawaii (hereinafter referred to as a "Hawaii business"); or
  2. Be registered to do business in the State of Hawaii (hereinafter referred to as a "compliant non-Hawaii business").

The CONTRACTOR may demonstrate compliance by submitting an original consolidated CERTIFICATE OF VENDOR COMPLIANCE as issued by the State Procurement Office via the online system, "Hawaii Compliance Express." Detailed information about the system and regarding this online application process can be viewed at: <http://vendors.ehawaii.gov>

## **28. Hawaii Compliance Express**

A *Certificate of Vendor Compliance* may be obtained through the Hawaii Compliance Express (HCE). This service allows CONTRACTORS to register online through a simple wizard interface at <http://vendors.ehawaii.gov>. The *Certificate of Vendor Compliance* provides current compliance status as of the issuance date, satisfies requirements of Chapter 103D-310(c), HRS, and is therefore acceptable for contracting purposes. CONTRACTORS that elect to use HCE services are required to pay an annual fee of (at least) twelve dollars (\$12.00) to the Hawaii Information Consortium, LLC (HIC).

## **29. Timely Submission of All Certificates**

The above certificates should be applied for and submitted to the STATE, Department of Education, PCB as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

## **30. Failure to Execute Contract**

Normally, award shall be made within sixty (60) calendar days after the close of bids but in no case will award be made until all necessary investigations are made. After award is made, failure on the CONTRACTOR's part to execute a contract as required within ten (10) calendar days (or such further time as the Superintendent may allow) after the Offeror has received the contract for execution shall be just cause for the annulment of the award. The Superintendent reserves the right to cancel or reject this solicitation or all offers in whole or in part when it is in the best interest of the STATE or to award the contract to the next lowest Offeror or may publish another call for tenders, if the lowest bid is non-responsive to the STATE's needs.

## **31. Availability of Funds**

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

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

## **32. Wage Certificate**

Section 103-55, HRS, provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. CONTRACTOR is advised that in the event of an increase in wage rates to public employees performing similar work during the contract period, employees shall be paid wages no less than those increased wages.

CONTRACTOR is obliged to notify its employees performing work under this contract of the provisions of Section 103-55, HRS, and of the current wage rate for public employees performing similar work. CONTRACTOR may meet this obligation by posting a notice to this effect in the CONTRACTOR's place of business in an area accessible to all employees, or CONTRACTOR may include such notice with each paycheck or pay envelope furnished to the employee.

For more information on the Class Specifications and Minimum Qualifications, please visit the State of Hawaii Department of Human Resources Development at the following website: <http://dhrd.hawaii.gov/>.

The STATE reserves the right to inspect the CONTRACTOR's wage records to ensure compliance with Section 103-55, HRS.

### **32.1 Services Performed by Laborers and Mechanics.**

1. The CONTRACTOR or the CONTRACTOR's subcontractor shall give a copy of the rates of wages to each laborer and mechanic employed by the CONTRACTOR at the time each laborer and mechanic is employed; provided that the CONTRACTOR does not have to provide the CONTRACTOR's employees the wage rate schedules where there is a collective bargaining agreement.
2. The STATE may withhold from the CONTRACTOR so much of the accrued payments as the STATE may consider necessary to pay the laborers and mechanics employed by the CONTRACTOR or any subcontractor on the job site the difference between the required wages and the wages received and not refunded by the laborers and mechanics.
3. A certified copy of all payrolls shall be submitted weekly to the STATE for review. The CONTRACTOR shall be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, the wage rates contained therein are not less than the applicable rates, and the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed. Any certification discrepancy found by the STATE shall be reported to the CONTRACTOR and the Superintendent to effect compliance.

Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the CONTRACTOR and the CONTRACTOR's subcontractors, if any, during the course of the work and preserved for a period of three (3) years thereafter. The records shall contain the name of each employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. The CONTRACTOR shall make payroll records available for

examination within ten (10) days from the date of a written request by the STATE or any authorized representatives thereof.

### 33. Liability Insurance

The CONTRACTOR shall maintain in full force and effect, during the life of this contract, liability and property damage insurance. This insurance shall protect the CONTRACTOR and his subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by himself or by a subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the contract, the insurance policy or policies shall name the subcontractor as additional insured.

