Hawaii Public Housing Authority
State of Hawaii

IFB PMB-2010-15

Invitation-For-Bids to Furnish Refuse Collection Services at Kawailehua – State and Kawailehua – Federal Under Asset Management Project 38 on the Island of Kauai

Note: If this Request for Proposals (RFP) was downloaded from the Hawaii Public Housing Authority's website, each interested respondent must provide the necessary contact information to the listed RFP Coordinator to be notified of any changes. For your convenience, you may download the RFP Sign-In, complete and email, fax or mail to the RFP Coordinator. The HPHA shall not be responsible for any missing addenda, clarifications, attachments or other information regarding this RFP if a proposal is submitted from an incomplete RFP.

Issued July 29, 2010

EQUAL HOUSING OPPORTUNITY

Notice to Bidders
(Chapter 103D, Hawaii Revised Statutes)

INVITATION FOR BIDS (IFB) PMB-2010-15

Notice is hereby given that pursuant to Chapter 103D, Hawaii Revised Statues ("HRS"), the Hawaii Public Housing Authority (HPHA) will be accepting sealed bids to **Furnish Refuse Collection Services at Kawailehua – State and Kawailehua – Federal under Asset Management Project 38 on the Island of Kauai** for the 12-month period from September 1, 2010 to August 31, 2011:

Asset Management Project 38 (AMP 38)	Kawailehua – State (2010), 5220 Paanau Rd, Koloa, Hawaii 96756 Kawailehua – Federal (1010), 5230 Paanau Rd, Koloa, Hawaii 96756

The Invitation for Bids, Specifications, and Bid Offer Form may be picked up at the HPHA's Contract & Procurement Office located at 1002 North School Street, Building D, Honolulu, Hawaii 96817 or downloaded at the HPHA website at: www.hpha.hawaii.gov. beginning June 16, 2010.

Sealed bids will be received at the HPHA's Central Files, 1002 North School Street, Building D, Honolulu, Hawaii 96817 until 10:00 a.m. Hawaii Standard Time (HST) on Tuesday, August 17, 2010. Opening of bids will commence at 10:15 a.m. HST at the HPHA's Contract & Procurement Office, 1002 North School Street, Building D, Honolulu, Hawaii 96817 on Tuesday, August 17, 2010.

The HPHA will conduct a Pre-Bid Conference on Thursday, August 5, 2010 at the Kawailehua – State Community Hall, 1002 North School Street, Honolulu, Hawaii 96817 from approximately 9:00 a.m. – 10:00 a.m. HST with a site visitation to follow. All interested bidders are strongly encouraged to attend.

The HPHA reserves the right to reject any or all bids and to accept the bids in whole or part in the best interest of the State. If you have any questions, please contact Rick Sogawa, IFB Coordinator at 832-6038.

HAWAII PUBLIC HOUSING AUTHORITY

Denise M. Wise
Executive Director

EQUAL HOUSING OPPORTUNITY

IFB Table of Contents

Section 1 – Administrative Overview

I. Authority 1
II. IFB Organization 1
III. Contracting Office 1
IV. Procurement Timeline 2
V. Pre-Bid Conference/Site Visitation 3
VI. Submission of Questions 3
VII. Submission of Sealed Bids 4
VIII. Discussions with Bidders Prior to Submission 5
IX. Opening of Bids 5
X. Additional Materials and Documentation 5
XI. IFB Amendments 5
XII. Cancellation of Invitation for Bids 6
XIII. Costs for Bid Preparation 6
XIV. Mistakes in Bids 6
XV. Rejection of Bids 6
XVI. Notice of Award 7
XVII. Protests 7
XVIII. Availability of Funds 8
XIX. Monitoring and Evaluation 8
XX. General and Special Conditions of the Contract 9
XXI. Cost Principles 9

Section 2 – Specifications

I. Introduction
- A. Overview, Purpose or Need 11
- B. Area of Service 11
- C. Funding Source and Period of Availability 11

II. General Requirements
- A. Specific Requirements 12
- B. Single or Multiple Contracts to be Awarded 16
- C. Single or Multi-Term Contracts to be Awarded 16
- D. Statutory requirements of Section 103-55, HRS 17
- E. Bid Price 18
- F. Contract Price Adjustment Due to Increase in State Wages 18
- G. Contract Price Adjustment Due to Landfill/Disposal Fees 19
- H. Recycling Fund Surcharge 20
- I. Solid Waste Management Surcharge 20
- J. Price Adjustment by the State 20

III. Scope of Work
A. Service Activities 21
B. Management Requirements 24

IV. Performance Monitoring & Remedies
A. Monitoring 26
B. Damages 26
C. Termination 27

Section 3 – Forms & Instructions

General Instructions for Completing Applications 29
I. Bid Offer Form 30
II. HUD Forms 30
III. General Conditions 30

Section 4 – Bid Evaluation & Award

I. Bid Evaluation 32
II. Method of Award 32

Section 5 – Attachments

1.	Wage Certificate	Due August 17, 2010
2.	Bid Offer Form	Due August 17, 2010
3.	Sample Contract Based on Competitive Sealed Bid for Goods and Services, AG-003 Rev. 06/22/2009	For Bidder's information
4.	Sample Contract – Attachment S1, Scope of Services	For Bidder's information
5.	Sample Contract – Attachment S2, Compensation and Payment Schedule	For Bidder's information
6.	Sample Contract – Attachment S3, Time of Performance	For Bidder's information
7.	Sample Contract – Attachment S4, Certificate of Exemption from Civil Service	For Bidder's information
8.	Sample Contract – Attachment S5, Special Conditions	For Bidder's information
9.	General Conditions, State AG-008 Rev. 4/15/2009	
10.	Instructions to Offerors Non-Construction, form HUD 5369-B	For Bidder's information
11.	Certification and Representations of Offerors, form HUD 5369-C	For Bidder's information
12.	General Conditions, Federal form HUD-5370-C	For Bidder's information
13.	Salary Schedule	For Bidder's information

Section 1
Administrative Overview

Section 1
Administrative Overview

I. Authority

This Invitation-for-Bids (IFB) is issued under the provisions of the Hawaii Revised Statutes, Chapter 103D, and the related administrative rules. The United States Department of Housing and Urban Development's (HUD) regulations shall apply when the contract executed includes an allocation of Federal funds. Prospective bidders are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed bid by any prospective bidder shall constitute admission of such knowledge on the part of such prospective bidder.

II. IFB Organization

This IFB is organized into five (5) sections:

Section 1	Administrative Overview – Provides interested bidders with an overview of the procurement process
Section 2	Service Specifications – Providers interested bidders with a general description of the tasks to be performed, delineates bidders' responsibilities, and defines deliverables (as applicable)
Section 3	Bid Form and Instructions – Describes the required format and content for the bid
Section 4	Bid Evaluation and Award – Describes how the bids will be evaluated by the HPHA
Section 5	Attachments

III. Contracting Office

The Contracting Office is responsible for overseeing the procurement and the Contract resulting from this IFB. The Contracting Office is:

Hawaii Public Housing Authority
Contract & Procurement Office
1002 North School Street, Bldg. D
Honolulu, Hawaii 96817

Telephone: (808) 832-6038 Fax: (808) 832-6039

For the purpose of this solicitation, the IFB Coordinator or his/her designated representative is listed below as the IFB Coordinator:

Rick Sogawa
Contract & Procurement Office
1002 North School Street, Bldg D
Honolulu, Hawaii 96817 Telephone: (808) 832-6038

Email: rick.t.sogawa@hawaii.gov

The HPHA reserves the right to change the IFB Coordinator without prior written notice.

The office responsible for monitoring the services performed under the Contract is the Property Management and Maintenance Services Branch (PMMSB). For the purpose of this solicitation, the Contract Administrator or his/her designated representative is listed below:

Earl Nakaya
Property Management and Maintenance Services Branch
1002 North School Street, Bldg. E
Honolulu, Hawaii 96817 Telephone: (808) 832-4684

Any changes to the Contract Administrator or his/her designated representative shall be provided in writing to the Contractor. The HPHA reserves the right to change the Contract Administrator and shall be responsible to notify the Contractor of any change.

For the purpose of this solicitation, the Officer-in-Charge shall be the primary point of contact for the Contractor's day-to-day operational issues and reporting requirements. No changes to the Contract shall be implemented based on verbal instructions of the Officer-in-Charge.

Asset Management Project	Complex	Office Address	Officer-in-Charge
38	Kawailehua – State	4726 Malu Road Kapaa, Hawaii 96746	Ms. Sandra Kouchi Ph: (808) 821-4415
38	Kawailehua – Federal	4726 Malu Road Kapaa, HI 96746	Ms. Sandra Kouchi Ph: (808) 821-4415

Any changes to the Officer(s)-In-Charge or his/her designated representative shall be provided in writing to the Contractor. The HPHA reserves the right to change the Officer(s)-In-Charge.

IV. Procurement Timeline

Activity	Scheduled Dates
Public notice announcing IFB	July 29, 2010
Distribution of bid specs/bid form	July 29, 2010
Pre-Bid Conference	August 5, 2010
Site visitation period	August 5 – 12, 2010
Bid submittal deadline	August 17, 2010
Bid Opening	August 17, 2010
Notice of award	August 2010
Contract execution	August 2010

Contract start date	September 1, 2010

The HPHA reserves the right to amend or revise the timetable without prior written notice when it is in the best interests of the State. Contract execution and start date are subject to approval by HUD and availability of funds.

V. Pre-Bid Conference & Site Visitation

Interested bidders are strongly encouraged to attend an optional Pre-Bid Conference on Thursday, August 5, 2010 at the Kawailehua – State Community Hall, Koloa, Hawaii 96817 from approximately 9:00 a.m. – 10:00 a.m. Hawaii Standard Time (HST).

Prior to submittal of the bid, interested bidders may visit the sites to thoroughly familiarize themselves with existing conditions. No additional compensation will be allowed by reason of any misunderstanding or error regarding site conditions/layout or work to be performed.

The HPHA will conduct a site visitation on Thursday, August 5, 2010 beginning at approximately 10:00 a.m. HST or at the conclusion of the Pre-Bid Conference. Interested bidders are strongly encouraged to attend.

Impromptu questions will be permitted at the Pre-Bid Conference and site visitation and verbal answers will be provided. Verbal answers provided by the HPHA are not binding and only intended as general direction. Written formal official responses to substantive questions will be provided to each interested bidder – as set forth in Section VI below. Any changes required will be issued as an addendum to the IFB.

