

STATE OF HAWAII
DEPARTMENT OF EDUCATION
PROCUREMENT AND CONTRACTS BRANCH

SEPTEMBER 17, 2020

INVITATION FOR BIDS

NO. IFB D21-019

SEALED BIDS

TO

**PROVIDE MAINTENANCE SERVICES FOR GREASE TRAPS
AT VARIOUS SCHOOLS OF THE HAWAII DEPARTMENT OF EDUCATION
ON THE ISLANDS OF MAUI, MOLOKAI AND LANAI**

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

on

OCTOBER 5, 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.

**PROVIDE MAINTENANCE SERVICES OF GREASE TRAPS AT VARIOUS
SCHOOLS OF THE DEPARTMENT OF EDUCATION ON THE ISLANDS OF MAUI, MOLOKAI AND LANAI
IFB D21-019**

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, Form AG-008 Rev. 4/15/2009, 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: 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): _____

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 for maintenance services of Grease Traps in various Maui District Schools:

Item No.	Name of School	Bldg.	Size of Grease Trap	(A) Est. No. of Services Per Year	(B) Unit Bid Price Per Trap	(C) Total Cost Per Year (AxB=C)
MAUI DISTRICT						
1	Baldwin High	G	1500	3	\$ -	\$ -
2	Baldwin High	F	500	1	\$ -	\$ -
3	Haiku Elem.	B	1000	3	\$ -	\$ -
4	Hana High	A	1500	3	\$ -	\$ -
5	Iao Inter	J	1500	3	\$ -	\$ -
6	Kahului Elem	K	1500	3	\$ -	\$ -
7	Kamalii Elem	C	1500	3	\$ -	\$ -
8	Kalama Inter	B	40	9	\$ -	\$ -
9	King Kamehameha III Elem	H	1500	3	\$ -	\$ -
10	King Kekaulike High	C	1500	3	\$ -	\$ -
11	Kihei Elem	J	1500	3	\$ -	\$ -
12	Kula Elem	D	750	4	\$ -	\$ -
13	Lahaina Inter	G	1500	3	\$ -	\$ -
14	Lahainalua High	H	1500	3	\$ -	\$ -
15	Lihikai Elem	B	1500	3	\$ -	\$ -
16	Lokelani Inter		1500	3	\$ -	\$ -
17	Makawao Elem	A	2500	2	\$ -	\$ -
18	Maui High	D	1500	3	\$ -	\$ -
19	Maui Waena Inter	K	1500	3	\$ -	\$ -
20	Princess Nahienaena Elem		300	9	\$ -	\$ -
21	Pomaikai Elem	C	1500	3	\$ -	\$ -
22	Pukalani Elem	C	25	9	\$ -	\$ -
23	Pu'u Kukui Elem	C	1000	3	\$ -	\$ -
24	Waihee Elem	F	2500	2	\$ -	\$ -

The following offer is hereby submitted for maintenance services of Grease Traps in various Maui District Schools:

Item No.	Name of School	Bldg.	Size of Grease Trap	(A) Est. No. of Services Per Year	(B) Unit Bid Price Per Trap	(C) Total Cost Per Year (AxB=C)
25	Wailuku Elem	F	1500	3	\$ -	\$ -
26	Kaunakakai Elem	G	1500	3	\$ -	\$ -
27	Kilohana Elem	A	750	4	\$ -	\$ -
28	Kualapuu Elem	A	2500	2	\$ -	\$ -
29	Maunaloa Elem	A	500	1	\$ -	\$ -
30	Molokai High	F	750	4	\$ -	\$ -
31	Lanai High & Elem	Q	1500	3	\$ -	\$ -
TOTAL SUM BID (Items 1-31):						\$ -

The following offer is hereby submitted for maintenance services of Grease Traps in various Maui District Schools:

ISLAND OF MAUI Pumping Cost per Trap Size:				ISLAND OF MAUI Emergency/Trouble Call Services	
Item No.	Grease Trap Size		Price (\$) per Trap**	Grease Trap Size	Price (\$) per Trap
a	15	Gallon	\$ -	15 - 60 gal	\$ -
b	25	Gallon	\$ -	61 - 200 gal	\$ -
c	30	Gallon	\$ -	201 - 500 gal	\$ -
d	40	Gallon	\$ -	501 - 750 gal	\$ -
e	50	Gallon	\$ -	751 - 1,000 gal	\$ -
f	60	Gallon	\$ -	1,001 - 1,500 gal	\$ -
g	190	Gallon	\$ -	1,501 - 2,000 gal	\$ -
h	200	Gallon	\$ -	2,001 - 2,500 gal	\$ -
i	320	Gallon	\$ -	2,501 - 3,000 gal	\$ -
j	500	Gallon	\$ -	3,001 - 4,000 gal	\$ -
k	750	Gallon	\$ -		
l	1,000	Gallon	\$ -		
m	1,200	Gallon	\$ -		
n	1,250	Gallon	\$ -		
o	1,500	Gallon	\$ -		
p	2,000	Gallon	\$ -		
q	2,500	Gallon	\$ -		
r	3,000	Gallon	\$ -		
s	4,000	Gallon	\$ -		

** Unit price should be the same as the individual school unit bid price per trap.

The following offer is hereby submitted for maintenance services of Grease Traps in various Maui District Schools:

ISLAND OF MOLOKAI Pumping Cost per Trap Size:				ISLAND OF MOLOKAI Emergency/Trouble Call Services	
Item No.	Grease Trap Size		Price (\$) per Trap**	Grease Trap Size	Price (\$) per Trap
k	750	Gallon	\$ -	501 - 750 gal	\$ -
l	1,000	Gallon	\$ -	751 - 1,000 gal	\$ -
m	1,200	Gallon	\$ -	1,001 - 1,500 gal	\$ -
n	1,250	Gallon	\$ -	1,501 - 2,000 gal	\$ -
o	1,500	Gallon	\$ -	2,001 - 2,500 gal	\$ -
p	2,000	Gallon	\$ -		
q	2,500	Gallon	\$ -		

** Unit price should be the same as the individual school unit bid price per trap.

ISLAND OF LANAI Pumping Cost per Trap Size:				ISLAND OF LANAI Emergency/Trouble Call Services	
Item No.	Grease Trap Size		Price (\$) per Trap**	Grease Trap Size	Price (\$) per Trap
a	1,500	Gallon	\$ -	1,001 - 1,500 gal	\$ -

** Unit price should be the same as the individual school unit bid price per trap.

Offeror shall provide the following information:

- A. Percentage of bid price per gallon that represents City and County of Maui tipping/disposal fee _____ %

WAGE CERTIFICATE

Subject: IFB/RFP No. IFB D21-019

Description of Project: Provide Maintenance Services of Grease Traps at Various Schools of the Department of Education on the Islands of Maui, Molokai and Lanai

Pursuant to §103-55, HRS, I hereby certify that, if awarded a contract in excess of \$5,000.00, 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

1. SCOPE OF SERVICE

The CONTRACTOR will provide grease trap maintenance service for the school facilities listed on the attached Exhibit B, "Schedule of Grease Trap Equipment", services performed will include all necessary labor, equipment, cleaning supplies and materials to satisfactorily collect and clear all the accumulations in the grease trap to permit free drainage flow. The CONTRACTOR shall follow all the latest recommendations and requirements of the County of Maui, the State of Hawaii and the Department of Environmental Services, as currently established.

2. DESCRIPTION OF WORK

- a. The CONTRACTOR will service all grease traps at each listed school for the quantity of times a year listed for those traps indicated on the Exhibit B, "Schedule of Grease Trap Equipment" or as needed. All monthly services shall be performed not less than three (3) weeks or more than five (5) weeks from the last service period or as directed by the Contract Administrator (CA).
- b. The CONTRACTOR, at his option, may pump or maintain all grease traps at a frequency greater than listed. If this is chosen, the CONTRACTOR shall submit their schedule and pumping/maintenance procedure to the CA, prior to implementing it at no additional cost.
- c. The CONTRACTOR shall submit his schedule of services for review and approval by the CA within two (2) weeks after the issuance of the notice to proceed. If for any reason the schedule should change, CONTRACTOR is responsible to provide a revised schedule to the CA within two (2) weeks prior to said change.
- d. The CONTRACTOR shall not be allowed to service, pump or open any cover of any grease trap at any facility when that facility is serving lunch. In general, lunch service times would range from 10:30 am to 12:00 noon. CONTRACTOR to verify lunch service at each facility.
- e. CONTRACTOR shall respond to requests for emergency/trouble call cleaning traps for the schools and will render such services within four (4) hours of notification during the normal working hours. If notified after 2:00 pm, the CONTRACTOR must respond to the Department of Accounting and General Services Maui District Office (DAGS) POC, prior to 7:45 am the next working day. CONTRACTOR shall be liable to pay for services done by another CONTRACTOR, regardless of cost, if he fails to respond.
- f. Grease traps will be located inside or outside of the buildings indicated; each will vary in size or capacity and the CONTRACTOR will determine the location and the best schedule to render service. CONTRACTOR shall coordinate with the School Food Service Manager (SFSM) or Assistant to schedule the optimal time for servicing the trap, containment pit, and line routing. Servicing shall be performed during normal working days, State holidays excluded, between the hours of 6:00 am and 3:00 pm at the schools. CONTRACTOR shall make prior arrangements with and inform school staff upon arrival so school personnel can be present to witness servicing.

