

BID DOCUMENTS AND SPECIFICATIONS FOR
PREPARED VENDED MEALS FOR YOUTH CHALLENGE
ACADEMY, KALAELOA, OAHU, STATE OF HAWAI'I,
DEPARTMENT OF DEFENSE, HAWAI'I YOUTH CHALLENGE
ACADEMY, JOB NO. CA-202513-GS

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

MAY 2025

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State of Hawai'i, Department of Defense, Hawai'i Youth Challenge Academy,
Project No. CA-202513-GS.**

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**STATE OF HAWAII
DEPARTMENT OF DEFENSE
OFFICE OF THE ADJUTANT GENERAL
3949 DIAMOND HEAD ROAD
HONOLULU, HAWAII 96816-4495**

NOTICE TO BIDDERS

SEALED BIDS for furnishing labor, materials, tools and equipment for "*Prepared Vended Meals for Youth Challenge Academy, Kalaeloa, Oahu, State of Hawai'i, Department of Defense, Hawai'i Youth Challenge Academy, CA-202513-GS*" will be received in the Engineering Office, State of Hawaii, Department of Defense, located in Building 306-A, Room 228, 3949 Diamond Head Road, Honolulu, Hawaii, up to **2:00 P.M. on Wednesday, June 4, 2025**, and will then and there be publicly opened and read aloud. Proposals may also be mailed to State of Hawaii, Department of Defense, 3949 Diamond Head Road, Honolulu, HI, 96816-4495, **ATTN: HIENG Room 228 – SEALED PROPOSAL** and shall be received prior to the above-mentioned date and time. Bids must be received in the Engineering Office, Room 228, prior to the time and date fixed for opening to be considered. All bids received in the Engineering Office after the time and date fixed for opening will not be considered.

Please be advised that the Department of Defense facility located at 3949 Diamond Head Road is a secured site. To arrange access, bidders must email the full name and date of birth of each individual requiring entry and date and time to: jesper.h.andersen@hawaii.gov. Upon arrival, all individuals must present a valid photo ID or other government-issued photo identification to the security personnel at the gate. Additionally, they must be prepared to provide the specific building and room number they are requesting access to.

Please note that failure to present proper identification or provide accurate location details may result in denial of access to the facility.

Bidders should be aware and allow for security screening and random vehicle inspections. The state will not be responsible for late bids due to the afore mentioned reasons.

Proposed work consists of, but not limited to the following: The Contractor agrees to furnish and deliver meals to the Youth Challenge Academy, Kalaeloa campus, located at 91-1001 Shangrila St. Kapolei, HI 96707, Monday through Sunday and holidays, when the program is in session..

The estimated cost associated with this contract is \$635,000.00.

All documents can be downloaded from the State Procurement Office website at <http://spo.hawaii.gov/> and at the State Department of Defense website at <http://dod.hawaii.gov/hieng/>.

All requests for substitution, clarification of bidding documents, specifications and/or questions must be received in the office listed above, via email to jesper.h.andersen@hawaii.gov, prior to **May 27, 2025**.

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

An Intent to Bid is NOT required to be submitted for this project.

Bidders are required to register on the Hawaii Compliance Express web site for all tax clearances by going to <http://spo.hawaii.gov/> click on "HCE" and registering there.

Bidders are responsible for checking for any addenda for this project. The addenda will be posted on the State Procurement Office web site under the project name at <http://spo.hawaii.gov/> and at the State Department of Defense website at <http://dod.hawaii.gov/hieng/>.

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

This shall only apply to bids and proposals for agricultural goods, value-added products, and commodities.

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

SCHEDULE

Release of solicitation	May 16, 2025
Questions due	May 27, 2025
Addendum with answers	May 30, 2025
Bid opening	June 4, 2025 at 2:00 P.M.

Stephen F. Logan
Major General
Adjutant General

Posted on: May 16, 2025

**Prepared Vended Meals for Hawaii Youth Challenge Academy, Kalaeloa, Hawaii,
State of Hawaii, Department of Defense,
Hawaii Youth Challenge Academy, Job No. CA-202513-GS
SCOPE OF WORK**

Section I - General Information

The Vendor agrees to furnish and deliver meals to the Youth Challenge Academy, Kalaeloa campus, Monday through Sunday and holidays, when the program is in session.

The vendor shall meet the School Nutrition Program's (SNP) requirements as specified in this scope of work and in accordance with the federal regulations and policies applicable to the U.S. Department of Agriculture (USDA) Child Nutrition Programs, identified in Section B, to ensure a measurable and appropriate meal standard is sustained.

The Vendor must be able to deliver all three (3) meals to Youth Challenge Academy, Kalaeloa campus, located at 91-1001 Shangrila St. Kapolei, HI 96707, at the specified times listed below. Times and location are subject to change due to mission requirements. Two (2) days telephone/email contact to notify the vendor of delivery time/location change.

Breakfast: 7:30am

Lunch: 11:30am

Dinner: 4:30pm

This contract may be renewed up to four additional one-year terms upon mutual agreement of the Youth Challenge Academy and the Vendor. A price increase, which may be requested six to three months before every two-year term begins, shall be based on either the National Consumer Price Index (CPI) or an annual fixed rate as determined by the Youth Challenge Academy. Additional justification for price increase and any/all supporting documents for such shall be made available upon request by the Program.

Section II – Meal Requirements

Students of the Youth Challenge Academy are categorized in the 9-12 grade level under the SNP. The Vendor should provide meals, snacks and/or milk that meet applicable SNP requirements, including revised requirements from the Healthy, Hunger-Free Kids Act of 2010 (check all programs that apply):

- A. Lunches meet National School Lunch Program requirements, 7 CFR 210 (meal pattern attached).
- B. Breakfasts meet School Breakfast Program requirements, 7 CFR 220 (attached copy of meal pattern).

- C. Milk meets Special Milk Program requirements, 7 Code of Federal Regulations (CFR) 215.
- D. Dinner is not part of the School Nutrition Program. Dinner meals provided are not required to meet the United State Department of Agriculture nutrition guidelines.

The Vendor will need to attach, to this contract, the sample cycle menu for Breakfast, Lunch, and Dinner.

The Vendor will provide meals to Youth Challenge Academy in the following manner: **Unitized meals** (to be defined as individually packaged meals, ready-to-eat)

The Vendor shall also provide the following with the “unitized meals:”

- 1. Eating Utensils.
- 2. Condiments.
- 3. Paper Items.
- 4. Extra Milk.
- 5. Transportation Containers.

Section III – Meal Charges and Billing

Youth Challenge Academy will pay the vendor submitted bid fixed prices for meals that meet School Nutrition Program requirements and are delivered in accordance with the contract. The fixed prices are the total amount due from Youth Challenge Academy for each meal type. The Vendor will not charge other fees, or request reimbursement of any costs, in addition to the fixed meal prices.