Prior to submittal of the bid, interested bidders may inspect the projects to thoroughly familiarize themselves with existing conditions, and the extent and nature of work to be performed. No additional compensation will be allowed by reason of any misunderstanding or error regarding site conditions or work to be performed. Interested bidder's must contact the Officer(s)-In-Charge to schedule a site inspection.

VI. Submission of Questions

Interested bidders may submit questions to the IFB Coordinator identified in Section III of this IFB as previously listed. The deadline for submission of written questions is 4:30 p.m. HST on August 9, 2010. All written questions will receive a written response from the HPHA. The HPHA's responses to interested bidder's written questions will be sent via mail, electronic mail, or facsimile no later than August 11, 2010 or as soon as practicable.

VII. Submission of Sealed Bids

A. **Forms/Formats** – Bid forms are attached at Section 5 of this IFB. See Attachment 2.

Interested Bidders shall also follow the U.S. Department of Housing and Urban Development's Instructions to Offerors Non-Construction form HUD 5369-B and Certifications and Representations of Offers Non-Construction Contract, form HUD 5369-C. The instructions can be downloaded from HUDClips at www.hudclips.org and is attached at Section 5 of this IFB. See attachment 11.

B. **Bid Submittal** – Sealed bids must be postmarked by the United States Postal Service (USPS) or delivered by the date and time designated in the procurement timeline. Any bids post-marked or received after the designated date and time shall be rejected. Note that postmarks must be by the USPS or the bid will be considered hand-delivered and shall be rejected if late. **Electronic mail and facsimile submissions of the Bid Offer shall not be accepted**.

Bids must be submitted in a sealed envelope and properly identified as a sealed bid in response to this IFB. Any bid documents not properly sealed or submitted via email or facsimile shall be automatically rejected. There shall be no exceptions to this requirement.

D. **Wages and Labor Law Compliance** – Prior to entering into a Contract in excess of $25,000, the Successful Bidder shall certify that it complies with section 103-55, HRS, Wages, hours, and working conditions of employees of contractors performing services. Section 103-55, HRS, provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Interested bidders are further advised that in the event of an increase in wages for public employees performing similar work during the period of the contract, the Contractor shall be obligated to provide wages not less than those increased wages. Interested bidders shall complete and submit the attached Wage Certification certifying that the services required will be performed pursuant to section 103-55, HRS. See Attachment 1.

The Successful Bidder shall be further obligated to notify their employees performing work under the resulting Contract of the provisions of section 103-55, HRS, and of the current wage rates for public employees performing similar work. The Successful Bidder may meet this obligation by posting a notice to this effect in the Successful Bidder's place of business in an area accessible to all employees.

E. **Confidential Information** – If an interested bidder believes that any portion of a bid contains information that should be withheld as confidential, the interested bidder shall request in writing nondisclosure of designated proprietary data to be confidential and provide justification to support confidentiality. Such data shall accompany the bid, be clearly marked, and shall be readily separable from the bid

documents to facilitate eventual public inspection of the non-confidential sections of the bid documents. Nondisclosure of requested information is subject to Chapter 92F, HRS and is discoverable unless exempted by law. **Note that price is not considered confidential and will not be withheld.**

VIII. Discussion with Bidders Prior to Bid Submission

Discussions may be conducted with interested bidders to promote understanding of the HPHA's requirements.

IX. Opening of Bids

Upon receipt of bids by the HPHA at the designated location, bids, modifications to bids, and withdrawals of bids shall be date-stamped, and when possible, time-stamped. All documents so received shall be held in a secure place by the HPHA and not examined for evaluation purposes until the submittal deadline. Procurement files shall be open to public inspection **after a Contract has been awarded and executed by all parties**.

Sealed bids received by the due date and time shall be opened at the bid opening. Bid opening will commence at 10:15 a.m. HST on Tuesday, August 17, 2010 at the HPHA's Contract and Procurement Office, Bldg. D, 1002 North School Street, Honolulu, Hawaii 96817.

In the unlikely event that the HPHA has received a bid that was misplaced or mishandled through no fault of the interested bidder by the HPHA, the HPHA shall publicly open the bid as soon as possible, contact all interested bidders to inform them of the additional bid and the bid price. Said bid shall only be opened if there is clear evidence that the bid was received by the HPHA by the posted due date, in the possession of the HPHA, and that the document was not properly opened during the posted bid opening date and time due to the HPHA's failure to properly manage the bid document.

X. Additional Materials and Documentation

Bid samples or descriptive literature should not be submitted. Any unsolicited documentation, literature or samples will not be examined or tested, and will not be deemed to vary any of the provisions of this IFB.

XI. IFB Amendments

The HPHA reserves the right to amend this IFB at any time prior to the closing date for the final revised bids or as allowed under section 3-122, Hawaii Administrative Rules (HAR). Interested bidders will be notified of all amendments through written communication which may include electronic mail, facsimile, or USPS.

XII. Cancellation of the Invitation for Bids

The IFB may be canceled and any or all bids may be rejected in whole or in part at the HPHA's sole discretion, when it is determined to be in the best interests of the State.

XIII. Costs for Bid Preparation

Any costs incurred by interested bidders in preparing or submitting a bid are the interested bidder's sole responsibility. Any costs incurred by the Successful Bidder prior to the execution of a Contract are not eligible for reimbursement.

Costs incurred in connection with the review, inspection and verification of information provided in the Bid Offer Form shall be the interested bidder's sole responsibility.

Interested bidders shall ensure that the HPHA is provided with the authorization(s) necessary to verify information provided in the Bid Offer Form.

XIV. Mistakes in Bids

While interested bidders are bound by their bids, circumstances may arise where a correction or withdrawal of bids is proper. An obvious mistake in a bid may be corrected or withdrawn, or waived by the bidder to the extent that it is not contrary to the best interest of the purchasing agency or to the fair treatment of other bidders. Mistakes in bids shall be handled as provided for in section 3-122, HAR, and HUD requirements at HUD Handbook 7460.8.

XV. Rejection of Bids

The HPHA reserves the right to consider as acceptable only those bids submitted in accordance with all requirements set forth in this IFB and which demonstrate an understanding of the service specifications. Any bid offering any other set of terms and conditions contradictory to those included in this IFB may be rejected without further notice.

A bid may be automatically rejected if it is:

1. Unreasonable in Price: A bid is unreasonable in price, if the bid price when compared with price submissions of other prospective bidders, prior contract prices, and/or prices available on the open market is grossly unbalanced HPHA Determined to be unreasonable in price, including not only the total price of the bid, but the prices for individual items as well.

2. Materially unbalanced: A bid is materially unbalanced, if there is a reasonable doubt that the bid would result in the lowest overall cost, even though it is the lowest bid, or the bid is so grossly unbalanced that its acceptance would be tantamount to allowing an advance payment. An example of a materially

unbalanced bid is one where the bidding is at a very high price for the first item and extremely low for subsequent items.

Any bid offer which is submitted in a manner which alters the bid form or does not conform to the format and instructions provided shall be determined non-responsive.

XVI. Notice of Award

An award, if made, shall be as follows:

b. Awarded to the responsible and responsive Bidder submitting the lowest total bid price for the initial 12-month period ending July 31, 2011, option year one (1), and option year two (2) located on the Bid Offer Form. See Attachment 2. Interested bidders must submit a bid for regular security hours, special event security hours and administrative/judicial hearing security officer hours to be considered responsive. The award of the initial 12-month contract period shall not be deemed a commitment on the part of the HPHA to automatically exercise the additional two (2) 12-month option periods; and

c. In the case of a tie, the bid shall be awarded: 1) to the present Contractor (if it is one of the tied bidders and whose previous business and/or performance indicate that it was responsible); or 2) if there is no present Contractor or if the present Contractor is not a tied bidder, by the flip of a coin or some other random means of selection.

Any Contract arising out of this solicitation is subject to the approval of the Department of the Attorney General as to form, and to all further approvals as required by statute, regulation, rule, order or other directive.

No work is to be undertaken by the Successful Bidder prior to the Contract start date of September 1, 2010. The HPHA is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the Successful Bidder prior to the starting date.

Reference Responsibility of Bidder in section 3-122-112, HAR. Bidder shall produce documents to the procurement officer to demonstrate compliance with this section. The Successful Bidder receiving an award shall be required to enter into a formal written Contract. The General Conditions of the Contract are attached and service specifications are included herein. See Attachment 10.

XVII. Protests

An unsuccessful bidder may protest the solicitation or award of services only for a serious violation of procurement policies and operational procedures. Only the following matters may be protested:

(1) A state purchasing agency's failure to follow procedures established by Chapter 103D, HRS;

(2) A state purchasing agency's failure to follow any rule established by Chapter 103D, HRS; or

(3) A state purchasing agency's failure to follow any procedure, requirement, or evaluation criterion in a request for proposals issued by the state purchasing agency.

The Notice of Protest shall be mailed by USPS or hand delivered to the head of the State Contraction Office conducting the protested procurement and the Procurement Officer who is conducting the procurement within five (5) working days of the postmark of the Notice of Non-Award sent to the protestor;. A protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the Contract. Delivery services other than USPS shall be considered hand deliveries and considered submitted on the date of actual receipt by the State Contracting Office.

Head of State Contracting Office		**Procurement Officer**	
Name:	Denise M. Wise	Name:	Rick T. Sogawa
Title:	Executive Director	Title:	Acting Procurement Officer
Mailing Address:	P.O. Box 17907 Honolulu, Hawaii 96817	Mailing Address:	P.O. Box 17907 Honolulu, Hawaii 96817
Business Address:	1002 North School Street Honolulu, Hawaii 96817	Business Address:	1002 North School Street Honolulu, Hawaii 96817

XVIII. Availability of Funds

All interested bidders and the Successful Bidder shall be duly informed that the award of a Contract and any allowed renewal or extension of a Contract, is subject to allotments made by the Director of Finance, State of Hawaii, pursuant to Chapter 37, HRS, and **subject to the availability of State and/or Federal funds. The HPHA shall retain the authority to cancel an award due to the lack of funds.**

Nothing in this IFB shall be construed to obligate the State of Hawaii or the HPHA to pay for services at federal public housing projects with State funds.

XIX. Monitoring and Evaluation

The Successful Bidder's performance of the Contract will be monitored and evaluated by the Officer-In-Charge and the HPHA's Contract Administrator. The HPHA shall provide the Successful Bidder with a copy of monitoring reports for their information and corrective action.

XX. General and Special Conditions of Contract

The General Conditions that will be imposed contractually are included as an attachment. See Attachment 10. The State's General Conditions may be found on the SPO website at www.spo.hawaii.gov.

Any necessary Special Conditions may also be imposed contractually by the HPHA. In the case of a conflict between the Special Conditions and the General Conditions, the Special Conditions shall apply.