NOTE: No servicing is allowed during Christmas break, spring break, or on any school intersessions (no school), unless approved by the Contract Administrator.

- g. CONTRACTOR is responsible to provide any and all means necessary to access and open all the trap covers as required to service all compartments of the traps. CONTRACTOR shall exercise caution during servicing to prevent damage to the traps, its internal or external components, or any adjacent surfaces or items. Should damage occur, the CONTRACTOR is responsible to bear the costs of repair to their former condition or replace the damaged items.

- h. Grease traps, grease retaining fittings (e.g., baffle cross-over tees, etc.), and pits shall be cleaned completely and influent/effluent lines routed as required up to 60 feet. Chemicals shall be applied as necessary to break-down accumulation of solids and/or to eradicate obnoxious odors. Such chemicals shall meet Federal, State, and County rules, regulations, and ordinances; and be prior approved for such use by DAGS. If grease trap overflows into the containment device or pit, CONTRACTOR shall also be responsible for its cleaning (Note: Volume of some containment devices can be as much as 1500 gallons.).
- i. CONTRACTOR is responsible to re-secure grease trap covers with proper gaskets and screws as/if originally provided by the manufacturer of the covers. If no screws are available, CONTRACTOR shall report it to the DAGS, on the monthly worksheet. Screws provided by DAGS shall be used by the CONTRACTOR to secure the grease trap covers. Should screws again become misplaced or lost, the CONTRACTOR shall be responsible to provide and install the stainless steel screws.
- j. After cleaning, grease traps and influent/effluent lines must be tested for unrestricted flow by running water through them. Verification of cleaning shall be signed off by the SFSM or Assistant. The CONTRACTOR shall submit the verification with the SFSM's or Assistant's signature upon request from DAGS.
- k. **Initial Repairs:** During the initial servicing the CONTRACTOR will inspect each grease trap and record all existing discrepancies found including all broken pipes, fittings, and other related components for each grease trap. The CONTRACTOR shall provide a list of all broken and/or defective parts to the CA. The STATE shall review the list and, if approved, request a cost proposal of repairs needed for each school from the CONTRACTOR. The CONTRACTOR shall promptly provide the CA with a written estimated cost proposal. The cost proposal will include:
 - i. Description and breakdown of material, parts and labor costs.
 - ii. Extra costs such as air freight.
 - iii. Completion date.
 - iv. Additional supporting data as required to support costs.

All repair work requiring a permit shall be performed by a licensed journeyman plumber and/or CONTRACTOR. Repair work may be subcontracted to a licensed plumber as described below however a cost proposal as described above is still required.

3. ALLOWABLE COSTS FOR PARTS AND SUBCONTRACTOR WORK; ISSUANCE OF PURCHASE ORDER FOR REPAIR WORK

Cost of parts plus shipping and taxes shall be limited to a 20% markup by the CONTRACTOR. If a subcontractor is used for the repairs, a 10% profit markup is allowed. If the cost proposal for repair work is deemed reasonable, the CA will approve the cost proposal and STATE will issue a purchase order for the repairs. After these initial repairs are accomplished, the CONTRACTOR shall be responsible for all repairs to piping, fittings, and other related components that are found defective or broken within a grease trap. The CONTRACTOR shall not be responsible for components that must be replaced due to normal wear and tear.