As an alternative to the CONTRACTOR providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, CONTRACTOR may require subcontractor to provide its own insurance which meets the requirements herein. It is understood that a subcontractor's insurance policy(ies) are in addition to the CONTRACTOR's own policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the CONTRACTOR, including its subcontractor(s) where appropriate:

- Commercial General Liability: (Occurrence Form) \$2,000,000 aggregate  
\$1,000,000 combined single limit per occurrence  
for bodily injury and property damage.
- Workers' Compensation: The CONTRACTOR shall maintain workers' compensation and employer's liability insurance that comply with statutory limits.
- Automobile Liability: (Combined Single Limit) \$1,000,000 per accident

General liability and automobile liability policies required by this contract, including a subcontractor's policy, shall contain the following clause:

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

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements. Each insurance policy shall be written by 1) an insurance company licensed to do business in the State of Hawaii, or 2) if not licensed by the State of Hawaii, an insurance company which meets §431:8-301, Hawaii Revised Statutes.

Upon CONTRACTOR's execution of the contract, the CONTRACTOR agrees to deposit with the STATE certificate(s) of insurance necessary to satisfy the STATE that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the STATE during the entire term of this contract, including those of its subcontractor(s), where appropriate. Upon request by the STATE, CONTRACTOR shall be responsible for furnishing a copy of the policy(ies).

Failure of the CONTRACTOR to provide and keep in force such insurance shall be regarded as material default under this contract, entitling the STATE to exercise any or all of the remedies provided herein.

The procuring of such required insurance shall not be construed to limit CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy(ies) of insurance, CONTRACTOR shall be obligated for the full and total amount of any damage, injury, or loss caused by the CONTRACTOR, its employees, officers, or agents, in connection with this Contract.

CONTRACTOR shall notify the STATE, via written notice within twenty-four (24) hours should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

### **CONTRACT PRICE ADJUSTMENTS**

**All requests for contract price adjustments shall be in writing and shall be addressed and submitted to the Contract Administrator in accordance with the following conditions:**

#### **34. Adjustment Pursuant to Section 103-55, HRS – Wage Rates**

At the time of contract award, only the current wages of STATE employees performing similar work were known. Should these wages increase during any period of the contract including supplements, the CONTRACTOR may request an increase in contract price. The increase requested must result in increase in wages to the CONTRACTOR'S employees performing the work under this agreement, including any increase in benefits required by law that are automatically increased as a result of increased wages, such as federal old age benefits, workers' compensation, temporary disability insurance, unemployment insurance, and prepaid public health insurance.

CONTRACTOR'S request for increase must meet the following criteria:

1. At the time of request, CONTRACTOR shall provide documentation to show that he/she is in compliance with §103-55, HRS, i.e., the employees are being paid no less than the known wages of the STATE position listed herein. Documentation shall include the employees' payroll records and a statement that the employees' services are being engaged for this contract.
2. At the time of bidding, the CONTRACTOR must have specified on the Exhibit A, the percentage of the bid price that represents labor costs. If the CONTRACTOR fails to specify the percentage, the CONTRACTOR'S request for increase will not be considered.
3. Request for increase must be made in writing to the STATE on a timely basis.
  - a. Request for increase for the initial contract period must be made as soon as practicable after the STATE wage agreements are made public. Approval request will be retroactive to the date of increase for STATE employees.
  - b. Request for increase for a supplemental period of the contract must be made prior to the start of the supplement. CONTRACTOR should call the Purchasing Specialist named on the cover of this IFB to obtain the current wage information.

If the CONTRACTOR meets the above criteria in its request for contract price increase, the following formula shall be used to calculate the increase:

$$I = (A \times X) (B)$$

Where, I = increase in unit offer price

A = unit offer price

X = percentage of unit offer price representing labor costs

B = percentage increase in wages of public employees

In order to be considered for price adjustment, Offeror must indicate on the appropriate offer page the percentage of the unit price offer that represents labor. The percentage will not change during the term of the contract, including the extension period, and will be used to calculate the increase in price allowed herein.

The increase shall be reflected in either a contract modification or in the supplemental agreement issued for any extended period of the initial contract.