The HPHA reserves the right to make small or major modifications to the quantity of items or reporting requirements contingent upon conditions that it is unable to now anticipate now.

XXI. Cost Principles

The HPHA shall utilize standard cost principles at section 3-123, HAR, which are available on the State Procurement Office website. Nothing in this section shall be construed to create an exemption from any cost principle arising under Federal law.

(END OF SECTION)

Section 2
Specifications

Section 2
Specifications

I. Introduction

A. Purpose or need

The Hawaii State Legislature established the HPHA under Chapter 356D, HRS. The HPHA consolidates all state low income housing and homeless functions and is administratively attached to the Department of Human Services. The HPHA is a public body and a body corporate and politic. The HPHA seeks to procure refuse collection services to meet the agency's goal of providing safe, sanitary, and decent housing. The purpose of this IFB is to provide refuse collection service on a regular schedule at Kawailehua – State and Kawailehua – Federal under Asset Management Project 38 on the Island of Kauai.

B. Area of Service

The Successful Bidder shall be required to provide services to both complexes as listed below.

Complex	Complex Address
Kawailehua – State	5220 Paanau Rd Koloa, Hawaii 96756
Kawailehua – Federal	5230 Paanau Rd Koloa, Hawaii 96756

C. Funding source and period of availability

Funds for the federally funded housing complex are subject to appropriation by the U.S. Congress and allocation by the U.S. Department of Housing and Urban Development (HUD). Funding and period of availability may change upon notice by HUD to the HPHA.

Funds for the state-funded housing complex are subject to appropriation by the State's Director of Finance and allocation by the Governor and/or State Legislature. Funding and period of availability may change upon notice by the STATE to the HPHA.

It is understood that no award shall not be binding unless the HPHA, HUD and/or the State Comptroller indicate that there is available an unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the Contract. Any Contract entered into as a result of this IFB is binding only to the extent that funds are certified as available and that the availability of funds in excess of the amount certified as available shall be contingent upon future appropriations or special fund

revenues.

If there should be insufficient federal or state funds for any portion of the remainder Contract period beyond the initial twelve (12) month period ending July 31, 2011, the STATE may terminate the Contract or revise the amount/quantity of services required without penalty. Services will be reduced or rescheduled at the same bid price.

II. General Requirements

A. Specific requirements

1. The Successful Bidder shall comply with the Chapter 103D, HRS, Cost Principles for Purchase of Goods and Services and applicable HUD rules. The Successful Bidder shall also comply with applicable HUD rules at Handbook No. 2210.18.

2. The Successful Bidder must have no outstanding balances owing to the HPHA. Exceptions may be granted by the Executive Director of the HPHA for debts recently acquired and for debts which have a repayment plan approved by the Executive Director of the HPHA.

3. Interested bidders must be in good standing with the Department of Commerce and Consumer Affairs and submit a certificate to the HPHA with the Notice of Intent to Bid.

   To obtain a *Certificate of Good Standing* go online to: www.hawaii.gov/dcca/areas/breg and follow the prompt instructions. To register or to obtain a "Certificate of Good Standing" by phone, call (808) 586-2727 (M-F 7:45 a.m. to 4:30 p.m. HST). The "Certificate of Good Standing" is valid for six (6) months from date of issue and must be valid on the date it is received by the purchasing agency. Interested Bidders are advised that there are costs associated with registering and obtaining a "Certificate of Good Standing" from the DCCA.

4. Pursuant to section 103D-328, HRS, the Successful Bidder shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate is valid for six (6) months from the most recent approval stamp date on the certificate. The certificate must be valid on the date it is received by the HPHA.

   The tax clearance certificate can be obtained from the State of Hawaii, *DOTAX.* The *Tax Clearance Application Form A-6 (Rev. 2003)* is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX

Website: http://www.hawaii.gov/tax/a1_1alphalist.html
Tel: (808) 587-7527

The application for the clearance is the responsibility of the Successful Bidder, and must be submitted directly to the DOTAX or IRS and not to the purchasing agency.

5. Pursuant to section 103D-310(c), HRS, the interested bidder shall be required to submit an approved certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the HPHA.

   The certificate of compliance may be obtained on the State of Hawaii, *DLIR APPLICATIONS FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR, Form LIR#27*. It is available at www.dlir.state.hi.us/LIR#27, or at the neighbor island DLIR District Offices. The DLIR will return the form to the Interested Bidder who in turn shall submit it to the HPHA.

   The application for the certificate is the responsibility of the interested bidder, and it must be submitted directly to the DLIR and not to the HPHA.

   Alternatively, instead of separately applying for these (paper) certificates at the various state/federal agencies, the interested bidder may choose to use the Hawaii Compliance Express (HCE), which allows business to register online through a simple wizard interface at:

   http://vendors.ehawaii.gov/hce/splash/welcome.html

   The HCE provides the applicant with a "Certificate of Vendor Compliance" with current compliance status as of the issuance date, accepted for both contracting purposes and final payment. Interested bidders that elect to use the new HCE services will be required to pay any annual fee of $15.00 to the Hawaii Information Consortium, LLC (HIC).

6. The Contractor shall maintain insurance acceptable to the HPHA in full force and effect throughout the term of this Contract. The policies of insurance maintained by the Contractor shall provide the following minimum insurance coverage.

Coverage	Limit
Commercial General Liability (occurrence form)	$2,000,000.00 combined single limit per occurrence for bodily injury and property damage.
Automobile Insurance	Bodily injury liability limits of $1,000,000.00

covering all owned, non-owned and hired automobiles.	each person and $1,000,000.00 per accident and property damage liability limits of $1,000,000.00 per accident. OR Combined single limit of $2,000,000.00
Workers Compensation as required by laws of the State of Hawaii.	Insurance to include Employer's Liability. Both such coverages shall apply to all employees of the Contractor and (in case any sub-contractor fails to provide adequate similar protection for all his employees) to all employees of sub-contractors.

A certificate of insurance evidencing such insurance is required prior to commencement of services. The insurance policy required by this Contract shall contain the following clauses:

(a) "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the State of Hawaii, Hawaii Public Housing Authority (HPHA), Property Management and Maintenance Services Brancy, 1002 N. School Street, Bldg E, Honolulu, Hawaii 96817."

(b) "The State of Hawaii, the HPHA, its elected and appointed officials, officers, and employees are added as additional insured with respect to operations performed for the State of Hawaii and HPHA."

(c) "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."

The HPHA is a self insured State agency. The Successful Bidder's insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute with, insurance provided by the Successful Bidder.

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the Contract, including all Supplemental Contracts.

The Successful Bidder agrees to provide the HPHA, before the effective date of the Contract, certificate(s) of insurance necessary to satisfy that the insurance provisions of this Contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the HPHA during the entire term of this Contract. Upon request by the HPHA, the Contractor shall furnish a copy of the policy or policies.

Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default under this Contract. The HPHA shall be entitled to exercise any or all of the remedies provided in this Contract for such default of the Contractor.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder or to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, the Contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Contract.

The insurer shall notify the HPHA in writing of any cancellation or change in provisions thirty calendar days prior to the effective date of such cancellation or change.

7. Interested Bidders are advised that if awarded a Contract under this solicitation, the Successful Bidder shall, upon award of the Contract, furnish proof of compliance with the requirements of section 3-122-112, HAR:
   - Chapter 237, HRS, tax clearance;
   - Chapter 383, HRS, unemployment insurance;
   - Chapter 386, HRS, workers' compensation;
   - Chapter 392, HRS, temporary disability insurance;
   - Chapter 393, HRS, prepaid health care; <u>and</u>
   - <u>One</u> of the following:

     i. The Successful Bidder shall be registered and incorporated or organized under the laws of the State (hereinafter referred to as a "Hawaii business"); or
     <u>Hawaii business.</u> A business entity referred to as a "Hawaii business" is registered and incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, successful Bidder shall submit a CERTIFICATE OF GOOD STANDING issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG). A Hawaii business that is a sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate. A Successful Bidder's status as sole proprietor or other business entity and its business street address indicated on the Successful Bidder Form page 1 will be used to confirm that the Successful Bidder is a Hawaii business.

     ii. The Successful Bidder shall be registered to do business in the State. (hereinafter referred to as a "compliant non-Hawaii business").
     <u>Compliant non-Hawaii business.</u> 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. As evidence of compliance, the Successful Bidder shall submit a *CERTIFICATE OF GOOD STANDING.*

The above certificates should be applied for and submitted to the HPHA as soon as possible. If a valid certificate is not submitted on a timely basis for award of a Contract, a bid otherwise responsive and responsible may not receive the award.

8. No performance or payment bond is required.

9. During the performance of this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment in compliance with State, Federal and local laws. Such actions shall include but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall insert similar provisions in all subcontracts.

10. The Contractor shall have a permanent office on the island from where he conducts business and where an authorized representative will be accessible to telephone calls for complaints or requests that need immediate attention. An answering service is not acceptable. Permanent office location and phone number shall be stated on the bid.

11. The work performed under this Contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended 12 U.S.C. 1701u. The purpose of section 3 is to ensure that employment and other opportunities generated by HUD assistance covered by section 3 shall to the greatest extent feasible be directed to low- and very low-income persons, particularly those who are recipients of HUD housing assistance.

    The Contractor must certify that it is under no contractual of other impediment that would prevent it from complying with part 135 Code of Federal Regulations (CFR). The Contractor must also certify that any vacant position that are filled after the Contractor is selected, but before the Contract is executed, was not filled to circumvent the Contractor's obligations under 24 CFR part 135.

B. Single or multiple contracts to be awarded

☒ Single ☐ Multiple ☐ Single & Multiple

C. Single or multi-term contracts to be awarded

☐ Single term (≤ 2 yrs) ☒ Multi-term (> 2 yrs.)

Initial term of contract:	Twelve months
Length of each extension:	Up to 12 months (may be less than 12 months when it is in the best interest of the State)
Maximum length of contract:	36 months

The initial period shall commence on the Contract start date. The following conditions must be met for an extension:

- The Contractor experienced cost savings and has unexpended funds available that can be used to provide additional services; or
- The HPHA determines there is an ongoing need for the services and has funds to extend services not to exceed two (2) additional 12-month periods. Contract extensions shall be awarded at the same or comparable rates as the primary agreement. Exceptions shall be granted upon satisfactory justification such as increase in cost of services or cost of living increase as provided herein; and
- A Supplemental Contract must be executed prior to expiration of the Primary Contract; and
- The Contractor must obtain written approval and a notice to proceed by the HPHA with the extension; and
- The HPHA may be required to obtain HUD approval; and
- The Contractor has a satisfactory track record of service performance.