4. DISPOSAL OF WASTE AND MAINTENANCE

- a. The CONTRACTOR shall dispose of all wastes from the grease traps in complete compliance with the Federal, State, and County disposal requirements. Failure to comply with these rules, regulations, or ordinances will constitute a breach of contract and cause of immediate cancellation of the contract. The CONTRACTOR shall be held accountable for any infractions and penalties. Moreover, the CONTRACTOR shall hold the State harmless in this regard.

- b. The CONTRACTOR shall be responsible to provide DAGS complete certified (signed) service reports with dates, times, pumped amounts, condition of the traps, person performing the service, and grease disposal method in compliance with the County, State and Federal requirements.
- c. It is the CONTRACTOR'S responsibility to inform the CA of any faults or deficiencies with the traps or associated components found during servicing. The CONTRACTOR shall also comply with other requirements such as posting of necessary information at the School.

5. EMERGENCY/TROUBLE CALL

- a. Hawaii Department of Education Schools shall call DAGS, to report grease trap problem(s) and input a Work Order Request in Maximo.
- b. CONTRACTOR shall NOT respond to calls from Hawaii Department of Education schools without DAGS' prior approval, but shall instruct the school to call DAGS.
- c. DAGS shall notify the CONTRACTOR of the problem(s).
- d. CONTRACTOR shall call DAGS, the same day and report the status of the trouble call.
 - i. If completed, CONTRACTOR will inform DAGS, of their evaluation of the trouble and the action to remedy the situation.
 - ii. If not completed, CONTRACTOR will inform DAGS, of the problem(s) and provide an estimated completion date.
- e. Once a week, the CONTRACTOR shall report the status of all outstanding trouble calls and their estimated completion date and/or action pending.
- f. DAGS, will inform the schools of pending actions.

6. GENERAL

- a. The CONTRACTOR shall provide proper safety signs and take proper precautions to prevent access of children to working areas; and the CONTRACTOR'S truck(s) shall not obstruct the free flow of traffic in the area.
- b. The CONTRACTOR shall be responsible to obtain all Federal, State and Permits that may be required for the work to be performed.
- c. Poor response to emergency/trouble calls or unsatisfactory performance reported by schools may be grounds for terminating contract upon sixty (60) days written notice.
- d. CONTRACTOR shall familiarize themselves with the location and sizes of all grease traps prior to submitting their bid.
- e. No additional compensation shall be allowed the CONTRACTOR for any scheduled work which may be deferred by the school due to extraordinary conditions or activity.
- f. CONTRACTOR shall be available annually with servicing equipment to instruct/inform/train food service managers or personnel about the proper procedures used by CONTRACTOR to service grease traps. Training session shall be at one (1) selected school per year for any or all food service managers or personnel within each district. Training sessions shall not be an additional cost to the State, should/if they be/are requested or scheduled.

7. SECURITY REQUIREMENTS

The CONTRACTOR shall be aware of the heightened security conditions at all the school facilities covered by this contract. The CONTRACTOR is requested to be easily identifiable and constantly aware during servicing and to 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 to the CA with as much detailed information as possible. Any grease traps left open and unsecured may be liable for safety and/or security breaches and be charged at \$100.00 per incident per day per location. The State reserves the right to request that background security checks be provided when requested for each personnel assigned to this contract. It is strongly recommended that the CONTRACTOR'S pumping trucks have the company name and/or logo permanently secured to each side of the vehicle and the work personnel have a uniform type apparel with their names stitched on for ease of identification during the performance of the work and to comply with these security requirements.

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 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 providing grease trap maintenance at various schools on the Islands of Maui, Molokai and Lanai for the Department of Education 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, Mr. Jeremy Koki, Auxiliary Services Specialist, OSFSS, Auxiliary Services Branch, or his duly authorized representative or successor in office is designated Contract Administrator (CA). He can be contacted by telephone at (808) 784-6800, by fax at (808) 733-4688 or via email at jeremy.koki@k12.hi.us.

The CA is responsible for:

- the terms, conditions, quantities, specifications, scope of services, other contract terms, and all decisions relating to the contract;
- 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
- notifying Procurement and Contracts Branch 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 Mr. Wade Shimabukuro, Department of Accounting and General Services, Maui District Office, 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)873-3504, or via email at wade.i.shimabukuro@hawaii.gov

4. Contract Period

This contract shall commence on November 15, 2020 of the contract and shall end on November 14, 2021, subject to availability of funds as specified in the General Conditions.