The Youth Challenge Academy will NOT pay the Vendor for any meals, or portions thereof, that are unwholesome, spoiled at time of delivery, incomplete (to include insufficient portions sizes) and/or are non-reimbursable.

If the cost of a substituted food item or beverage provided to a student with a medical or special dietary need in accordance with Section IV exceeds the standard meal or milk payment to the Vendor, Youth Challenge Academy will reimburse the Vendor for the additional costs if requested by the Vendor and supported by documentation of the additional cost. Neither the Vendor nor the Youth Challenge may charge any additional amount to qualifying students who receive substitutions or modifications required by law or Youth Challenge Academy Policy.

Note: Neither the Hawaii Child Nutrition Programs (HCNP), Hawaii Department of Education, nor USDA assumes any liability for meal payments.

Section IV – Substitutions and Modifications for Medical or Special Dietary Needs

The Vendor will substitute food or beverage items or modify food items for qualifying students as required by federal and state law (Sections A and B below), and if required by any Youth Challenge Academy policies.

If the Vendor incurs additional costs for substitutions in accordance with Sections A through C below that exceed the regular meal payments, the Vendor may request reimbursement from the Youth Challenge Academy for the additional costs, in accordance with Section C – Meal Charges and Billing. Neither the vendor nor the Youth Challenge Academy may charge any additional amounts to students who qualify for substitutions.

A. Substitutions or Modifications for Students with Disability - Federal Requirement

The Vendor will provide substitutions to, or modifications of, Youth Challenge Academy meals required by federal law for students who are documented by a physician to be unable to consume the regular program meals due to a disability. A medical statement must include a description of the child's physical or mental impairment associated with the child's diet restriction, an explanation of what must be done to accommodate the child's disability, the food or foods to be omitted from the student's diet, and the food or choice of foods that must be substituted. The statement must be signed and dated by the physician and maintained on file.

B. Meal Substitutions for Students without Disability

Youth Challenge Academy has established a policy, as allowed by School Nutrition Programs, to offer meal substitutions for students who do not have a disability but who are unable to eat the regular meals due to medical or special dietary needs. The Vendor will provide substitutions for students who do not have a disability upon the written request of a recognized medical authority (physician, osteopathic physician, naturopathic physician, physician's assistant, or certified nurse practitioner). The request must specify the food or foods to be omitted from the student's diet, the food or choice of foods that must be substituted, be signed and dated by the recognized medical authority, and be maintained on file.

C. Non-Dairy Fluid Milk Substitutes

Youth Challenge Academy has established a policy, as allowed by School Nutrition Programs, to offer one or more non-dairy fluid milk substitutes that are nutritionally equivalent to cow's milk to students with a medical or other special dietary need. The Vendor will provide non-dairy fluid milk substitute(s) in accordance with Youth Challenge Academy policy. A request for a non-dairy fluid milk substitute must be in writing, identify the medical or other special dietary need that restricts the student's diet, be signed and dated by the parent/legal guardian or a medical authority (physician, osteopathic physician, naturopathic physician, physician's assistant, or certified nurse practitioner), and be maintained on file. Product information must be maintained on file to document that the non-dairy product(s) offered to students meet School Nutrition Programs standards for non-dairy fluid milk substitutes.

Section V – Ordering and Delivering

The Youth Challenge Academy will notify the Vendor, in advance, of the number of meals needed. Total number of meals needed, per day, may and shall change in accordance with the number of students attending the program. The Vendor shall be notified of any adjustments to the total number of meals needed at least 2 days before such adjustment shall be initialized.

The Vendor and Youth Challenge Academy will use an organized system for receiving orders for delivery, documenting delivery adjustments, adjusting production levels, if necessary, ensuring that delivery receipts are changed to reflect adjusted meal orders, and ensuring that meal orders for each site are correctly packaged and loaded for delivery.

The Vendor shall be responsible for providing and cleaning transport containers.

Section VI - Recordkeeping and Availability of Records

The Vendor agrees to maintain full and accurate records, which the Youth Challenge Academy needs to meet its responsibility for claiming reimbursements through the SNP. Required records include records of food purchased, daily menu records, food production records, daily quantities of food prepared and furnished for each type of meal, food labels, nutrition information from food products, recipes, and delivery receipts.

At the end of each month, the Vendor will submit copies of the records of menus and numbers of meals furnished to Youth Challenge Academy. The Vendor will submit copies of food purchases, food production records, food labels, and recipes to the Youth Challenge Academy monthly and upon request.

The Vendor agrees that books and records pertaining to the Vendor's food service fund will be made available to the Youth Challenge Academy upon request and agrees to retain all records for inspection and audit by representatives of the Youth Challenge Academy, Hawaii Child Nutrition Program, United State Department of Agriculture, and U.S. General Accounting Office, at any reasonable time and place for a period of three (3) years after the final payment for the contract. In circumstances where audit findings have not been resolved the records must be retained beyond the three-year period until resolution of the audit.

Section VII – Health and Sanitation

The Vendor and Youth Challenge Academy agree that state and local health and sanitation requirements will always be met. The Vendor will meet all state and local health regulations that apply to Youth Challenge Academy facilities and any other facilities in which meals are prepared. The Vendor will maintain applicable health certifications for facilities outside the Youth Challenge Academy in which meals are prepared.

All food will be properly stored, prepared, packaged, and transported free of contamination and at appropriate temperatures. The Vendor will maintain, and provide upon request, all temperature logs for the temperatures of food for preparation and temperatures of food when leaving the establishment.

Youth Challenge Academy will not pay for meals or snacks that are unwholesome, spoiled at time of delivery, incomplete or non-reimbursable.

The Vendor will have and implement a written Food Safety Plan in accordance with Section 111 of the Child Nutrition and WIG Reauthorization Act of 2004 (Public Law 108-265) amended section 9(h) of the Richard B. Russell National School Lunch Act.

More information regarding a food safety program based on the process approach to Hazard Analysis Critical Control Points (HACCP) may be found at:

<http://hcnp.hawaii.gov/overview/nslp/>.

Section VIII – Youth Challenge Academy Control of Food Service

The Youth Challenge Academy will maintain overall responsibility for administration of the food service, in accordance with School Nutrition Program regulations and policies. The Youth Challenge Academy will:

- A. Retain control of the quality, extent, and general nature of the food service.
- B. Retain control of the nonprofit food service account, overall financial responsibility for the nonprofit food service operation, and meal prices.
- C. Ensure that the food service operation is in conformance with the Hawaii Child Nutrition Program to participate in SNP.
- D. Maintain all applicable health certifications for the Youth Challenge Academy and assure that all State and local health regulations are being met by the Vendor.
- E. Monitor vended meals to ensure the food service is in conformance with program regulations.
- F. Retain signature authority on the SNP agreement with HCNP. Retain signature authority for the annual SNP application and monthly SNP claims by submitting required information to HCNP by the due dates.
- G. Prepare contract documents for vended meals.
- H. Review, approve or deny, and if applicable verify Household Free and Reduced Price Meal Applications and provide hearings related to adverse actions.