The Primary Contract is being executed for a 12-month period beginning September 1, 2010 and ending August 31, 2011.

The option to extend the Contract will be at the sole discretion of the HPHA. The Contract may be extended, without the necessity of rebidding, at the same rates as proposed in the original bid unless price adjustments are made and approved as provided herein.

The Contractor shall provide the requested insurance information and a completed wage certificate. The Contractor shall pay the State of Hawaii general excise tax and all other applicable taxes.

D. Statutory requirements of Section 103-55, HRS

Interested bidders shall complete and submit the attached wage certification by which the interested bidder certifies that the services required will be performed pursuant to section 103-55, HRS.

Interested bidders are advised that section 103-55, HRS, provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Interested bidders are further advised that in the event of an increase in wage rates to public employees performing similar work during the Contract period, the Contractor will be obligated to provide wages no less than those increased wages.

The HPHA has determined that work to be done under this Contract is similar to various refuse collector positions; therefore the Successful Bidder shall be required to pay their employees the prevailing State wages for work performed under this Contract. The hourly wages paid to the State positions are:

Class	Hourly Rate Eff. 3.1.09
Public Facilities Refuse Collector (BC-04)	$17.09
Refuse Collector (BC-05)	$17.77
Truck Drive – Laborer (BC-05)	$17.77
Refuse Collector (BC-06)	$18.48
Truck Driver (BC-06)	$18.48
Heavy Truck Driver (BC-07)	$19.22
Refuse Collection Crew Leader (BC-09)	$21.42

E. Bid Price

The total bid price shall include costs for all labor, equipment, materials, applicable taxes and any other expenses incurred to provide refuse collection services as specified herein. Other expenses may include but are not limited to equipment, materials, increase in costs for benefits required by law that are automatically increased as a result of increase wages, such as federal old age benefits, workers' compensation, temporary disability insurance, unemployment insurance, and prepaid health insurance.

The total bid price shall be applicable to refuse collections services provided during normal work hours. The HPHA is not responsible for and shall not pay overtime pay resulting from the Successful Bidder's scheduling of employees. Interested bidders should account for any published wage increase in the total bid price. It is the sole responsibility of the Contractor to comply with Section 103-55, HRS.

F. Contract Price Adjustment Due to Increase in State Wages

At the release of this bid solicitation, the effective wages through July 1, 2008 for State employees performing similar work are known. If wages increase after the execution of the Contract, the Successful Bidder may request an increase in contract price in order to correspondingly increase the wages of Bidder's employees performing the work, including any increase in costs for benefits required by law that are automatically increased as a result of increased wages, such as federal old age benefits, workers' compensation, temporary disability insurance, unemployment insurance, and prepaid health insurance.

The Contractor shall not be paid for any reimbursement of retroactive pay negotiated by the State. The Successful Bidder's request for the increase must meet the following criteria:

1. At the time of bidding, if the Successful Bidder's hourly wage rate is greater than the prevailing State wage, the Successful Bidder's requests for increase will not be considered.

2. At the time of the request, the Successful Bidder must or must have provided documentation to show that it is in compliance with Section 103-55, HRS, that its employees are being paid no less than the known wage of the State position listed herein. Documentation shall include the employees payroll records and a statement that the employees are being utilized for this Contract.

3. Request for an increase must be made in writing to the HPHA on a timely basis:

   i. Request for increase for the initial Contract period must be made as soon as practicable after the State wage agreements are made public. Approved request will be retroactive to the date of increase for the State employees with adequate documentation that the Successful Bidder provided its employees a wage increase.

   ii. Request for increase for an option period of the Contract must be made prior to the start of the option period. The Successful Bidder is to call the Contract Administrator listed in Section 1 of this Information For Bids to obtain the current wage information or download the information from the Department of Human Resource Development's website at the following address:

   http://www.hawaii.gov/hrd/main/HRDInfoCentral/DocCentral/SalarySchdules/BU01

G. Contract Price Adjustment Due to Landfill/Disposal Fees

Interested bidders shall include County landfill and disposal fees in their bid prices. The Contractor may request adjustments to the contracted bid price per cubic yard provided the request is made in writing and documentation of landfill and disposal fee increase is submitted with the request. The HPHA shall only consider requests for a price adjustment equivalent to the documented increase in County landfill/disposal fees.

Disposal fees on the bid form shall mean and include land fill, disposal, transfer fees, tipping fees, and applicable surcharges.

The formula used to calculate price adjustments due to landfill/disposal fees is as follows:

$$[(N-O) \div 2000] \times W \times C$$

Whereby:
N = New County disposal unit charge per ton.
O = Old County disposal unit charge per ton.
2000 = Pounds per ton.
W = Base weight per cubic yard of refuse (125 lbs. per Cubic yard will be used.
C = Refuse container capacity

H. Recycling Fund Surcharge

Interested bidders shall include the County recycling fund surcharge in their bid prices. If the County recycling fund surcharge changes during the life of the Contract, 125 pounds will be used as a container base weight per cubic yard of refuse generated, and 20 pounds will be used for the 30-gallon trash cans or plastic bags.

Disposal fees on the bid form shall mean and include land fill, disposal, transfer fees, tipping fees, and applicable surcharges.

I. Solid Waste Management Surcharge

Interested bidders shall include the State's solid waste management surcharge in their bid prices. If there is a future increase for this surcharge, the adjustment per cubic yard shall be based on the following formula:

$(I \div 2000) \times W \times C$

Whereby:
- I = Amount of State's solid waste management surcharge increase per ton.
- 2000 = Pounds per ton.
- W = Pounds per cubic yard refuse (125 lbs. per cubic yard will be used).
- C = Cubic yards per container.

125 pounds will be used as the base weight per cubic yard of refuse generated.

J. Price Adjustment by the State

Change in Number of Pickups or Containers. The total Contract price is based on the maximum amount of refuse to be generated per Contract period. The HPHA reserves the right to increase or decrease the number of pickups and/or containers provided. Such decreases shall be made only upon written notice by the HPHA. Increases in the number of pickups and/or containers shall be made upon written notice and execution of a supplemental contract with the HPHA.

If an increase or decrease in refuse is generated as to necessitate additional or less pickups or containers, the bid price per cubic yard shall be used to compute the cost.

If a scheduled collection is not made as per the Collection Schedule of the Specifications, deduction in cost will be based on bid price per cubic yard.

Emergency Calls (Excess Refuse Pick-up on an Unscheduled Collection Date). The Contractor agrees to make unscheduled collections, when requested by the Officer-In-Charge. Such "emergency calls" shall be performed within twenty four hours after request. Bid price per cubic yard will be used as the basis for "emergency call" charges, unless such charges are modified by mutual agreement at the time of the emergency to account for any additional expense to make the special pickup.

Extra yardage will be charged in excess of the 3 and 6 cubic yard bins. The bid price per cubic yard shall be used to compute the additional cost.

III. SCOPE OF WORK

A. Service Activities (Minimum and/or mandatory tasks and responsibilities

1. Collection and Disposal

The Contractor shall collect refuse from the complexes according to the Service Schedule in the Bid Offer Form. See Attachment 3.

d. Containers shall be emptied completely during collections. The transfer of refuse from containers to refuse collection trucks shall be performed with a minimum of spillage, pollution of the atmosphere or surrounding area. The refuse collection truck shall be constructed so that refuse therein shall be well confined without any leakage, spillage or loss of refuse during transit.

e. The Contractor shall clean up the container areas to keep them free of debris and rubbish. The areas shall be left in a clean and sanitary condition with empty refuse containers replaced at their stations if applicable, in a condition which will be safe and accessible to the users. Additional bags of trash, which are located adjacent to the bins, shall be picked up whenever the additional trash is created.

f. The Contractor shall dispose of all refuse collected by transporting to disposal sites that meet the requirements of local ordinance and regulations applicable to refuse disposal.

2. Collection Schedule

a. Collections shall be made in accordance with the Service Schedule listed in the Bid Offer Form. Changes in days designated for collection and disposal service may be made, provided written approval is granted by the Officer-In-Charge, provided that the change does not change the number of pick-ups per week/month. Pickup hours shall be between the hours of 7:30 a.m. to 3:00 p.m. Hawaii Standard Time (HST).

b. When the pick-up schedule falls on a Contractor's holiday, and Contractor will not be making the scheduled pickup for that day, the Contractor shall make the pick-up on the first working day after the holiday. The Contractor shall provide a list of observed holidays to the Officer-in-Charge upon execution of a Contract.

c. The Contractor shall schedule an extra pick-up day on December 26, if that day is not a regularly scheduled pick-up day.

The Contractor shall schedule an extra pick up day on December 27, if December 26 falls on a regularly scheduled pick-up day.

d. If the Contractor is unable to perform the work on the scheduled date due to inclement weather or any other unavoidable condition including without limitation heavy rain days or hurricane weather, the Contractor shall report immediately to the Officer-in-Charge that work has been postponed. Make-up collection shall be made within twenty-four hours and no additional compensation will be allowed Contractor for such make-up or any corrective work undertaken.

e. If make-up collection is not made within twenty-four hours, the HPHA reserves the right to purchase emergency services from another vendor and shall assess those charges to the Contractor who failed to perform the make-up collection.

3. Refuse Containers

a. All refuse containers shall be delivered to all sites on or before 8:00 a.m. HST, September 1, 2010 (but no earlier than August 31, 2010 at 4:30 p.m. HST) to prevent any interruption of service.

b. Three (3) Cubic Yard Containers. The number of containers required under the Contract is specified in the attached Service Schedule. Furnished containers shall be new or refurbished (like new), at least three (3) cubic yard capacity, and of steel construction. Containers shall have four (4) heavy-duty casters, two (2) covers that can easily be opened and closed, and shall be properly reinforced with no sharp or bare edges.

The Officer-in-Charge may, at their discretion, request containers without covers. Substitution of larger containers, not to exceed eight (8) cubic yards, will be permitted upon written approval of the Officer-in-Charge.

c. All containers shall be uniformly painted. At the start of the Contract and any subsequent contract period, all containers shall be clean, uniformly and freshly painted, and in good repair. In the event that the present Contractor is awarded the Contract, containers presently at the site must meet these requirements.

The Contractor shall be responsible to keep all containers free from graffiti. Any graffiti reported to the Contractor by the Officer-In-Charge shall be removed within five (5) working days.
The Officer-in-Charge may, at their discretion, agree to keep the refuse containers free from graffiti.

d. The Contractor shall maintain a supply of spare containers to serve as replacements or additions to ensure that refuse can be handled without delay.