### **35. Workmanship**

All work shall be executed in a professional manner and shall present a neat appearance when completed. All work shall be subject to inspection and approval of the CA or POC; all services rendered shall be in accordance with these specifications and provisions. CONTRACTOR shall leave premises in neat and sanitary condition by hosing off or removing any sludge or spillage discharged on the premises. Excessive emergency calls may be used as criteria in determining the CONTRACTOR's quality and performance of the scheduled cleanings. A record of all emergency calls will be kept at the STATE, OFO-Facilities Maintenance Branch.

### **36. New Locations**

The STATE reserves the right to add or delete whole schools to the contract and will make adjustments by contract modifications. The STATE also reserves the right to add or delete individual FPE to this contract. NOTE: The CONTRACTOR shall not refuse to accept the additional equipment. Any increase or decrease in contract price for additional or deleted units shall be based on the unit bid price on the appropriate offer page and shall become binding only upon issuance of a contract modification by the STATE.

## **PERFORMANCE OF CONTRACT**

### **37. Authority of the STATE, Department of Education**

The STATE, Department of Education shall decide all questions which may arise as to the work performed, as to the manner of such performance, as to the interpretation of any term, condition or provision, as to the applicability and interpretation of any law, rule or regulation, policies and procedures, as to compensation, or additional reason to service, and as to any other matter which may arise under the contract. The decision of the STATE, Department of Education in such matters shall be final provided that decision is not in violation of law and not arbitrary, capricious or characterized by abuse of discretion.

### **38. Relief Available to STATE**

In addition to all rights and remedies available to the STATE provided in this Contract or otherwise provided under law, if the CONTRACTOR is in non-compliance with contract requirements, the STATE may:

1. Suspend Payments – Temporarily withhold or disallow all or part of the billing cost/payments pending correction of a deficiency or a non-submission of a required deliverable by the CONTRACTOR;
2. Suspend Referrals – Suspend referrals to the CONTRACTOR should the CONTRACTOR fail to comply with any of the requirements or other term(s) or condition(s) of this Contract and, further, the STATE may maintain the suspension of referrals until such time as the deficiency or non-compliance is corrected and the CONTRACTOR's corrective actions are determined to be acceptable by the STATE; and
3. Seek Reimbursement – Seek reimbursement from the CONTRACTOR or withhold future payments for any funds paid to the CONTRACTOR subsequent to a determination that such was unauthorized, fraudulently obtained, or inappropriately billed.
4. Seek Market Value – In the event the CONTRACTOR fails, refuses or neglects to perform the services in accordance with the requirements of these Special Conditions, the Scope of Services

or the General Conditions, the STATE reserves the right to purchase, in the open market, a corresponding quantity of the services specified herein and to deduct from any monies due or that may thereafter become due to the CONTRACTOR, the difference between the price named in the contract and the actual cost to the STATE. In case any money due the CONTRACTOR is insufficient for said purpose, the CONTRACTOR shall pay the difference upon demand from the STATE. The STATE may also utilize all other remedies provided by law.

### **39. Confidentiality Obligations**

In the course of performing under this agreement, the CONTRACTOR will receive, be exposed to or acquire confidential information, which may include but not be limited to, names, addresses, telephone numbers, birthdates, social security numbers, medical information, and other employment information, written or oral, fixed in hard copy or contained in any computer data base or computer readable form (hereinafter referred to as "Confidential Information"). The CONTRACTOR, including its employees, agents, representatives, and assigns (i) shall not disclose to any third party any Confidential Information, except as specifically permitted by the STATE, (ii) shall only permit use of such Confidential Information by employees, agents, representatives, and assigns having a need to know in connection with performance under this agreement, and (iii) shall advise each of their employees, agents, representatives, and assigns of their obligations to keep such Confidential Information confidential in compliance with all relevant state and federal laws.

CONTRACTOR, its employees, agents, representatives, or assigns shall ensure the security of the Confidential Information. The CONTRACTOR shall provide the STATE with a list of individuals (by name and position) (hereinafter referred to as "Authorized Handlers") who are authorized to handle the Confidential Information. Authorized Handlers shall ensure the security of the Confidential Information. Only Authorized Handlers shall have access to the Confidential Information, which will be kept on password protected computers with the hard copy documents kept in a locked file cabinet. CONTRACTOR shall ensure that procedures exist to prohibit access to the Confidential Information by anyone other than an Authorized Handler.