Section IX – Additional Vendor Responsibilities

The Vendor agrees to comply with the additional following requirements:

- A. Vendor will not offer any la carte food services to Youth Challenge Academy.

- B. Buy Local first and American domestic commodities and products for vended meals to the maximum extent practicable. Domestic products are those that are produced in the United States and those that are processed in the United States substantially (51 percent or more) using agricultural commodities produced in the United States. Hawaii may not be required to Buy American due to availability of domestically grown produce and/or products and/or price differentials per 2 CFR 200.
- C. Comply with the following, as applicable, incorporated into this contract by reference:
 - 1) The requirements established in United States Department of Agriculture regulations concerning USDA rights to copyrights, patent rights and rights in data and reporting of discoveries and inventions.
 - 2) If the contract exceeds \$2,500: Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by the U.S. Department of Labor regulations (29 CFR Part 5).
 - 3) If the contract exceeds \$10,000: Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in the U.S. Department of Labor regulations (41 CFR Part 60).
 - 4) If the contract exceeds \$100,000: All applicable standards, orders and requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and the U.S. Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use of facilities included on the EPA List of Violating Facilities. Contractor will report all violations to the grantor agency and to the EPA Administrator for Enforcement (EN-329).

Section X – Nonperformance or Noncompliance

In cases of nonperformance or noncompliance on the part of the Vendor, the Vendor will pay the Youth Challenge Academy for any excess costs which the Youth Challenge Academy may incur by obtaining meals from another source. The Youth Challenge Academy will notify the Vendor (and surety vendor if performance bond is in effect) of specific instances of unsatisfactory performance. If the Vendor does not immediately take corrective action, the Youth Challenge Academy may negotiate another contract (or request surety Vendor to provide another Vendor) or withhold payments to the Vendor. The Vendor in default is liable for any difference in price between the original price and the new contract price. Further specifications as follows:

- 1. Youth Challenge Academy will notify the Vendor of specific instances of unsatisfactory performance. If the vendor refuses or fails to perform the work specified in this contract, or any extension thereof, the Youth Challenge Academy will provide written notice. If within seven (7) days after receipt of written notice from the Youth Challenge Academy, the vendor fails to implement corrective action with diligence and promptness, the Youth Challenge Academy may negotiate with another Vendor.
- 2. Whether or not the Vendor's right to proceed with the work is terminated, the Contractor shall be liable for any damage to the Youth Challenge Academy resulting from the Vendor's refusal or

failure to complete the work within the specified time. In cases of termination, the Youth Challenge Academy shall limit any payments to the Vendor to the part(s) of the contract satisfactorily completed at the time of termination. Termination shall not relieve the Contractor from liability for performance liquidated damages.

Section XI – Termination

Either party may terminate this contract by notice in writing: The number of days required for notice of termination to be submitted shall not exceed 60 days prior to termination.

Section XII – Contract Renewal

Youth Challenge Academy and Vendor may mutually agree to renew the contract up to a maximum of four additional one-year periods following the original contract, with financial terms for each renewal adjusted using the economic index described below. The contract may not automatically renew:

Economic Index for Price Adjustment:

Prices for a renewed contract will be adjusted from the previous contract year's prices by a percentage not to exceed the percentage change in the national rate of the Consumer Price Index for All Urban Consumers (CPI-U), Food Away from Home (U.S. Bureau of Labor and Statistics) for the calendar year preceding the contract effective date.

Any proposed per meal price changes must be accompanied by documentation supporting such increase. Youth Challenge Academy reserves the right to accept or reject any proposed price changes, in the best interest of the Youth Challenge Academy. If the proposed per meal price changes are accepted, they shall become effective on the first day after a Supplement has been completed.

Section XIII – Vendor Certification Statements

Debarment and Suspension (Executive Orders 12549 and 12689)-A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory DEBARMENT Per 2 CFR 180 as adopted and modified by USDA regulations at 2 CFR 417 all program participants must ensure that they do not enter into a covered transaction with a suspended or debarred entity by doing one of the following [2 CFR 180.300]]:

1. Check the EPLS (Excluded Parties List System) which is a part of the System of Awards Management (SAM). This system lists all suspended and debarred organizations;
2. Collect a certification from the organization stating that they are not suspended or debarred; or,
3. Include a clause in their contract and solicitations.

The contract exceeds \$100,000 -The Selected Vendor must complete and attached the following forms prior to award of contract.

- A. Suspension and Debarment Certification;
- B. Certification Regarding Lobbying; and
- C. If applicable, as described on the Certification Regarding Lobbying form, the Disclosure of Lobbying Activities form.

Section XIV – Additional Provisions (State of Hawaii Required)

The State of Hawaii Act 144, Session Laws of Hawaii 2022 amended Act 176, SLH 2021 requires the Department of Defense, which includes Hawaii Youth Challenge Academy, to ensure that the percentages of foods purchased that are fresh local agricultural products and local value-added, processed, agricultural, or food products meet incrementally-increasing benchmarks by January 1, 2025, January 1, 2030, January 1, 2035, January 1, 2040, January 1, 2045, culminating in a 50% benchmark by January 1, 2050.

The Vendor shall submit a report to the Hawaii Youth Challenge Academy, Director, no later than 45 days prior to the convening of each regular session on progress made toward meeting the benchmarks including:

- The total cost of food purchased during the calendar year preceding that regular session.
- The percentage of the total cost of food purchased during the calendar year preceding that regular session, accounted for by the total cost of 'fresh local agricultural products and local value added, processed, agricultural, or food products purchased; and
- If relevant benchmark has not been reached, an explanation of why the Vendor did not meet that benchmark.

As used in this section:

- "Fresh local agricultural products" means fruits, vegetables, nuts, coffee, eggs, poultry and poultry products, livestock and livestock products, milk and milk products, aquacultural and maricultural products, and horticultural products, that are one hundred per cent grown, raised, and harvested in Hawaii.
- "Local value-added, processed, agricultural, or food products" means a product for which at least fifty-one per cent of its primary agricultural product is grown, raised, and harvested in Hawaii.
- "Primary agricultural product" means the major agricultural product in a processed or value-added agricultural or food product.

SPECIAL NOTICE TO BIDDERS – GOODS AND SERVICES

QUALIFICATIONS OF BIDDERS - Prospective bidders must be capable of performing the work for which bids are being called.

The Department of Defense no longer requires a submittal of "INTENTION TO BID" unless otherwise stated in the notice to bidders.

If a notice to bid is required, the written notice shall be received no later than TEN calendar days prior to the date designated for opening bids. If the 10th calendar day prior to the day designated for opening bids is a weekend or legal State holiday, then the written notice must be received no later than the last working day immediately prior to said weekend or State holiday. The written notice will be time stamped when received by said office. The time designated by the time stamping device in said office shall be official. If the written notice is hand carried, then the bearer is responsible to ensure that the notice is time stamped by said office.