4. Refuse Container Maintenance

a. All Contractor-owned refuse containers shall be kept clean, odor-free, and presentable at all times. The Contractor shall hose wet refuse from containers, disinfect, deodorize, refurbish or replace containers at the request of the Officer-in-Charge. **After every pickup, Contractor shall provide special treatment to the inside of the containers by rinsing with water under air pressure and disinfectant (to clean, disinfect and deodorize) applied under air pressure at a strength of 1.6% or 10 ounces per 5 gallons of water.**

b. **Containers shall also be scraped on the last pickup day of each week,** or as specified by the Officer-in-Charge before disinfecting. Equipment, water, chemicals and any materials needed to perform the required maintenance shall be furnished by Contractor. Maintenance shall be done at Contractor's place of business and not on the project premises.

c. In the event the Contractor fails to maintain the refuse containers and the Officer-in-Charge notifies the Contractor of his failure to keep the containers in good repair and appearance, the Contractor shall replace the deficient refuse container with a refuse container acceptable to the Officer-in-Charge by the next scheduled pick-up. The Contractor shall notify Officer-in-Charge within seven (7) calendar days of the action taken to correct the deficiency. Repeated failure of Contractor to correct refuse container deficiencies on a timely basis or to respond to the Officer-in-Charge within seven (7) calendar days of the action taken to correct the deficiencies shall be deemed sufficient cause for termination of the Contract.

5. **Vehicle Listing and Standards**

a. All vehicles may be subject to periodic inspection by the State. All vehicles must meet and comply with any and all applicable Rules and Regulations prescribed by local, State and Federal governments.

b. Any vehicle failing to meet the safety standards or found to be mechanically unsafe shall be removed from service and repaired. Any refusal to correct or repair discrepancies shall result in termination of the Contract.

6. **Equipment**

a. Equipment furnished and used by Contractor to collect and remove refuse shall at all times be clean and well maintained, both mechanically and in appearance.

B. **Management Requirements (Minimum and/or mandatory requirements)**

1. **Personnel**

a. The Contractor shall ensure that all personnel meet the minimum qualifications, including licensing and experience requirements, as appropriate.

b. The Contractor shall maintain and implement a plan to ensure minimal disruption of services due to staff vacancies or changes.

c. The Contractor shall be solely responsible for the behavior and conduct of their employees or agents on HPHA property and shall instruct personnel to fully cooperate with the Officer-in-Charge.

d. Contractor agrees to remove any of his employees from servicing or providing services to HPHA, upon written request by the Officer-in-Charge.

2. **Administrative**

a. The Contractor may be asked to attend quarterly meetings or upon request by the Officer-in-Charge. The day and time is to be specified by the Officer-in-Charge. Field visits will be made, as required.

b. At the end of every month, the Officer-in-Charge shall submit a report to the Contractor listing any discrepancies or contract

violation(s) which need correction. These discrepancies or contract violation(s) must be corrected within five (5) working days for payment adjustment purposes.

3. Payment

a. Section 103-10, HRS, provides that the HPHA shall have thirty calendar days after receipt of invoice or satisfactory delivery of goods or performance of the services to make payment. For this reason, the HPHA will reject any bid submitted with a condition requiring payment within a shorter period. Further, the HPHA will reject any bid submitted with a condition requiring interest payments greater than that allowed by Section 103-10, HRS, as amended.

b. The Contractor shall submit a monthly invoice, one original , for services rendered to:

Hawaii Public Housing Authority
Attn: Property Mgmt. and Maint. Svcs. Branch
1002 North School Street
P.O. Box 17907
Honolulu, HI 96817

The date of the invoice shall be the date of receipt of the invoice by the HPHA.

c. All invoices shall reference the contract number and property name assigned to the Contract. Invoices shall also include a breakdown by cubic yards disposed and the cost per cubic yard.

d. Charges for extra pickups, extra yardage, extra bins, etc., not specified in the Service Schedule or not added to the Contract by an Amendment of Contract/Supplemental Agreement, shall be submitted on a separate invoice and will be paid through other means such as State purchase order. In particular, charges for emergency services shall be invoiced in this manner.

e. For final payment, the Contractor must submit a valid original tax clearance certificate "Certification of Compliance for Final Payment" (SPO Form-22). A copy of the Form is available at www.spo.hawaii.gov. Select "forms for Vendors/Contractors" from the Chapter 103D, HRS.

The Contractor is required to submit a tax clearance certificate for final payment on the Contract. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must

accompany the invoice for final payment on the Contract.

IV. PERFORMANCE MONITORING & REMEDIES

A. Monitoring

1. The performance of work shall be monitored by the Officer-in-Charge. Performance will be monitored on an ongoing basis by the HPHA through desk monitoring, site inspection and/or other methods.

2. The Contractor shall re-execute any work that fails to conform to the requirements of the Contract and shall immediately conform to the requirements of the Contract. Should the Contractor fail to comply, the HPHA reserves the right to engage the services of another company to perform the services, to remedy the defect or failure and to deduct such costs from monies due to the Contractor or to directly assess the Contractor.

3. In the event the Contractor fails, refuses, or neglects to perform the services in accordance with the requirements of this Invitation for Bids, and the Contract which is attached, the HPHA reserves the right to purchase in the open market, a corresponding quantity of services. The HPHA shall deduct from the Contractor the cost of procuring such services and from any moneys due or that may thereafter become due the Contractor. In case money due to the Contractor is insufficient for the purpose, the Contractor shall pay the difference upon demand by the HPHA. The HPHA may also utilize all other remedies provided under the Contract and by law and rules.

B. Damages

1. Liquidated damages is fixed at the sum of FIFTY DOLLARS ($50.00) for each calendar day that the Contractor fails to perform in whole or in part any of its obligations in accordance with the terms of paragraph 9 of the General Conditions. Liquidated damages may be deducted from any payments due or to become due to the Contractor.

2. The Contractor shall repair all damages caused by the Contractor's equipment or employees to existing utilities and structures, such as water lines, electric conduits, sewer lines, buildings, and plantings. If such repairs are not completed within a reasonable time, the HPHA reserves the right to purchase services for the necessary repairs from the open market and to deduct all repairs costs from moneys due or may thereafter become due to the Contractor. In the event money due the Contractor is insufficient for the purpose, the Contractor shall pay the difference upon demand by the HPHA.

C. Termination

The HPHA reserves the right to terminate any agreement without penalty for cause or convenience as provided in the General Conditions.

(END OF SECTION)

Section 3
Forms and Instructions

Section 3
Forms and Instructions

General Instructions for Completing Forms

- *Bid offers shall be submitted to the HPHA in the prescribed format outlined in this IFB.*
- *No supplemental literature, brochures or other unsolicited information should be included in the bid packet.*
- *A written response is required for each item unless indicated otherwise.*
- *Bid documents, and all certifications should be completed with black ink.*

I. Bid Offer Form

The Bid Offer Form must be completed and submitted to the HPHA by the required due date and time, and in the form prescribed by the HPHA. See Attachment 2. **Electronic mail and facsimile transmissions shall not be accepted.**

Interested bidders shall submit its bid under the interested bidder's exact legal name that is registered with the Department of Commerce and Consumer Affairs and shall indicate this exact legal name in the appropriate space on Bid at page 1. Failure to do so may delay proper execution of the Contract.

The interested bidder's authorized signature shall be an original signature in ink. If the Bid Offer Form on page 1, is unsigned or the affixed signature is a facsimile or a photocopy, the Bid Offer Form shall be automatically rejected.

Interested bidders are required to submit the following certifications with the Bid Offer Form. In lieu of Items b, c, d, below, interested bidder may also submit an original CERTIFICATE OF VENDOR COMPLIANCE as issued by the State Procurement Office via the online system, "Hawaii Compliance Express". Details regarding this online application process can be viewed at http://vendors.ehawaii.gov/hce/.

1. Wage Certification;
2. Department of Labor and Industrial Relations, Certificate of Compliance with Section 3-122-112, HAR, Form LIR#27;
3. Department of Commerce and Consumer Affairs, Certificate of Good Standing; and
4. Corporate resolution.

The Bid price shall include labor, equipment, transportation, County landfill/disposal fees, recycling surcharge, solid waste management surcharge, all applicable taxes and any other costs incurred to provide services as specified. Bid price per cubic yard/units shall be applicable to additional services that may be requested by the HPHA.

Cost for Pick-Up. The interested bidder must indicate the portion of the bid price that represents the interested bidder's labor, equipment, transportation and applicable taxes and other costs incurred to provide services specified.

Disposal Fees. The interested bidder must indicate the portion of the bid price per cubic yard/units that represents the interested bidder's landfill, disposal fees and applicable surcharges. Such information will be used in calculating price adjustments if requested by the Contractor and if allowed by the HPHA.

The breakdown of costs will be used to determine reasonableness and in the calculation of any future requests for increases.

II. HUD Forms

A. Instructions to Offerors Non-Construction, form HUD 5369-B

The form HUD 5369-B is provided for the interested bidder's information and reference. Form HUD 5369-B is attached to this IFB and can also be found at www.hudclips.org. See Attachment 10.

B. Certification and Representations of Offerors, form HUD 5369-C

The form HUD 5369-C must be completed and submitted to the HPHA with the bid form by the required due date and time, and in the form prescribed by the HPHA. The certification must be signed and dated by an authorized representative.

Form HUD 5369-C is attached to this IFB and can also be found at www.hudclips.org. See Attachment 11.

C. General Conditions, form 5270-C

The form HUD 5370-C is provided for the interested bidder's information and reference. Form HUD 5370-C is attached to this IFB and can also be found at www.hudclips.org. See Attachment 12.

III. General Conditions

The State of Hawaii's General Conditions of the Contract are attached for the interested bidder's review and information. The General Conditions shall be incorporated into the Contract with the Successful Bidder. See Attachment 9.

(END OF SECTION)

Section 4
Bid Evaluation & Award

Section 4
Bid Evaluation & Award

I. Bid Evaluation

Each bid offer will be reviewed for exact conformity of the requirements in the IFB, known as a responsible bid. Information provided in/with the Bid Offer will be used to determine whether the interested bidder has the technical and financial capacity to deliver the goods or services, known as a responsive bid.

II. Method of Award

Award shall be made to the lowest responsible and responsive bidder's grand total base bid price that includes the price for the initial 12-month period, option year one (1) and option year two (2). To be considered a responsive bid and eligible for an award, the interested bidder must bid on the initial 12-month period, option year one (1) and option year two (2).