CONTRACTOR may not share data received under this agreement with any other entity without the prior written approval of the STATE.

CONTRACTOR will be responsible for safeguarding the confidentiality of all personal records it receives from the STATE and shall safeguard and protect such documents from unauthorized use, handling, or viewing. CONTRACTOR shall be liable to the STATE and the employee of the STATE, Department of Education whose records the CONTRACTOR receives custody of under this Contract for records protection for any unpermitted release, viewing, or loss of such records. CONTRACTOR shall assume liability responsibility for records protection and for the inappropriate or unlawful release of Confidential Information. CONTRACTOR shall return all documents containing Confidential Information upon completion of the services CONTRACTOR is contracted to provide under this agreement.

### **40. Exclusion of Specific Workers**

The STATE reserves the right to require the CONTRACTOR to remove an employee, agent, subcontractor or volunteer (Worker) from performing work under this contract. The Contract Administrator shall notify the CONTRACTOR in writing and this exclusion of a specific Worker(s) shall take effect as indicated on the notice. The CONTRACTOR may appeal this decision to the Contract Administrator, in writing within ten (10) working days of receipt of the notice. Removal of the employee, agent, subcontractor or volunteer shall remain in effect pending the outcome of the appeal. This provision shall not infringe upon the right of the CONTRACTOR to employ the removed individual, but shall apply to any work requiring interaction with the STATE, its employees or students.



## **PAYMENT**

### **41. Invoicing**

CONTRACTOR shall submit original invoice, including the Project Name, School, contract number and the service period (Month/Year) to the following address:

Department of Education  
Office of School Facilities and Student Support Services  
Facilities Maintenance Branch  
3633 Waiialae Avenue  
Honolulu, Hawaii 96816  
Attention: Benjamin Miura

Invoices shall include the solicitation name and number, the contract number, an itemized listing of schools, service dates, and number and type of FPE units serviced. Maintenance reports for each school listed on the invoice, together with a copy of the specified Monthly Fire Extinguisher Inspection form (Exhibit B), shall be attached to the invoice.

Payment shall be made based on the actual number of FPE items inspected, maintained, cleaned and/or tested at the prices bid herein, upon certification by the CA that the CONTRACTOR has satisfactorily performed the required services for that period.

Invoices billed from a mainland affiliate must be sent to the CONTRACTOR'S local office for inclusion of the appropriate supporting documentation, before being submitted to the STATE. Incomplete invoices will be returned to the CONTRACTOR without processing.

The CONTRACTOR shall include with the invoice, all service reports for each unit serviced (fully completed with original signatures of the maintenance mechanic and a school representative), material and subcontractor invoices, and/or labor time sheets to substantiate parts and service charges to the STATE. Invoice payments may be delayed or rejected because of missing or incomplete paperwork. Services which cannot be certified by a representative of the school may not be compensated.

### **42. Payment**

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

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

The **final payment** on the contract shall be for services rendered during the billing period just prior to the contract anniversary date.

The following shall accompany the final payment invoice:

- A valid (not over 2 months old) and **original Tax Clearance Certificate (TCC)** must accompany the final payment invoice. In accordance with Section 103-53, HRS, all CONTRACTORS must provide a TCC from the State of Hawaii Department of Taxation and the U.S. Internal Revenue Service as a prerequisite to receipt of final payment.
- The *Certification of Compliance for Final Payment* (DOE Form-22) with an original signature of an authorized representative of the CONTRACTOR.

- In lieu of the above, CONTRACTOR may submit an original *Certificate of Vendor Compliance* as issued by the State Procurement Office via an online system, also referred to as “Hawaii Compliance Express”. Details regarding this online application process can be viewed at: <http://vendors.ehawaii.gov/hce/>.

## **APPROVALS**

### **43. State’s General Conditions**

The Special Conditions shall serve to supplement the General Conditions; both documents remain part of the contract with full force and effect. In the case of a conflict between the General Conditions and Special Conditions, the Special Conditions shall control to the extent necessary to resolve the conflict.