It is the responsibility of the perspective bidder to ensure that the written notice of intention to bid is received in time and the State assumes no responsibility for failure of timely delivery caused by the prospective bidder or by any method of conveyance chosen by the prospective bidder.

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

The Adjutant General or his designated representative may, in accordance with Section 103D-310, Hawaii Revised Statutes, require the prospective bidder to submit answers to questions in the "Standard Questionnaire and Financial Statement for Bidders," on the form provided by the Department, properly executed and notarized, setting forth a complete statement of the experience of such prospective bidder and his organization in performing similar work and a statement of the equipment proposed to be used, together with adequate proof of the availability of such equipment, at least forty-eight (48) hours prior to the time advertised for the opening of bids. If the information in the questionnaire proves satisfactory, the bidder's proposal will be received. All information contained in the answers to the questionnaire shall be kept confidential. The questionnaire will be returned to the bidder after it has served its purpose.

If upon review of the Questionnaire, or otherwise, the bidder appears not fully qualified or able to perform the intended work, the Adjutant General or his designated representative shall, after

affording the bidder an opportunity to be heard and if still of the opinion that the bidder is not fully qualified to perform the work, refuse to receive or to consider any bid offered by the prospective bidder.

Failure to complete the prequalification questionnaire, (IF SENT TO YOU), will be sufficient cause for the Department to disqualify a prospective bidder.

INTERPRETATION OF QUANTITIES IN BID SCHEDULE - When quantities for individual items of work are listed in the bid form for which respective unit prices are asked, said quantities are to be considered as approximate and are to be used by the Department only for the purpose of comparing on a uniform basis bids offered for the work. The Department does not, expressly or by implication, agree that the actual quantity of work will correspond therewith. The undersigned agrees that he is satisfied with and will at no time dispute said estimated quantities as a means of comparing the bids.

After determining the low bidder by comparison of bids submitted in accordance with the proposal form, the Adjutant General or his designated representative reserves the right to increase or decrease the scope of the improvement.

On unit price bids, payment will be made only for the actual number of units incorporated into the finished project at the unit price bid.

It is understood and agreed that the contractor will make no claim for anticipated profit or loss of profit due to the Department's right to eliminate entirely portions of the work or to increase or decrease any or all of the quantities shown in the proposal form.

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

Proposal forms will also include a listing of joint contractor and/or subcontractors asking the name of each person or firm to be engaged on the project as a joint contractor or subcontractor.

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

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

BIDDERS RESPONSIBILITY FOR EXAMINATION OF PLANS, SPECIFICATIONS, SITE OF WORK, ETC. - The bidder shall examine carefully the site work contemplated and the proposal, plans, specifications, supplemental specifications, special provisions and contract and bond forms therefore. The submission of a bid shall be considered as a warranty that the

bidder has made such examination and is satisfied with the conditions to be encountered in performing the work and with the requirements of the plans, specifications, supplemental specifications, special provisions, contract and bond forms (if applicable).

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

ADDENDA AND INTERPRETATIONS - Discrepancies, omissions, or doubts as to the meaning of drawings and specifications should be communicated in writing to: Department of Defense, State of Hawaii, ATTN: HIENG, 3949 Diamond Head Road, Honolulu, HI, 96816, for the interpretation and must be received by the Engineering Office, Department of Defense, no later than fourteen (14) calendar days prior to the date fixed for bid opening. Any interpretation, if made, and any supplemental instructions will be in the form of written addenda to the specifications, which will be mailed to all prospective bidders at the respective addresses furnished for such purposes, eight (8) calendar days prior to the date fixed for the opening bids. Failure of any bidder to receive any such addendum or interpretations shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents.

PREPARATION OF PROPOSAL - The bidder's proposal must be submitted on the proposal form furnished by the Department. The proposal must be prepared in full accordance with the instructions therein. The bidder must state, both in words and numerals, the lump sum price at which the work contemplated is proposed to be done. These prices must be written in ink or typed. Prices written in pencil are not acceptable. In case of a discrepancy between the prices written in words and those written in figures, the words shall govern over the figures. The bidder shall sign the proposal in the spaces provided with ink.

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

Pursuant to the requirements of Section 103D-302, Hawaii Revised Statutes, each bidder shall include in his bid the name of each person or firm to be engaged by the bidder on the project

as joint contractor or subcontractor indicating also the nature and scope of work to be performed by such joint contractor and/or subcontractor.

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

WITHDRAWAL OR REVISION OF PROPOSALS - Any bid may be withdrawn or revised at any time prior to, but not after, the time fixed in the public notice for the opening of bids, provided that a request in writing, executed by the bidder or his duly authorized representative, for the withdrawal or revision of such bid is filed with the Adjutant General before the time set for the opening of bids. The withdrawal of a bid shall not prejudice the right of a bidder to file a new bid. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid will not be received after that time, nor may any bid be withdrawn after the time fixed in the public notice for the opening of bids.

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

REQUIRED PROPOSAL DOCUMENTS – The following documents must be completed and submitted in full for the proposal to be considered:

- Completed Offer Form,
- Corporate Resolution or equivalent,
- Copy applicable Permit(s),
- Copy of confirmation of compliancy with the National School Lunch Program and the School Breakfast Program,
- Sample Thirty (30) Day Meal Plan, including lunch, and dinner, meeting full daily caloric requirements,
- Hawaii Compliance Express Certificate.

DISQUALIFICATION OF BIDDERS - Any one or more of the following cause will be considered as sufficient for the disqualification of a bidder and the rejection of his proposal or proposals:

- A. Evidence of collusion among bidders.
- B. Lack of responsibility and cooperation as shown by past work.
- C. Being in arrears on existing contracts with the State of Hawaii, or having defaulted on a previous contract.

- D. Lack of proper equipment and/or sufficient experience to perform the work contemplated.
- E. More than one proposal for the same work from an individual, firm, partnership, corporation or joint venture under the same or different name.
- F. Delivery of bids after the deadline specified in the advertisement calling for bids.
- G. Failure to pay, or satisfactorily settle, all bids overdue for labor and material on former contracts in force at the time of issuance of proposal forms.

CONSIDERATION OF PROPOSALS - After the proposals are opened and read, the figures will be extended and/or totaled in accordance with the bid prices of the acceptable proposals and the totals will be compared and the results of such comparison shall immediately be made public. In the comparison of bids, words written in the proposals will govern over figures and unit prices will govern over totals. Until the award of the contract, however, the right will be reserved to reject any and all proposals and to waive any defects or technicalities as may be deemed best for the interest of the State.

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

- A. If the proposal is unsigned.
- B. If proposal is on a form other than that furnished by the Department or if the form is altered or any part thereof detached.
- C. If the proposal shows any non-compliance with applicable law, alteration of form, additions not called, conditional bids, incomplete bids, uninitiated erasures, other defects, or if the prices are obviously unbalanced, or if sufficient funds are not available to prosecute the work.
- D. If the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.