Beyond November 14, 2021, this contract may be extended for not more than three (3) additional twelve-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 Bid

The STATE will not participate in determinations regarding an Offeror's authority to perform a service. If there are any questions or doubts regarding an Offeror's right or ability 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.

Office Location

At the time of bidding, Offeror shall have a permanent office/service facility on the Island of Maui from where they conduct business and will be accessible to telephone calls during normal business hours, 7:45 a.m. to 4:30 p.m., for complaints or emergency service requests that need immediate attention. Telephone answering machines are not acceptable during normal business hours. Therefore, at the time of bidding and during the contract period, Offeror shall maintain an Island of Maui-based facility and business capability of its own. Offeror shall provide the information requested on the attached Exhibit A to the POC or CA regarding office location upon the STATE's request.

Experience

Offeror shall have a minimum of five (5) consecutive years of experience (immediately prior to the bid opening date) in the field of grease trap service and pumping. All Offerors must be able to produce documented grease trap service experience to substantiate their claim of experience upon request. Offeror shall provide the information requested on Exhibit A to the POC or CA regarding company experience.

At the time of bidding and during the term of the contract, Offeror shall have available and assigned to this contract a minimum of one (1) 600-gallon or larger capacity pump truck.

License/Permit

Prior to the start of the contract and throughout the contract period, Offeror must have a current County of Maui Wastewater Hauler Permit. Offeror may provide all necessary documentation (e.g., copy of permit) to substantiate compliance with this requirement upon request.

Personnel

Offeror shall have sufficient personnel and equipment necessary to perform and complete the work specified herein within the time period indicated.

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 contact period. Failure to maintain these requirements may result in cancellation of award.

7. References

Offeror shall provide the names of at least three (3) references, other than the State of Hawaii government with whom Offeror has done business in the past and who can attest to the quality level and reliability of all aspects of Offeror's work and service, on the attached Exhibit A. The STATE reserves the right to contact these references to verify Offeror's quality level and reliability.

8. Site Inspection

Prior to submittal of a bid, Offeror may inspect grease traps at various schools listed in Exhibit B and thoroughly familiarize themselves with existing conditions, rules and regulations, and the amount and kind of work to be performed. No additional compensation will be made by reason of any misunderstanding or error regarding conditions at the service areas or the amount and kind 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. At the company's own expense, Offeror shall call the POC to make arrangements to visit the service areas between the hours of 8:00 a.m. to 3:00 p.m., Monday through Friday, except State Holidays.

Submission of bid shall be evidence that the Offeror understands the scope of the project and will comply with these specifications if awarded the contract.

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:

- Chapter 237, General Excise Tax Law;
- Chapter 383, Hawaii Employment Security Law;
- Chapter 386, Workers' Compensation Law;
- Chapter 392, Temporary Disability Insurance;
- Chapter 393, Prepaid Health Care Act; and
- 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.

BID 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, a 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 bid 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. Total Bid Price shall include labor, equipment, materials, transportation, 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. Offeror shall submit an offer on all items to qualify for award.

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

15. Tipping/Disposal Fees. Offeror must indicate on the applicable Offer Page the percentage of the bid price per gallon that represents County of Maui tipping/disposal fees. This information will be used in calculating price adjustments, if applicable.

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, **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 this bid.

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

BID SUBMITTAL

19. Submission of Bid

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 seven (7) 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 offer, 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.

BID EVALUATION

23. Disqualification of Offers

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

1. Hard copy offer not signed by an authorized individual.
2. More than one offer from an individual, firm, corporation or joint venture under the same or different names.
3. 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).
4. Lack of proper equipment and/or sufficient experience to perform the work contemplated.
5. Offer received after specified deadline for close of offers.
6. 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 made to the responsive, responsible Offeror submitting the lowest estimated **TOTAL SUM BID for Items 1-31.**

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 submit an offer on all items to qualify for award.

For purposes of this solicitation, all prices offered for emergency/trouble call services shall be the unit costs per trap for emergency/trouble call services. These services performed by the CONTRACTOR shall be charged on a separate purchase order authorized by the CA

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: \$2,000,000 aggregate
(Occurrence Form) \$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: \$1,000,000 per accident
(Combined Single Limit)

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.