The option to extend the Contract will be at the sole discretion of the HPHA. Nothing in this IFB shall be construed or interpreted to mean that the HPHA is obligated to exercise its 12-month option period. The Contract may be extended, without the necessity of rebidding, at the same rates as proposed in the original bid, unless price adjustments are made and conditions are met as described in Section 2 Specification of this IFB.

Pursuant to Chapter 3-122-35, HAR, in the event there are no responsive and responsible bids an alterative procurement method may be used by the HPHA. The HPHA may conduct a resolicitation or an alternative procurement method.

The low bid must conform to all requirements of the IFB in order to be determined responsive.

Section 5
Attachments

1.	Wage Certificate	Due August 17, 2010
2.	Bid Offer Form	Due August 17, 2010
3.	Sample Contract Based on Competitive Sealed Bid for Goods and Services (11/05)	For Bidder's information
4.	Sample Contract – Attachment S1, Scope of Services	For Bidder's information
5.	Sample Contract – Attachment S2, Compensation and Payment Schedule	For Bidder's information
6.	Sample Contract – Attachment S3, Time of Performance	For Bidder's information
7.	Sample Contract – Attachment S4, Certificate of Exemption from Civil Service	For Bidder's information
8.	Sample Contract – Attachment S5, Special Conditions	For Bidder's information
9.	General Conditions, State AG-008 Rev. 4/15/2009	
10.	Instructions to Offerors Non-Construction, form HUD 5369-B	For Bidder's information
11.	Certification and Representations of Offerors, form HUD 5369-C	For Bidder's information
12.	General Conditions, Federal form HUD-5370-C	For Bidder's information
13.	Salary Schedule	For Bidder's information

WAGE CERTIFICATE

SUBJECT: BID NO.: ***IFB PMB-2010-15***

DESCRIPTION OF PROJECT

FURNISHING REFUSE COLLECTION SERVICES FOR KAWAILEHUA – STATE AND KAWAILEHUA – FEDERAL UNDER ASSET MANAGEMENT PROJECT 38 ON THE ISLAND OF KAUAI

Pursuant to Section 103-55, HRS, I hereby certify that if the awarded contract is in excess of $25,000.00, the services shall be performed under the following conditions:

1. The services shall be performed by employees at wages or salaries not less than wages or salaries paid to public officers and employees doing similar work.

2. The services shall be in compliance with all applicable laws of the Federal and State governments, relating to worker's compensation, unemployment compensation, payment of wages, and safety.

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

BIDDER: _____

BY: _____
Signature of Person Authorized to Sign this Bid.

Please Print

NAME: _____

TITLE: _____

DATE: _____

IFB PMB-2010-15

SEALED BID

Hawaii Public Housing Authority
Contract and Procurement Office
1002 North School Street, Bldg. D
Honolulu, HI 96817

Dear Sir/Madam:

The undersigned has carefully read and understands the terms and conditions specified in the Sealed Invitation for Bid, Specifications and the General Conditions by reference made a part of this Bid and hereby submits the following offer to perform the work specified.

That the undersigned further understands and agrees that by submitting this Sealed Bid, 1) it is declaring its Bid is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) it is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Date: _____

Telephone No.: _____

Fax No.: _____

Payment address, if other than street address at right:

_____

_____

Hawaii General Excise Tax Lic. I.D. No.:

_____

Social Security or Federal I.D. No.:

_____

Respectfully Submitted,

_____
Legal Name of Offeror

_____
Authorized Signature (Original)

_____
Title

_____
Street Address

_____
City, State, Zip Code

Offeror is: ☐ Individual ☐ Partnership ☐ Corporation ☐ Joint Venture

State of Incorporation: ☐ Hawaii *☐ Other _____

*If "other", is corporate seal available in Hawaii? ☐ Yes ☐ No

Bidder shall list below business firms and/or government agencies to which he has provided security services similar or identical to those required by the IFB.

	Firm or Agency	Contact Person	Telephone No.
1.			
2.			
3.			

Bidder's Office Address: _____

_____

Name of Person to Contract: _____

Telephone Number: _____ Fax Number: _____

Insurance coverage to be provided by:

Commercial General Liability: _____

Name of Agent: _____

Telephone Number: _____

Workers Comp: _____

Automobile Insurance: _____

Signature of Offeror _____

Complex # & Location	# of Cont.	Container Size	# of p/u per week	Scheduled Pick-up Days						Refuse Per Year	Cost for Pick-Up	+	Disposal Fee	=	Total Bid Price Per c.y.	Total Bid Price for the 12-month period (9/1/10 - 8/31/11)
Group I				M	T	W	TH	F	S							
Asset Management Project 38																
Kawailehua - State	2	3 c.y.	2	X			X			624 c.y.		+		=		
Asset Management Project 38																
Kawailehua - Federal	2	3 c.y.	2	X			X			624 c.y.		+		=		

TOTAL 1248 **c.y.** **SUB-TOTAL** _____

Complex # & Location	# of Cont.	Container Size	# of p/u per week	Scheduled Pick-up Days						Refuse Per Year	Cost for Pick-Up	+	Disposal Fee	=	Total Bid Price Per c.y.	Total Bid Price for Option Year 1
Group I				M	T	W	TH	F	S							
Asset Management Project 38																
Kawailehua - State	2	3 c.y.	2	X			X			624 c.y.		+		=		
Asset Management Project 38																
Kawailehua - Federal	2	3 c.y.	2	X			X			624 c.y.		+		=		

TOTAL 1248 **c.y.** **SUB-TOTAL** _____

Complex # & Location	# of Cont.	Container Size	# of p/u per week	Scheduled Pick-up Days						Refuse Per Year	Cost for Pick-Up	+	Disposal Fee	=	Total Bid Price Per c.y.	Total Bid Price for Option Year 2
Group I				M	T	W	TH	F	S							
Asset Management Project 38																
Kawailehua - State	2	3 c.y.	2	X			X			624 c.y.		+		=		
Asset Management Project 38																
Kawailehua - Federal	2	3 c.y.	2	X			X			624 c.y.		+		=		

TOTAL 1248 **c.y.** **SUB-TOTAL** _____

GROUP I GRAND TOTAL _____

STATE OF HAWAII

CONTRACT FOR GOODS OR SERVICES
BASED UPON
COMPETITIVE SEALED BIDS

This Contract, executed on the respective dates indicated below, is effective as of September 1, 2010, between Hawaii Public Housing Authority,
(Insert name of state department, agency, board or commission)
State of Hawaii ("STATE"), by its Executive Assistant,
(Insert title of person signing for State)
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is 1002 North School Street, Honolulu, Hawaii 96817
_____ and _____
("CONTRACTOR"), a _____
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)
under the laws of the State of _____, whose business address and federal and state taxpayer identification numbers are as follows: _____

RECITALS

A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services, or both.

B. The STATE has issued an invitation for competitive sealed bids, and has received and reviewed bids submitted in response to the invitation.

C. The solicitation for bids and the selection of the CONTRACTOR were made in accordance with section 103D-302, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 5, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").

D. The CONTRACTOR has been identified as the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation.

E. Pursuant to Section 356D-4, HRS, the STATE
(Legal authority to enter into this Contract)
is authorized to enter into this Contract.

F. Money is available to fund this Contract pursuant to:

(1) _____
(Identify state sources)
or (2) _____
(Identify federal sources)
or both, in the following amounts: State $ _____
Federal $ _____

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the Invitation for Bids number PMB-2010-15 ("IFB") and the CONTRACTOR'S accepted bid ("Bid"), both of which, even if not physically attached to this Contract, are made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Contract in a total amount not to exceed

_____ DOLLARS ($ _____), including approved costs incurred and taxes, at the time and in the manner set forth in the IFB and CONTRACTOR'S Bid.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR ☐ is required to provide or ☒ is not required to provide: ☐ a performance bond, ☐ a payment bond, ☐ a performance and payment bond in the amount of _____ DOLLARS ($ _____).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the IFB, including all attachments and addenda; and (3) the CONTRACTOR'S Bid.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of _____ DOLLARS ($ 50.00) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

STATE

_____
(Signature)

Barbara E. Arashiro
(Print Name)

Executive Assistant
(Print Title)

_____
(Date)

CONTRACTOR

CORPORATE SEAL
(If available)

_____
(Name of Contractor)

_____
(Signature)

_____
(Print Name)

_____ *
(Print Title)

_____
(Date)

APPROVED AS TO FORM:

_____
Deputy Attorney General

*Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.

STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF _____)
) **SS.**
_____ **COUNTY OF** _____)

On this _____ day of _____, _____ before me appeared _____ and _____, to me known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are _____ and _____ of _____, the CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument as the free act and deed of the CONTRACTOR.

_____
(Signature)

(Notary Stamp or Seal)

_____
(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ _____ Circuit

Doc. Description: _____

_____

_____

(Notary Stamp or Seal)

_____

Notary Signature Date

NOTARY CERTIFICATION

STATE OF HAWAII

CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of _____, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR ☐ is* ☐ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

*Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of $10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

CONTRACTOR

By _____
(Signature)

Print Name _____

Print Title _____

Name of Contractor _____

_____

Date _____

Attachment - S1

STATE OF HAWAII

SCOPE OF SERVICES

Contractor:
Project(s): Kawailehua – State; Kawailehua – Federal

1. The CONTRACTOR shall provide and perform the described services in a satisfactory and proper manner as determined by the STATE and in strict accordance with the terms and conditions of this Contract and the requirements of Invitation for Bids number IFB PMB-2010-15, dated July 29, 2010. It is understood that this Contract includes IFB PMB-2010-15 and all addendums, incorporated hereto and made a part hereof.

2. The CONTRACTOR shall furnish refuse collection services at the complexes listed below:

   - Kawailehua – State, 5220 Paanau Road, Koloa, Hawaii 96756
   - Kawailehua – Federal, 5230 Paanau Road, Koloa, Hawaii 96756

3. Collection and Disposal:

   The Contractor shall collect refuse from the complexes according to the Service Schedule in the Bid Offer Form. See Exhibit B, attached hereto and incorporated herein.

   a. Containers shall be emptied completely during collections. The transfer of refuse from containers to refuse collection trucks shall be performed with a minimum of spillage, pollution of the atmosphere or surrounding area. The refuse collection truck shall be constructed so that refuse therein shall be well confined without any leakage, spillage or loss of refuse during transit.

   b. The Contractor shall clean up the container areas to keep them free of debris and rubbish. The areas shall be left in a clean and sanitary condition with empty refuse containers replaced at their stations if applicable, in a condition which will be safe and accessible to the users. Additional bags of trash, which are located adjacent to the bins, shall be picked up whenever the additional trash is created.

   c. The Contractor shall dispose of all refuse collected by transporting to disposal sites that meet the requirements of local ordinance and regulations applicable to refuse disposal.