This does not exclude a proposal limiting the maximum gross amount of awards acceptable to any one bidder at any one bid letting, provided that any selection of awards will be made by the Department.

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

AWARD OF CONTRACT - The award of contract, if it be awarded, will be made within seven (7) consecutive calendar days after the opening of the proposals to the lowest responsible and responsive bidder (including the alternate or alternates which may be selected by the Adjutant General in the case of alternate bids) whose proposal complies with all the requirements prescribed, but in no case will an award be made until all necessary investigations are made. The successful bidder will be notified, by letter mailed to the address shown on the proposal that his bid has been accepted and that he has been awarded the contract.

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

CANCELLATION OF AWARD - The Adjutant General or his designated representative reserves the right to cancel the award of any contract at any time before the execution of said contract by all parties without any liability to the awardee and to any other bidder.

EXECUTION OF THE CONTRACT - The contract shall be signed by the successful bidder and returned, within ten (10) consecutive calendar days, after the bidder has received his contract for execution or within such further time as the Adjutant General or his designated representative may allow. No proposal or contract shall be considered binding upon the State until the contract has been fully and properly executed by all parties thereto and the Adjutant General or his designated representative has endorsed therein his certificate, as required by Section 103D-309, Hawaii Revised Statutes, that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the State's amount required by such contract.

On any individual award totaling less than \$50,000, the State reserves the right to execute the contract by the issuance of a State Purchase Order. Acceptance shall result in a binding contract between the parties without further action by the State. Executing the contract by Purchase Order shall not be deemed a waiver of these specification requirements.

PROTECTION OF PROPERTY – The Contractor shall confine all of his operations to the immediate vicinity of the work and take all necessary precautions during the progress of the work to protect the adjoining property from damage and injury. The Contractor shall repair and make good to the entire satisfaction of the Engineer any damages to existing utilities, streets, sidewalks and other properties.

The Contractor shall repair the damaged or disturbed utilities to existing condition at no cost to the State. Any damage claims due to the disruption of services caused by the utilities being damaged or disturbed shall be paid by the Contractor who shall save harmless the State from all suits, actions or claims of any character.

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

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

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

- A. Commercial General Liability (CGL): Coverage shall be maintained with limits of no less than \$1 million per occurrence and \$2 million in aggregate. This insurance shall protect against claims arising from bodily injury, personal injury, and property damage that may result from or be related to the performance of services under the contract. The STATE shall be named as additional insured.
- B. Automobile Liability: Coverage shall include a limit of no less than \$1 million per accident, covering claims for bodily injury and property damage resulting from the ownership, maintenance, or use of any owned, hired, or non-owned vehicles used in the performance of the contract. The STATE shall be named as additional insured.
- C. Workers' Compensation (WC): The CONTRACTOR shall maintain workers' compensation insurance as required by the Hawaii Revised Statutes (HRS) Title 21, Section 386. This coverage shall ensure compliance with state laws regarding the provision of benefits to employees for work-related injuries or illnesses, and Employer's Liability: Coverage shall be maintained with the following minimum limits:
 - \$100,000 per accident for bodily injury.
 - \$500,000 disease-policy limit.
 - \$100,000 disease limit per employee.
- D. Waiver of Subrogation: CONTRACTOR agrees to a waiver of any right to subrogation against the State of Hawaii and their respective employees and agents by each insurer under each required policy described herein except for the Professional Liability (Errors and Omission) policy. When required by the insurer, or should a policy condition not permit the CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, CONTRACTOR shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should the CONTRACTOR enter into such an agreement on a pre-loss basis.

It is the responsibility of the CONTRACTOR to notify the STATE of any changes to its insurance policies or if the Contractor receives a notice of cancellation of any of its insurance policies. The Contractor will immediately provide written notice to the STATE should the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

In addition, CONTRACTOR's insurance policies with the exception of the Worker's Compensation and Professional Liability policies, shall contain the following clauses:

1. The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii.
2. It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy.

Furthermore, the Certificate of Insurance shall contain the reference to the project name and the project number

CHARACTER OF WORKERS OR EQUIPMENT – The Contractor shall at all times provide adequate supervision and sufficient labor and equipment for prosecuting the several classes of work to full completion and within the time required by the contract.

- A. Character and Proficiency of Workers – All workers must have sufficient skill and experience to perform the work assigned to them and in the operation of the equipment.

Any worker employed on the project by the Contractor or subcontractor who, in the opinion of the Engineer or his authorized representative, is not careful and competent, does not perform his work in a proper and skillful manner or is disrespectful, intemperate, disorderly or neglects or refuses to comply with directions given, or is otherwise objectionable shall, at the written request of the Engineer, be removed forthwith by the Contractor or subcontractor employing such worker and shall not be employed again in any portion of the work without the written consent of the Engineer. Should the Contractor or subcontractor continue to employ, or again employ such person(s) on the project, the Engineer will withhold all estimates which are or may become due, or the Engineer will suspend the work until such orders are complied with.

- B. Insufficient Workers – In the event that the Engineer, in his judgment, finds the condition whereby insufficient workers are present to accomplish the work and no corrective action is taken by the Contractor after being informed, the Engineer reserves the right to terminate the contract.
- C. Equipment Requirements – All equipment furnished by the Contractor and used shall be of such size and of such mechanical condition that the work can be prosecuted in an acceptable manner.

NOTICE TO PROCEED - After the contract is fully executed, the Contractor will be sent a formal "Notice to Proceed" advising the Contractor of the date on which he may proceed with the work. The Contractor shall be allowed ten (10) consecutive working days from said date to begin his work. In the event that the Contractor refuses or neglects to start the work, the Adjutant General or his designated representative may terminate the contract.

SPECIAL PROVISIONS FOR GOODS AND SERVICES CONTRACTS

RESPONSIBILITY OF OFFERORS

Offeror shall furnish proof of compliance In accordance with Act 190 Amendment to HRS 103D-310(c)

Required as a prerequisite to entering into a contract, the contractor shall register on the Hawaii Compliance Express web site for all tax clearances by going to <http://vendors.ehawaii.gov> and registering there.

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

BID PREPARATION

Offer Form, Page Of-1. Offeror is requested to submit its offer using Offeror'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 Form, page OF-1. Failure to do so may delay proper execution of the contract.

The authorized signature on the first page of the Offer Form shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

Hawaii Business. A business entity referred to as a "Hawaii business", is registered and incorporated or organized under the laws of the State of Hawaii.

Compliant non-Hawaii business. A business entity referred to as a "compliant non-Hawaii business," is not incorporated or organized under the laws of the State of Hawaii, but is registered to do business in the State.

Tax Liability. Work to be performed under this solicitation is a business activity taxable under Chapter 237, Hawaii Revised Statutes (HRS), and vendors are advised that they are liable for the Hawaii GET at the current rate.

4.712% tax rate. All businesses located on Oahu are required to pay the ½% County Surcharge tax on all Oahu transactions for which they pay the 4% GE tax. Neighbor island and out-of-state businesses that deliver goods or services to Oahu and have a 'physical presence' on Oahu, must pay the new ½% County Surcharge tax on their Oahu transactions.