34. 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 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 DAGS, Maui District Office.

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:

35. Adjustment Pursuant to Increase in Disposal Fees

Offerors shall include in their bid prices, the cost for the County (of Maui) disposal fee, at the current rate per ton. If the County's disposal fees are increased, the CONTRACTOR may request adjustment(s) to the contracted bid price per gallon, subsequent to bid opening provided the request is made in writing to the Procurement Officer. Documentation of disposal fee increase(s) satisfactory to the STATE, Department of Education, must be submitted with the request.

The following formulas will be used in calculating such increase(s):

First Increase: $LI = (XY) X (Z)$

Subsequent Increase(s): $LI = AZ$

whereby, LI = Dollar amount increase in contract price per gallon due to an increase in the County (of Maui) disposal fees occurring subsequent to bid opening date;
X = Original contract price per gallon;
Y = Percentage of bid price per gallon designated by CONTRACTOR as representing the County (of Maui) disposal fees and solid waste management fees if applicable;
Z = Percentage increase in the County (of Maui) disposal fees and; solid waste management fees if applicable;
A = Portion of the current contract price per gallon representing disposal fees and; solid waste management fees if applicable; (this amount is X multiplied by Y plus any previous increase(s) in contract price per gallon resulting from increase(s) in the County (of Maui) disposal fees.

PERFORMANCE OF CONTRACT

36. 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.

37. 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.

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. Service Requirements

It is understood and agreed that in addition to the schools listed herein, CONTRACTOR shall be required to furnish services specified herein to any new school or any school not initially listed in this IFB, when such services are required. CONTRACTOR shall be notified of such requirements by a contract modification issued by the State.

The STATE reserves the right to add or delete whole schools to the contract and will make adjustments by contract modifications. Any increase or decrease in contract price for additional or deleted schools shall be based on the bid price per grease trap per school, and shall become binding only upon issuance of a contract modification by the STATE.

The schools location and list of equipment for this contract will be kept by the CA and shall be used to record additions or deletions. The CONTRACTOR shall also submit an annual updated inventory of grease traps, by school during the contract period.

41. Inspections

All work done and all materials furnished shall be subject to random periodic inspection and approval by the CA so as to ascertain that the services rendered are in accordance with requirements of the General Conditions, Specifications and Special Conditions. He may require additional information as necessary to maintain a record of the service rendered, and also request that the CONTRACTOR accompany him on field inspections to be scheduled periodically.

42. Clean Up

The CONTRACTOR shall keep the job site free of debris, litter, refuse, etc. and shall clean all fluids, oil and grease drippings or spills during the daily progress of work. The CONTRACTOR shall remove all old replaced malfunctioning parts and equipment from the area upon completion of the work.

PAYMENT

43. Invoicing

CONTRACTOR shall submit an **original** invoice to the following address:

State of Hawaii
Department of Education
Auxiliary Services Branch
1037 South Beretania Street
Honolulu, Hawaii 96814

Monthly invoices shall include all schools serviced, during that month, and dates of servicing the grease

traps. Inspection reports for each school listed on the invoice shall be attached to the invoice, together with a copy of all service reports for each unit serviced fully completed with original signatures of the maintenance mechanic and the School Food Services Manager (SFSM) or its assistant. 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.

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

For authorized repair of breakdowns (emergency repairs or extra work) approved by the CA, a separate detailed invoice is required. Invoices shall contain date and description of the work performed, location of work, and detailing the equipment serviced; and its associated work order number (if applicable), the total amount, and purchase order number authorizing the work. Any extra work will be paid for outside of this contract. The CONTRACTOR shall also include with the invoice, copies of fully completed and signed service slips.

CONTRACTOR shall invoice authorized emergency/trouble call services approved by the CA separately at the grease trap size rates. Invoices shall contain date of work, description of the work performed, name of school, size of trap, total amount, and a purchase order number authorizing the work. Unless the CONTRACTOR is given a separate purchase order authorizing the additional service, the STATE shall not be held responsible for payment of any such work performed by the CONTRACTOR.

44. Payment

Payment shall be made by the STATE to the CONTRACTOR on a monthly basis at the contracted price upon certification by the Maui District Office, DAGS District Engineer, that the CONTRACTOR has satisfactorily performed the required services for that period.

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

45. 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.