4. Collection Schedule

   a. Collections shall be made in accordance with the Service Schedule listed in the Bid Offer Form. Changes in days designated for collection and disposal service may be made upon written approval by the Officer-In-Charge. The change shall not change the number

of pick-ups per week/month. Pick-up hours shall be between the hours of 7:30 a.m. to 3:00 p.m. Hawaii Standard Time.

b. When the pick-up schedule falls on a Contractor's holiday, and Contractor will not be making the scheduled pick-up for that day, the Contractor shall make the pick-up on the first working day after the holiday. The Contractor shall provide a list of observed holidays to the Officer-in-Charge upon execution of a Contract.

c. The Contractor shall schedule an extra pick-up day on December 26, if that day is not a regularly scheduled pick-up day for the following project:

d. If the Contractor is unable to perform the work on the scheduled date due to inclement weather or any other unavoidable condition (i.e. heavy rain days or hurricane weather), the Contractor shall report immediately to the Officer-in-Charge that work has been postponed. Make-up collection shall be made within twenty-four hours and no additional compensation shall be allowed for such make-up or any corrective work undertaken by the Contractor.

e. If make-up collection is not made within twenty-four hours, the STATE reserves the right to purchase emergency services from another vendor and shall assess those charges to the Contractor who failed to perform the make-up collection.

5. Refuse Containers:

a. All refuse containers shall be delivered to all sites on or before 8:00 a.m. September 1, 2010 (but no earlier than August 31, 2010 at 4:30 p.m.) to prevent any interruption of service.

b. Three (3) Cubic Yard Containers. The number of containers required under the Contract is specified in the Service Schedule which is attached to Exhibit B. Furnished containers shall be new or refurbished like new with at least three (3) cubic yard capacity, and be made of steel construction or equivalent. Containers shall have four (4) heavy-duty casters, two (2) covers that can easily be opened and closed, and shall be properly reinforced with no sharp or bare edges.

The Officer-in-Charge may at his discretion request containers without covers. Substitution of larger containers, not to exceed eight (8) cubic yards, will be permitted upon written approval of the Officer-in-Charge.

c. All containers shall be uniformly painted. At the start of the Contract and any subsequent contract period, all containers shall be clean, uniformly and freshly painted, and in good repair. In the event that the present Contractor is awarded the Contract, containers presently at the site must meet these requirements.

d. The Contractor shall be responsible to keep all containers free from graffiti. Any graffiti reported to the Contractor by the Officer-In-Charge shall be removed within five (5) working days.

e. The Contractor shall maintain a supply of spare containers to serve as replacements or additions to ensure that refuse can be handled without delay.

6. Refuse Container Maintenance

a. All Contractor-owned refuse containers shall be kept clean, odor-free, and presentable at all times. The Contractor shall hose wet refuse from containers, disinfect, deodorize, refurbish or replace containers at the request of the Officer-in-Charge. After every pick-up, the Contractor shall clean the inside of the containers by rinsing with air pressured water. The Contractor shall further use disinfectant to clean, disinfect and deodorize the containers applied under air pressure at a strength of 1.6% or 10 ounces per 5 gallons of water to clean, disinfect and deodorize the containers.

b. In the event the Contractor fails to maintain the refuse containers, the Officer-in-Charge will notify the Contractor of his failure to keep the containers in good repair and appearance. Upon such notification the Contractor shall replace the deficient refuse container with a refuse container acceptable to the Officer-in-Charge by the next scheduled pick-up. The Contractor shall notify the Officer-in-Charge within seven (7) calendar days, regarding correction of the deficiency. The Contractor's repeated failure to timely correct the refuse container deficiencies shall be deemed sufficient cause for termination of the Contract.

7. Vehicle Listing and Standards

a. All vehicles may be subject to periodic inspection by the State. All vehicles must meet and comply with any and all applicable Rules and Regulations prescribed by local, State and Federal governments.

b. Any vehicle failing to meet the safety standards or found to be mechanically unsafe shall be removed from service and repaired. Any refusal to correct or repair discrepancies shall result in termination of the Contract.

STATE OF HAWAII

SCOPE OF SERVICES

8. Equipment furnished and used by Contractor to collect and remove refuse shall at all times be clean and well maintained both mechanically and in appearance.

9. Personnel:

   a. The Contractor shall ensure that all personnel meet the minimum qualifications, including licensing and experience requirements.

   b. The Contractor shall maintain and implement a plan to ensure minimal disruption of services due to staff vacancies or changes.

   c. The Contractor shall be solely responsible for the behavior and conduct of its employees or agents on HPHA property and shall instruct personnel to fully cooperate with the Officer-in-Charge.

   d. Contractor agrees to remove any of his employees from servicing or providing services to HPHA, upon written request by the Officer-in-Charge.

10. The Contractor may be asked to attend quarterly meetings or upon request by the Officer-in-Charge. The day and time is to be specified by the Officer-in-Charge. Field visits will be made as required.

11. At the end of every month, the Officer-in-Charge shall submit a report to the Contractor that lists any discrepancies or contract violation(s) which need correction. These discrepancies or contract violation(s) must be corrected within five (5) working days for payment adjustment purposes.

Attachment – S2

STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

Contractor:
Project(s): Kawailehua – State; Kawailehua – Federal

1. Subject to the receipt of Federal funds under the Annual Contributions Contract and Section 161 of the Housing & Community Development Act of 1992 (HCDA 1992), Public Law 102-550, approved October 28, 1992, the STATE agrees to pay the CONTRACTOR for services satisfactorily performed under this Contract a sum of money not to exceed _____ **and No/100 Dollars ($_____)** for the twelve month period as shown in the CONTRACTOR's Bid Offer Form. See Exhibit B.

   Subject to the availability and receipt of State funds, the STATE agrees to pay the CONTRACTOR for services satisfactorily performed under this Contract, a sum of money not to exceed _____ **and No/100 Dollars ($_____)** for the twelve month period as shown in the CONTRACTOR's Bid Offer Form. See Exhibit B.

   The total Contract amount shall not exceed _____ **and No/100 Dollars ($_____)**.

2. Federal funds are subject to appropriation by the U.S. Congress and allocation by the U.S. Department of Housing and Urban Development (HUD) and the State of Hawaii. Funding and period of availability may change upon notice by HUD to STATE. If there should be insufficient funds for any portion of the remaining Contract period beyond the initial twelve (12) month period, ending August 31, 2011, the STATE may terminate the Contract or revise the amount/quantity of services required without penalty.

   State funds are subject to appropriation by the State's Director of Finance and allocation by the Governor and/or State Legislature. Funding and period of availability may change upon notice by the STATE. If there should be insufficient state funds for any portion of the remainder of the contract period ending August 31, 2011, the STATE may terminate without penalty the Contract or may revise the amount/quantity of services required.

3. Upon execution of this Contract, payments shall be paid in accordance with and subject to the following:

   a. CONTRACTOR shall submit a monthly invoice, one original, for services rendered to:
      Hawaii Public Housing Authority
      Attn: Property Mgmt. and Maint. Services Branch
      1002 North School Street
      P.O. Box 17907
      Honolulu, HI 96817

STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

b. Section 103-10, HRS, provides that STATE shall have thirty calendar days after receipt of invoice or satisfactory delivery of goods or performance of the services to make payment. The date of the invoice shall be the latter of the two: 1) date of invoice or 2) postmark of original invoice received by the STATE via United States Postal Service or other method of delivery.

c. All invoices shall reference the Contract number assigned to this Contract. Payment shall be in accordance with Section 103-10, Hawaii Revised Statutes (HRS), upon certification by the Officer-In-Charge (OIC) that the CONTRACTOR has satisfactorily performed the services specified. Payment shall be made on the basis of actual man-hours performed by the CONTRACTOR. The CONTRACTOR shall submit monthly invoices for payment, listing dates of collection and amount of refuse collected for the previous month. All charges for any additional work shall be described, and the charges shall be computed at the contracted rate per cubic yard on a separate invoice. The CONTRACTOR shall clearly indicate any adjustments made to the billing statement for work not performed.

d. The OIC shall submit a report to the CONTRACTOR listing any discrepancies or Contract violation(s), which need correction. The Contractor shall correct these discrepancies or Contract violation(s) by the next reporting period for payment adjustment purposes. Liquidated damages shall apply for the Contractor's failure to comply.

e. Charges for extra pickups, extra yardage, extra bins, etc., that are not specified in the Service Schedule or not added to the Contract by an amendment of contract or a supplemental contract shall be submitted on a separate invoice and will be paid for by state purchase order, state procurement card, or other appropriate means. Charges for emergency services shall be invoiced in this manner.

f. For final payment, the CONTRACTOR must submit a valid original tax clearance certificate "Certification of Compliance for Final Payment" (SPO Form-22). If the CONTRACTOR fails to provide a valid tax clearance certificate within one (1) month of the termination date of this Contract, the STATE shall assign the final payment in an amount not to exceed the tax liability to the Department of Taxation or the Internal Revenue Service, provided that the debt owed to the Department of Taxation shall be offset first.

4. The CONTRACTOR shall be reimbursed at the accepted bid price per cubic yard, which shall be the all-inclusive cost to the STATE, including all applicable taxes for providing the services specified. The total bid price shall be applicable to refuse collection services provided during normal work hours during the term of this Contract.

STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

5. The STATE is not responsible for overtime and shall not pay for any overtime pay.

6. It is the sole responsibility of the CONTRACTOR to comply with section 103-55, HRS. The Contractor shall not be paid any reimbursement of retroactive pay. The STATE may consider requests for increases as a result of an increase to public officers and employees during the Contract period or during any option period. The CONTRACTOR's requests for an increase must meet the following criteria:

   a. At the time of the request, the CONTRACTOR's hourly wage rate must be less than the prevailing State wage rate; and

   b. The CONTRACTOR must or must have provided documentation to show that the hourly wage rate is in compliance with section 103-55, HRS, and that its employees are being paid no less than the known hourly wage rate of the equivalent State position.

5. The CONTRACTOR shall repair all damages caused by CONTRACTOR's equipment or employees to existing utilities and structures, such as water lines, electric conduits, sewer lines, and buildings. If such repairs are not completed within a reasonable time, STATE reserves the right to purchase services for the necessary repairs from the open market and to deduct all repairs costs from moneys due or may thereafter become due to CONTRACTOR. In the event money due to the CONTRACTOR is insufficient for the purpose, CONTRACTOR shall pay the difference upon demand by STATE.