4% tax rate. Neighbor island and out-of-state businesses that do not deliver any goods or services to Oahu are not subject to the new ½% County Surcharge tax.

If, however, an Offeror is a person exempt by the HRS from paying the GET 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.

Taxpayer Preference. For evaluation purposes, pursuant to §103D-1008, HRS, the Bidder's tax-exempt price offer submitted in response to an IFB 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.

AWARD OF CONTRACT

Method of Award. Award, if made, shall be to the responsive, responsible offeror submitting the lowest Lump Sum Bid.

Responsibility of Lowest Responsive Bidder. Reference Responsibility of Offerors in §3-122-112, HAR. If compliance documents have not been submitted to the State Department of Defense prior to award, the lowest responsive offeror shall produce documents to the procurement officer to demonstrate compliance with this section.

HRS Chapter 237 tax clearance requirement for award and final payment. Instructions are as follows:

In accordance with Act 190 Amendment to HRS 103D-310(c)

Required as a prerequisite to entering into a contract, the contractor shall register on the Hawaii Compliance Express web site for all tax clearances by going to <http://vendors.ehawaii.gov> and registering there.

A current Certificate of Vendor Compliance must accompany the invoice for final payment on the contract.

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award. Instructions are as follows:

Pursuant to §103D-310(c), HRS, The Certificate of Vendor Compliance must have a "Compliant" rating with the DLIR.

Compliance with Section 103D-310(c)(1) and (2), HRS.

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

In accordance with Act 190 Amendment to HRS 103D-310(c), required as a prerequisite to entering into a contract, the contractor shall register on the Hawaii Compliance Express

web site for all tax clearances by going to <http://vendors.ehawaii.gov> and registering there.

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

Timely Submission of all Certificates. The above certificates should be applied for and submitted to the purchasing agency 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.

Final Payment Requirements. A current Certificate of Vendor Compliance will be required for final payment.

ATTACHMENTS

ATTACHMENT 1

PREPARED VENDED MEALS FOR YOUTH CHALLENGE ACADEMY, KALAELOA, OAHU, STATE OF HAWAI'I, DEPARTMENT OF DEFENSE, HAWAI'I YOUTH CHALLENGE ACADEMY, JOB NO. CA-202513-GS

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

Dear Sir:

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

The undersigned represents: **(Check $\checkmark$ one only)**

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

State of incorporation: _____

Offeror is:

- ☐ Sole Proprietor ☐ Partnership ☐ Corporation ☐ Joint Venture
☐ Other _____

Federal I.D. No.: _____

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

Payment address (if other than street address below): _____

City, State, Zip Code: _____

Business address (street address): _____

City, State, Zip Code: _____

Respectfully submitted:

Date: _____

(x) _____

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

Telephone No.: _____

Fax No.: _____

Name and Title (Please 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 undersigned has carefully examined the attached specifications and hereby proposes to furnish at his own expense all labor, materials, tools, and equipment necessary as shown and called for, in strict accordance with the specifications pertaining thereto, all for the BID PRICE of (Including all applicable taxes, delivery, unloading, freight charges and other costs involved.):

BASIC BID:

ITEM		UNIT COST	MONTHLY COST ⁺
Breakfast		\$ _____	\$ _____
Entrée	\$ _____		
Juice	\$ _____		
Milk	\$ _____		
Lunch		\$ _____	\$ _____
Entrée	\$ _____		
Juice	\$ _____		
Milk	\$ _____		
Dinner		\$ _____	\$ _____
Entrée	\$ _____		
Juice	\$ _____		
Milk	\$ _____		
TOTAL		\$ _____ *	\$ _____

TOTAL COST OF BASIC BID (TOTAL OF UNIT COSTS*)

_____ DOLLARS (\$ _____).

[BIDDER'S INSTRUCTIONS: Fill in the total cost of basic bid price in numbers and write out the total lump sum bid price in words. Prices shall be written in ink or typed.]

⁺Monthly Total Cost of Meals is for comparison purposes only.

Monthly Total Cost of Meals = (Approximate 6000 meals/Month) x (Unit Cost/Meal)

* Award determination will be made by total unit costs i.e. Breakfast Unit Cost + Lunch Unit Cost + Dinner Unit Cost

Traditionally there are two classes per year. Each class runs approximately 22 weeks. There will be a break between each class of approximately 4 weeks of which no meals will be needed during that time.

NOTE:

1. Contract will be awarded based on the total cost of basic bid.
2. The prices listed in this Offer Form are firm and fixed for a minimum of 90 days from the date set for opening of the bids for this project unless otherwise noted above.
3. In order to execute the contract by the end of the State fiscal year (June 30, 2025), the contractor will need to provide all documents required in the Special Provisions, Responsibility of Offerors (Page SP-1-3) within seven (7) calendar days of notification of intent to award or after receipt of award.
4. The State reserves the right to determine the extent of the contract by selecting and/or omitting bid items (not necessarily in numerical sequence or all of the bid items in the bid schedule) to the extent required to come within the funds available for the project. The award of the contract shall be made to the responsible bidder whose aggregate total on any combination or all of the bid items are the lowest.
5. Failure to submit complete item bids will cause the rejection of this proposal.
6. All requests for substitution, clarification of bidding documents and/or specifications must be received in the office listed above, via email at jesper.h.andersen@hawaii.gov prior to 12:00 pm on May 27, 2025.
7. Term of contract shall be from July 1, 2025 to June 30, 2026.
8. OPTION TO RENEW: Contract may be renewed by mutual agreement for no more than four one-year renewal periods.
9. **CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS PROHIBITED**. If awarded a contract in response to this solicitation, offeror agrees to comply with HRS §11-355, which states that campaign contributions are prohibited from a State and County government contractor during the term of the contract if the contractor is paid with funds appropriated by the legislative body between the execution of the contract through the completion of the contract.

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

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

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

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

HAWAII PRODUCTS' PREFERENCE

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

This shall only apply to bids and proposals for agricultural goods, value-added products, and commodities.

It is further understood and agreed that:

2. The Adjutant General or his designated representative reserves the right to reject any and/or all bids and waive any defects when, in his opinion, such rejection or waiver will be in the best interest of the State.
3. The award of the contract shall be conditioned upon funds being made available for these projects and further upon the right of the Adjutant General or his designated representative to hold all bids received for a period of ninety (90) days from the date of the opening thereof, unless otherwise required by law, during which time no bid may be withdrawn.
4. The liquidated damages per working day for failure to complete the work on time shall be at \$2,000.00 per calendar day or as stipulated in the General Conditions, whichever is higher.
5. By submitting this proposal, the undersigned is declaring his firm has not been assisted or represented on this matter by an individual who has, in a State capacity, been involved in the subject matter of this contract in the past two years.
6. Upon the acceptance of the proposal by the Adjutant General or his designated representative, the undersigned must enter into and execute a contract for the same as required by law.
7. If the lowest bid received by the State exceeds the funds available for this project, the State reserves the right to negotiate with the lowest responsible bidder as permitted under Section 103D-302, Hawaii Revised Statutes, as amended, to reduce the scope of work and award a contract therefore.
8. This contract may be awarded as an informal contract as determined by the Adjutant General or his designated representative in accordance with the applicable Hawaii Revised Statutes as amended, whereby a purchase order will be executed and used as the formal contract.
9. It is further agreed by the parties that any portion of the Contract price payable to the Contractor out of federal funds shall be paid to the Contractor only when such federal funds are received, and this contract shall not be construed as binding the State to pay said portion out of any fund other than those which are received from the Federal government.