### **44. Approvals**

Any agreement arising out of this offer may be subject to the approval of the Department of the Attorney General as to form, and is subject to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive.

**EXHIBIT A**

**Offer shall provide the following information:**

**A.** CONTRACTOR'S State of Hawaii Specialty License, Subclassification C-20 and C-20a No.: \_\_\_\_\_

**B.** Number of consecutive years of experience

Maintaining Fire Protection Equipment (FPE): \_\_\_\_\_

**C.** Offeror's Office/Service Facility (Refer to Special Conditions, Offeror Qualifications):

Island of Oahu-Based Address: \_\_\_\_\_

Contact Person Name: \_\_\_\_\_

Telephone & Cell Phone Nos.: \_\_\_\_\_ Facsimile No.: \_\_\_\_\_

**D.** Percentage of Unit Bid Price that represents Labor: \_\_\_\_\_

**E.** List of CONTRACTOR'S personnel licensed by the City & County, Fire Department, Fire Prevention Bureau (FPB) (at the time of bid submittal), or who will be assigned to this contract to perform the specified FPE work (see Special Conditions, Offeror Qualifications):

**LEEWARD DISTRICT SCHOOLS:**

Name of Licensed Individual: \_\_\_\_\_ C&C-HFD-FPB License No.: \_\_\_\_\_

Years of Experience: \_\_\_\_\_ No. of Years with Current Company: \_\_\_\_\_

Name of Licensed Individual: \_\_\_\_\_ C&C-HFD-FPB License No.: \_\_\_\_\_

Years of Experience: \_\_\_\_\_ No. of Years with Current Company: \_\_\_\_\_

Name of Licensed Individual: \_\_\_\_\_ C&C-HFD-FPB License No.: \_\_\_\_\_

Years of Experience: \_\_\_\_\_ No. of Years with Current Company: \_\_\_\_\_

F. List of previous Contracts and/or References. Offeror shall list at least three (3) references in the State of Hawaii for whom Offeror has or is performing maintenance services of FPE on a regular basis. Services shall be similar in nature and volume to the services specified in this bid in order to qualify Offeror to perform the project.

Name of Firm Address Contract Name Date (From-To) Contact Person Telephone

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

**EXHIBIT B**

**MONTHLY FIRE EXTINGUISHER INSPECTION REPORT**

**LEEWARD SCHOOL DISTRICT**

| YR            |                |             |            |            |              |             | 5YR        | 6 YR       | 12         |
|---------------|----------------|-------------|------------|------------|--------------|-------------|------------|------------|------------|
| HYDRO         | SERVICE        | SERIAL      | MODEL      | SIGN       | MNFG         | HYDRO       | MAINT      |            |            |
| <u>SCHOOL</u> | <u>BLDG</u>    | <u>DATE</u> | <u>NO.</u> | <u>NO.</u> | <u>(Y/N)</u> | <u>DATE</u> | <u>DUE</u> | <u>DUE</u> | <u>DUE</u> |
|               | <u>REMARKS</u> |             |            |            |              |             |            |            |            |
| AIEA<br>ELEM. | A-101          | AUG 00      | 461810     | 3A40BC     | Y            | 94          |            | 06         |            |
|               | B-105          | JUL 93      | 702311     | 2A10BC     | Y            | 02          | 08         |            |            |

Remarks:

1. Report any discrepancies found and corrected. Also, report if 6-yr maintenance or hydrostatic test was done.
  2. This report shall be filled out monthly for all schools serviced. Reports shall be submitted to HIDEOE-POC together with monthly invoice. No payment will be processed without a Service Report.
- Prepare a schedule of schools to be serviced per month. Provide copy to HIDEOE-POC prior to start of contract.