46. 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

Special Conditions #6, *Offeror Qualifications*, requires that Offeror provide the information requested on Exhibit A to the POC or CA.

Number of consecutive years of experience (immediately prior to bid opening date) maintaining grease trap and pumping: _____

County of Maui Wastewater Hauler Permit No.: _____

Office Location

Name of Company _____

Office Address _____

Telephone/Facsimile No. _____

Name of Point-of-Contact Person and Cellular No. _____

E-mail Address (if available) _____

Normal Business Hours _____

Service Facility

Name of Company _____

Facility Address _____

Telephone/Facsimile No. _____

Name of Contact Person and Cellular No. _____

E-mail Address (if available) _____

Normal Business Hours _____

References. Offeror shall provide the names of at least three (3) references, other than the State of Hawaii government with whom Offeror has done business in the past and who can attest to the quality level and reliability of all aspects of Offeror's work and service. The STATE reserves the right to contact these references to verify Offeror's quality level and reliability.

<u>Name of Company</u>	<u>Address</u>	<u>Contact Person</u>	<u>Telephone No.</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____

Exhibit B
SCHEDULE OF GREASE TRAP EQUIPMENT

Facility	Building	Estimated Grease trap size
Baldwin High 1650 Kaahumanu Ave, Wailuku HI 96793	G F	1,500 gal 500 gal
Haiku Elem 105 Pauwela Rd., Haiku HI 96708	B	1,000 gal
Hana High 4111 Hana Hwy., Hana HI 96713	A	1,500 gal
Iao Inter 260 S. Market St., Wailuku HI 96793	J	1,500 gal
Kahului Elem 410 S. Hina Ave., Kahului HI 96732	K	1,500 gal
Kamalii Elem 180 Kealii Alanui, Kihei HI 96753	C	1,500 gal
Kalama Inter 120 Makani Rd., Makawao HI 96768	B	40 gal
King Kamehameha III Elem 611 Front St., Lahaina HI 96761	H	1,500 gal
King Kekaulike High 121 Kula Highway, Pukalani HI 96768	C	1,500 gal
Kihei Elem 250 E. Lipoa St., Kihei HI 96753	J	1,500 gal
Kula Elem 5000 Kula Highway, Kula HI 96790	D	750 gal
Lahaina Inter 871 Lahainaluna Rd., Lahaina HI 96761	G	1,500 gal
Lahainaluna High 980 Lahainaluna Rd., Lahaina HI 96761	H	1,500 gal
Lihikai Elem 335 S. Papa Ave., Kahului HI 96732	B	1,500 gal
Lokelani Inter 1401 Liloa Drive, Kihei HI 96753	-	1,500 gal
Makawao Elem 3542 Baldwin Ave., Makawao HI 96768	A	2,500 gal
Maui High 660 S. Lono Ave., Kahului HI 96732	D	1,500 gal
Maui Waena Inter 795 Onehee St., Kahului HI 96732	K	1,500 gal
Princess Nahienaena Elem 816 Niheu St., Lahaina HI 96761	-	300 gal
Pomaikai Elem 4650 S. Kamehameha Ave., Kahului HI 96732	C	1,500 gal
Pukalani Elem 2945 Iolani St., Pukalani HI 96768	C	25 gal
Pu'u Kukui Elem 3700 Kehalani Mauka Pkwy, Wailuku HI 96793	C	1,000
Waihee Elem 2125 Kahekili Hwy., Wailuku HI 96793	F	2,500 gal

Facility	Building	Estimated Grease Trap Size
Wailuku Elem 355 S. High St., Wailuku HI 96793	F	1,500 gal
Kaunakakai Elem 30 Ailoa St. Kaunakakai, HI. 96748	G	1,500 gal
Kilohana Elem Kamehameha V Hwy. Kaunakakai, Hi. 96748	A	750 gal
Kualapuu Elem 260 Farrington Ave., Kualapuu, Hi. 96757	A	2,500 gal
Maunaloa Elem 128 Maunaloa Hwy., Mauanaloa, Hi. 96770	A	500 gal
Molokai High 2140 Farrington Hwy. Hoolehua, Hi.96729	F	750 gal
Lanai High & Elem 555 Fraser Ave. Lanai, Hi. 96763	Q	1,500 gal

GENERAL CONDITIONS

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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.