Receipt of the following addenda issued by the Department is acknowledged by the day(s) of the receipt indicated below:

Addendum No. 1 _____ Addendum No. 2 _____
Date _____
Addendum No. 3 _____ Addendum No. 4 _____

It is understood that failure to receive any such addendum shall not relieve the Contractor from any obligation under this Proposal as submitted. (See Special Notice to Bidders for information regarding addenda.)

Respectfully submitted,

HAWAII GENERAL EXCISE TAX

I.D. NO. _____

LICENSE CLASSIFICATION
AND/OR SUBCLASSIFICATION
NO. _____

Name of Company

By _____
*Signature

Print Name

Title _____

Date _____

Address _____

Telephone _____

(CORPORATE SEAL)

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

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

ATTACHMENT 2

(Name of Corporation)
Corporate Resolution

I, _____, Secretary of _____
Corporation,
a _____ Corporation, do hereby certify that the following is a full, true
and correct copy of a resolution duly adopted by the Board of Directors of said corporation, at its
meeting duly called and held at the office of the Corporation _____
Street, _____, on the _____ day of _____, 20____, at
which a quorum was present and acting throughout, and that said resolution has not been
modified, amended or rescinded and continues in full force and effect:

“RESOLVED that any individual at the time holding the position of President, Vice
President, Secretary or Treasurer be, and each of them hereby is, authorized to execute on behalf
of the Corporation any bid, proposal or contract for the sale or rental of the products of the
Corporation or for services to be performed by the Corporation, and to execute any bond
required by any such bid, proposal or contract with the United States Government or the State of
Hawaii or the City and County of Honolulu, or any County or Municipal Government of said
State, or any department or subdivision of any of them.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said
_____ Corporation this _____ day of
_____, 20____.

Secretary

(Names and Address of:)

President:

Vice President:

Secretary:

Treasurer:

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 for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

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.

**ADDITIONAL GENERAL CONDITIONS FOR
GOODS AND SERVICES CONTRACTS**

INTENT OF CONTRACT:

The intent of the contract is to provide for the service, complete in every detail, of the work described. The Contractor shall furnish all labor, materials, equipment, tools, transportation and supplies required to complete the work in accordance with the specifications and terms of the contract.

INTERPRETATION OF SPECIFICATIONS:

Should it appear that the work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the specifications, the Contractor shall apply to the Contracting Officer for such further explanations as may be necessary and shall conform to same as part of the contract, so far as may be consistent with the original specifications; and in the event of any doubt or questions arising respecting the true meaning of the specifications, reference shall be made to the Contracting Officer whose decision thereon shall be final.

LIABILITY INSURANCE:

The Contractor shall not commence any work until it obtains, at its own expense, all required liability insurance. Such insurance must have the approval of the State as to limit form and amount and must be maintained with a company acceptable to the State. Such insurance must be maintained for the full period of the contract and shall provide protection from claims arising out of or resulting from the Contractor's operations under the Contract itself Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

The contractor shall take out and maintain during the life of this contract broad form public liability (Bodily Injury) and broad form property damage liability insurance in a combined single limit not less than \$1,000,000 and not less than \$2,000,000 in the aggregate to protect such contractor and all his subcontractors 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 anyone directly or indirectly employed by either of them.

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

A certificate of insurance acceptable to the State shall be filed with the State prior to commencement of the work. Such certificate shall contain a provision that coverage afforded under the policy will not be canceled or changes until at least thirty days written notice has been given to the State by registered mail at the address denominated for the State in the Contract for

official communications to it should any policy be canceled before final acceptance by the State, and the Contractor fails to immediately procure replacement insurance as specified, the State reserves the right to procure such insurance and to deduct the cost thereof from any sum due the Contractor.

LAWS TO BE OBSERVED:

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

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

Attention is directed to the Hawaii Employment Relations Act, Chapter 377, HRS; Hawaii Employment Security Law, Chapter 383, HRS; Wage and Hour Law, Chapter 387, HRS; Payment of Wages, Chapter 388, HRS; and Worker's Compensation Law, Chapter 386, HRS.

Workers' Compensation - The Contractor shall, in accordance with Sections 386-121 to 386-129 Hawaii Revised Statutes, inclusive, take out adequate worker's compensation insurance for all of his employees who will be engaged in work at the site of the project.

PERMITS AND LICENSES:

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

CHARACTER OF WORKERS OR EQUIPMENT:

A. Character and Proficiency of Workers - All workers must have sufficient skill and experience to perform the work assigned to them and in the operation of the equipment.

Any worker employed on the project by the Contractor who, in the opinion of the Engineer or his authorized representative, is not careful and competent, does not perform his work in a proper and skillful manner or is disrespectful, intemperate, disorderly or neglects or refuses to comply with directions given, or is otherwise objectionable shall, at the written request of the

Engineer, be removed forthwith by the Contractor employing such worker and shall not be employed again in any portion of the work without the written consent of the Engineer. Should the Contractor continue to employ, or again employ such person(s) on the project, the Engineer will withhold all estimates which are or may become due, or the Engineer will suspend the work until such orders are complied with.

B. Insufficient Workers - In the event that the Engineer, in his judgment, finds the condition whereby insufficient workers are present to accomplish the work and no corrective action is taken by the Contractor after being informed, the Engineer reserves the right to terminate the contract.

C. Equipment Requirements - All equipment furnished by the Contractor and used shall be of such size and of such mechanical condition that the work can be prosecuted in an acceptable manner.

RIGHT TO AUDIT RECORDS

Pursuant to Section 103D-317 HRS the State, at reasonable times and places, may audit the books and records relating to the contractor's cost or pricing data. The books and records shall be maintained for a period of three years from the date of final payment under the contract, unless another period is otherwise authorized in writing.

Additionally, Sections 231-7, 235-108, 237-39 and other HRS chapters through reference, authorizes the Department of Taxation to audit all taxpayers conducting business within the State. Contractors must make available to the Department of Taxation all books and records necessary to verify compliance with the tax laws.

The following sections of the Hawaii Administrative Rules, Chapter 3-125 are amended as shown below.