EXHIBIT C  
Leeward District Inventory List

| Location               | Fire Extinguishers | Fire Hose Cabinets | Standpipe Systems (SPS) | Fire Sprinkler Systems (Including Preaction) | Kitchen Hood Suppression Systems |
|------------------------|--------------------|--------------------|-------------------------|--|----------------------------------|
| August Ahrens          | 93                 | 1                  |                         |  |                                  |
| Barbers Point ES       | 26                 |                    |                         |  |                                  |
| Campbell HS            | 173                | 7                  | 2                       | 2  | 1                                |
| Kapolei Alt Center     | 7                  |                    |                         |  |                                  |
| Ewa Beach ES           | 48                 | 4                  | 1                       |  | 1                                |
| Ewa ES                 | 76                 |                    |                         |  |                                  |
| Ewa Makai Middle       | 89                 |                    |                         | 5  | 2                                |
| Highlands Int          | 65                 |                    |                         |  |                                  |
| Holomua ES             | 91                 |                    |                         | 2  | 1                                |
| Honowai ES             | 58                 |                    |                         |  |                                  |
| Hookele ES             | 25                 |                    |                         | 1  | 1                                |
| Ilima Int              | 76                 | 1                  | 1                       |  |                                  |
| Iroquois Point ES      | 53                 |                    |                         |  |                                  |
| Kaimiloa ES            | 45                 |                    |                         |  |                                  |
| Kaleiopuu ES           | 65                 |                    |                         |  |                                  |
| Kamaile ES             | 63                 |                    |                         |  | 1                                |
| Kanoelani ES           | 53                 |                    |                         |  |                                  |
| Kapolei ES             | 67                 |                    |                         |  | 1                                |
| Kapolei HS             | 180                |                    |                         | 18   | 9                                |
| Kapolei Middle         | 102                |                    |                         | 6  | 1                                |
| Keoneula ES            | 71                 |                    |                         | 1  | 1                                |
| Leeward Baseyard       | 14                 |                    |                         | 1  |                                  |
| Leeward Dist Office    | 6                  |                    |                         |  |                                  |
| Lehua ES               | 19                 | 2                  | 1                       |  |                                  |
| Leihoku ES             | 57                 |                    |                         | 5  |                                  |
| Maile ES               | 45                 | 2                  | 2                       |  |                                  |
| Makaha ES              | 59                 |                    |                         |  |                                  |
| Makakilo ES            | 45                 |                    |                         |  |                                  |
| Manana ES              | 26                 |                    |                         |  |                                  |
| Mauka Lani ES          | 50                 |                    |                         | 1  |                                  |
| Momilani ES            | 18                 |                    |                         |  |                                  |
| Nanaikapono ES         | 90                 |                    |                         |  | 1                                |
| Nankuli ES             | 47                 |                    |                         |  |                                  |
| Nanakuli HS and Int    | 116                | 4                  | 6                       | 3  | 1                                |
| Palisades ES           | 21                 | 2                  |                         |  |                                  |
| Pearl City ES          | 32                 |                    |                         |  |                                  |
| Pearl City HS          | 156                | 35                 | 5                       | 4  | 1                                |
| Pearl City Highland ES | 30                 |                    |                         |  |                                  |
| Pohaku ES              | 33                 |                    |                         |  |                                  |
| Waianae ES             | 61                 | 1                  | 1                       |  |                                  |
| Waianae HS             | 190                | 5                  | 1                       | 3  | 4                                |
| Waianae Int            | 72                 | 3                  | 1                       |  |                                  |
| Waiau ES               | 35                 |                    | 2                       |  |                                  |
| Waikele ES             | 36                 |                    |                         |  | 2                                |
| Waipahu ES             | 92                 | 2                  |                         | 6  |                                  |
| Waipahu HS             | 202                | 9                  | 2                       | 3  | 2                                |
| Waipahu Int.           | 103                |                    |                         | 1  | 1                                |
| <b>TOTAL:</b>          | <b>3181</b>        | <b>78</b>          | <b>25</b>               | <b>62</b>                                    | <b>31</b>                        |

# GENERAL CONDITIONS

## Table of Contents

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

## GENERAL CONDITIONS

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



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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

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

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

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

### 13. Termination for Default.

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

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

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

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

#### 14. Termination for Convenience.

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

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

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

- d. Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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



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

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

21. Price Adjustment.

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

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

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

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

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

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

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

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

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

31. Records Retention.

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

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

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

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

d. Termination for Cause. In addition to any other remedies provided 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.

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

e. Records Retention.

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