CHANGE ORDERS TO GOODS AND SERVICES CONTRACTS – HAR 3-125-2

1. Change clause. By written order, at any time, and without notice to any surety, the 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.
2. Adjustments of price or time for performance. If any change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this contract or as negotiated. Failure of the parties to agree to an adjustment shall not excuse the contractor from

proceeding with the contract as changed, provided that the procurement officer promptly and duly makes the provisional adjustments in payment or time for the direct costs of the work as the State deems reasonable. The right of the contractor to dispute the contract price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the contract or these rules.

3. Time Period for Claim. Within 10 days after receipt of a written change order, unless the period is extended by the procurement officer in writing, the contractor shall respond with a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.
4. Claim barred after final payment. No claim by the contractor for an adjustment hereunder shall be allowed if written response is not given prior to final payment under this contract.
5. Claims not barred. In the absence of a change order, nothing in this clause shall be deemed to restrict the contractor's right to pursue a claim under the contract or for breach of contract.

MODIFICATIONS TO GOODS AND SERVICES CONTRACTS – HAR 3-125-3

1. Contract Modification. By a written order, at any time, and without notice to any surety, the procurement officer, subject to mutual agreement of the parties to the contract and all appropriate adjustments, may make modifications within the general scope of this contract to include any one or more of the following:
 - a. Drawings, designs, or specifications, for the goods to be furnished;
 - b. Method of shipment or packing;
 - c. Place of delivery;
 - d. Description of services to be performed;
 - e. Time of performance (i.e., hours of the day, days of the week, etc.);
 - f. Place of performance of the services; or
 - g. Other provisions of the contract accomplished by mutual action of the parties to the contract.
2. 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 the 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.
3. Claim barred after final payment. No claim by the contractor for an adjustment hereunder shall be allowed if written agreement of modification is not made prior to final payment under this contract.

4. Claims not barred. In the absence of a contract modification, nothing in this clause shall be deemed to restrict the contractor's right to pursue a claim under the contract or for a breach of contract.

PRICE ADJUSTMENT FOR GOODS AND SERVICES CONTRACTS – HAR 3-125-12

1. Price adjustment. Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways;
 - a. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - b. By unit prices specified in the contract or subsequently agree upon;
 - c. By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
 - d. In such other manner as the parties may mutually agree; or
 - e. In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-122 and 3-126, Hawaii Administrative Rules.
2. Submission of cost or pricing data. The contractor shall provide cost or pricing data for any price adjustments subject to the provision of subchapter 15, chapter 3, 122, Hawaii Administrative Rules.

PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS – HAR 3-125-23

1. Prompt payment clause. Any money, other than retainage, paid to a contractor shall be dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and, upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

SECTION 40 OF THE GENERAL CONDITIONS HAS BEEN CHANGED TO READ AS:

40. Environmental Compliance

A. 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 or any other environmental law, regulation, or permit requirement, 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.

B. Non-Compliance Notifications - The Project Manager will notify the Contractor in writing within 3 business days of any observed noncompliance with federal, state, or local environmental laws or regulations, permits, and other elements of the Contractor's Environmental Protection Plan. After receipt of such notice, CONTRACTOR will inform the Project Manager of the proposed corrective action within 3 business days. After acceptance of the proposed action by the Project Manager, the Contractor shall take such action within 5 business days. The Contracting Officer may issue an order of suspension of all or part of the work until satisfactory corrective action has been taken. A suspension, delay, or interruption of work due to the fault or negligence of the Contractor, in whole or in part, will not justify an adjustment to the contract for time extensions or equitable adjustments. In addition to a suspension of work, the Contracting Officer or Project Manager may exercise any additional remedy authorized by law or the contract. Failure to comply with this requirement within a time period specified by the Project manager constitutes a material breach of the contract.



STATE OF HAWAII

SPECIAL CONDITIONS

1. Non-Liability of STATE Employees. The HOPA and any of the HOPA's duly authorized representatives and subordinates, in carrying out the provisions of this Agreement or in exercising any power or authority granted herein, shall not be held personally liable in any way, it being understood that in such matters they act as agents and representatives of the STATE.
2. In Accordance with HRS 103D-713, Paragraph 7 Indemnification and Defense of the General Conditions, is amended as follows:

“7. Indemnification and Defense. The CONTRACTOR shall, indemnify and hold harmless the governmental body and its officers, employees, and agents from and against any liability, damage, loss, cost, and expense, including reasonable attorneys' fees, and all claims, suits, and demands therefore arising out of or resulting from the negligent, reckless, intentional, or wrongful acts, errors, or omissions of the contractor, the contractor's employees, officers, agents, or subcontractors in the performance of the contract or the contractor's professional services, and the provisions shall remain in full force and effect notwithstanding the expiration or early termination of the contract.”

3. Paragraph 2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities, subparagraph f. of the General Conditions is amended by adding the following:

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

Required Types of Insurance:

- A. Commercial General Liability (CGL): Coverage shall be maintained with limits of no less than \$1 million per occurrence and \$2 million in aggregate. This insurance shall protect against claims arising from bodily injury, personal injury, and property damage that may result from or be related to the performance of services under the contract. The STATE shall be named as additional insured.
- B. Automobile Liability: Coverage shall include a limit of no less than \$1 million per accident, covering claims for bodily injury and property damage resulting from the ownership, maintenance, or use of any owned, hired, or non-owned vehicles used in the performance of the contract. The STATE shall be named as additional insured.
- C. Workers' Compensation (WC): The CONTRACTOR shall maintain workers' compensation insurance as required by the Hawaii Revised Statutes (HRS) Title 21, Section 386. This coverage shall ensure compliance with state laws regarding the provision of benefits to employees for work-related injuries or illnesses, and Employer's Liability: Coverage shall be maintained with the following minimum limits:
 - \$100,000 per accident for bodily injury.
 - \$500,000 disease-policy limit.
 - \$100,000 disease limit per employee.
- D. Waiver of Subrogation: CONTRACTOR agrees to a waiver of any right to subrogation against the State of Hawaii and their respective employees and agents by each insurer under each required policy described herein except for the Professional Liability (Errors and Omission) policy. When required by the insurer, or should a policy condition not permit the CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, CONTRACTOR shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy,



STATE OF HAWAII

SPECIAL CONDITIONS

which includes a condition specifically prohibiting such an endorsement, or voids coverage should the CONTRACTOR enter into such an agreement on a pre-loss basis.

It is the responsibility of the CONTRACTOR to notify the STATE of any changes to its insurance policies or if the Contractor receives a notice of cancellation of any of its insurance policies. The Contractor will immediately provide written notice to the STATE should the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

In addition, CONTRACTOR's insurance policies with the exception of the Worker's Compensation and Professional Liability policies, shall contain the following clauses:

1. The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii.
2. It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy.

Furthermore, the Certificate of Insurance shall contain the reference to the project name and the project number"

4. Conflict. If there is a conflict between this Attachment — S5 (Special Conditions) and the General Conditions, this Attachment — S5 (Special Conditions) shall govern and control unless otherwise specified.