Attachment – S3

STATE OF HAWAII

TIME OF PERFORMANCE

Contractor:
Project(s): Kawailehua – State; Kawailehua – Federal

1. The term of this Contract for Furnishing Refuse Collection Services shall be for a 12-month period, beginning on September 1, 2010 and ending on August 31, 2011.

2. No services shall be performed on this Contract prior to September 1, 2010.

3. The option to extend the Contract shall be at the sole discretion of the STATE. The Contract may be extended without the necessity of rebidding at the same rates as proposed in the original bid, unless price adjustments are made and approved as provided herein:

Initial term of Contract:	12 months
Length of each extension:	Up to twelve months (may be less than twelve months when it is in the best interest of the State)
Maximum length of contract:	36 months

4. The initial period shall commence on the Contract start date. The following conditions must be met for an extension:
   a. The CONTRACTOR experienced cost savings and has unexpended funds available that can be used to provide additional services; or
   b. The STATE determines there is an ongoing need for the services and has funds to extend services, not to exceed two (2) twelve-month periods. Contract extensions shall be awarded at the same or comparable rates as the primary Contract; and
   c. A supplemental Contract must be executed prior to expiration of the primary Contract; and
   d. The STATE may be required to obtain HUD approval in writing of the extension prior to execution of a supplemental Contract; and
   e. The CONTRACTOR must obtain STATE approval in writing and a notice to proceed with the extension; and
   f. The STATE has determined that the CONTRACTOR has satisfactorily provided services over the current Contract term; and
   g. Necessary State and/or Federal funds are appropriated and allotted for an extension.

5. Liquidated damages is fixed at the sum of **Fifty and No/100 Dollars ($50.00)** for each and every day the CONTRACTOR fails to perform in whole or in part any of its obligations. Liquidated damages may be deducted from any payments due or to become due to the CONTRACTOR.

Attachment – S4

STATE OF HAWAII

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development ("DHRD").*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature) (Date)

Denise M. Wise
(Print Name)

Executive Director
(Print Title)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

(1) It involves the delivery of completed work or product by or during a specific time;
(2) There is no employee-employer relationship; and
(3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, HRS.

(Signature) (Date)

(Print Name)

(Print Title, if designee of the Director of DHRD)

STATE OF HAWAII

SPECIAL CONDITIONS

Contractor:
Project(s): Kawailehua – State; Kawailehua – Federal

1. The CONTRACTOR shall maintain insurance acceptable to the STATE in full force and effect throughout the term of this contract. The policies of insurance maintained by the CONTRACTOR shall provide the following coverage.

Coverage	Limit
General Liability Insurance (occurrence form)	$2,000,000.00 combined single limit per occurrence for bodily injury and property damage.
Automobile Insurance covering all owned, non-owned and hired automobiles.	Bodily injury liability limits of $1,000,000.00 each person and $1,000,000.00 per accident and property damage liability limits of $1,000,000.00 per accident OR Combined single limit of $2,000,000.00
Workers Compensation as required by laws of the State of Hawaii.	Insurance to include Employer's Liability. Both such coverages shall apply to all employees of the CONTRACTOR and (in case any sub-CONTRACTOR fails to provide adequate similar protection for all his employees) to all employees of sub-CONTRACTORs.

a. The State of Hawaii, the Hawaii Public Housing Authority (HPHA), its elected and appointed officials, and employees are added as additional insured with respect to operations performed under this Contract. The CONTRACTOR agrees to provide the STATE before the effective date of the Contract, certificate(s) of insurance necessary to satisfy the STATE that the insurance provisions of this Contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the STATE during the entire term of this Contract. The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the Contract, including Supplemental Contracts. Upon request by the STATE, the CONTRACTOR shall furnish a copy of the policy or policies.

b. Failure of the CONTRACTOR to provide and keep in force such insurance shall be a material default under this Contract. The STATE shall be entitled to exercise any or all of the remedies provided in this Contract for default of the CONTRACTOR.

c. The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability hereunder or to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, CONTRACTOR shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Contract.

STATE OF HAWAII

SPECIAL CONDITIONS

d. The insurer shall notify the STATE in writing of any cancellation or change in provisions thirty calendar days prior to the effective date of such cancellation or change.

2. The CONTRACTOR shall have a permanent office on the island of Kauai or the geographic area awarded from where he/she conducts business and where he/she will be accessible to telephone calls for complaints or requests that need immediate attention. An answering service is not acceptable.

3. The work to be performed under this Contract is subject to the requirement of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall to the greatest extent feasible be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

4. The STATE shall monitor the performance of work an ongoing basis through desk monitoring, site inspection and/or other appropriate methods.

6. Should the CONTRACTOR fail to comply with the requirements of the Contract, the STATE reserves the right to engage the services of another company to perform the services to remedy the defect or failure. The STATE may deduct such costs from monies due to the CONTRACTOR or may directly assess the CONTRACTOR.

7. In the event the CONTRACTOR fails, refuses, or neglects to perform the services in accordance with the requirements of the Invitation for Bids number IFB PMB-2010-15 or the Contract, the STATE reserves the right to purchase in the open market a corresponding quantity of services, and to deduct the cost of such services from any monies due or may thereafter become due the CONTRACTOR. In case money due to the CONTRACTOR is insufficient for the purpose, the CONTRACTOR shall pay the difference upon demand by the STATE. The STATE may also utilize all other remedies provided under the Contract and by law and rules.

8. In the event there is a conflict between the attached General Conditions from HUD 5370-C (05/2006) and the attached General Conditions AG-008 (4/15/2009), the more restrictive of the two shall apply.

GENERAL CONDITIONS

Table of Contents

Page(s)

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

GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.

2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.

   a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.

   b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.

   c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.

   d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

   e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.

   f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section103D-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. CPO 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 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.

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 11-205.5, 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.

Instructions to Offerors Non-Construction

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

- 03291 -

1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

(1) signing and returning the amendment;
(2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
(3) letter or telegram, or
(4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

(1) Have adequate financial resources to perform the contract, or the ability to obtain them;
(2) Have a satisfactory performance record;
(3) Have a satisfactory record of integrity and business ethics;
(4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
(5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
(2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/HUD that the late receipt was due solely to mishandling by the HA/HUD after receipt at the HA;
(3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
(4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

7. Contract Award

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may
(1) reject any or all offers if such action is in the HA's interest,
(2) accept other than the lowest offer,
(3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

8. Service of Protest

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

9. Offer Submission

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show **the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.**

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]

Certifications and Representations of Offerors
Non-Construction Contract

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offerors to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Contingent Fee Representation and Agreement

(a) The bidder/offeror represents and certifies as part of its bid/ offer that, except for full-time bona fide employees working solely for the bidder/offeror, the bidder/offeror:

(1) ☐ has, ☐ has not employed or retained any person or company to solicit or obtain this contract; and

(2) ☐ has, ☐ has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) If the answer to either (a)(1) or (a) (2) above is affirmative, the bidder/offeror shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offeror shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

2. Small, Minority, Women-Owned Business Concern Representation

The bidder/offeror represents and certifies as part of its bid/ offer that it:

(a) ☐ is, ☐ is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) ☐ is, ☐ is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) ☐ is, ☐ is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

☐ Black Americans ☐ Asian Pacific Americans
☐ Hispanic Americans ☐ Asian Indian Americans
☐ Native Americans ☐ Hasidic Jewish Americans

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

(1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder/ offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

(b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:

(1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(l) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(l) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(l) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

4. Organizational Conflicts of Interest Certification

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

(i) Award of the contract may result in an unfair competitive advantage;

(ii) The Contractor's objectivity in performing the contract work may be impaired; or

(iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

7. Offeror's Signature

The offeror hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

Signature & Date:

Typed or Printed Name:

Title:

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
Office of Labor Relations
OMB Approval No. 2577-0157 (exp. 12/31/2011)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

1) **Non-construction contracts** (*without* maintenance) **greater than $100,000 - use Section I**;
2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than $2,000 but not more than $100,000 - use Section II**; and
3) **Maintenance contracts** (including nonroutine maintenance), **greater than $100,000 – use Sections I and II**.

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Section I - Clauses for All Non-Construction Contracts greater than $100,000

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1. Definitions

The following definitions are applicable to this contract:

(a) "Authority or Housing Authority (HA)" means the Housing Authority.
(b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
(c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
(d) "Day" means calendar days, unless otherwise stated.
(e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

(a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
(b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
(c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a proposal submitted before final payment of the contract.
(d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
(e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

(a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
(b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
(c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
(d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall been titled to payment as described in paragraph (b) above.
(e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

(a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding $10,000.
(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
(i) appeals under the clause titled Disputes;
(ii) litigation or settlement of claims arising from the performance of this contract; or,
(iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

7. Disputes

(a) All disputes arising under or relating to this contract, *except for disputes arising under clauses contained in Section III, Labor Standards Provisions*, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.
(b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
(c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
(d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
(e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
(i) Award of the contract may result in an unfair competitive advantage; or
(ii) The Contractor's objectivity in performing the contract work may be impaired.
(b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
(d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

(a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

(b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.

(c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other pubic official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

(i) The awarding of any Federal contract;
(ii) The making of any Federal grant;
(iii) The making of any Federal loan;
(iv) The entering into of any cooperative agreement; and,
(v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

(i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
(ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
(iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
(iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

(i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

16. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.

(c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

19. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

21. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

(a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of $10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of $10,000 of the item both under and outside that contract.

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
Office of Labor Relations
OMB Approval No. 2577-0157 (exp. 12/31/2011)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

1) Non-construction contracts (*without* maintenance) greater than $100,000 - use Section I;
2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 968.105) greater than $2,000 but not more than $100,000 - use Section II; and
3) Maintenance contracts (including nonroutine maintenance), greater than $100,000 – use Sections I and II.

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Section II – Labor Standard Provisions for all Maintenance Contracts greater than $2,000

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1. Minimum Wages

(a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:

(1) The work to be performed by the classification required is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the industry; and

(3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Records

(a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:

(i) Name, address and Social Security Number;
(ii) Correct work classification or classifications;
(iii) Hourly rate or rates of monetary wages paid;
(iv) Rate or rates of any fringe benefits provided;
(v) Number of daily and weekly hours worked;
(vi) Gross wages earned;
(vii) Any deductions made; and
(viii) Actual wages paid.

(b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

4. Apprentices and Trainees

(a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:

(i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice;

(ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or

(iii) A training/trainee program that has received prior approval by HUD.

(b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.

(c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.

(d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

(e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Disputes concerning labor standards

(a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).

(i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD).

(ii) The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations.

(iii) The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

(b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds $100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

(a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

7. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

8. Non-Federal Prevailing Wage Rates

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

State of Hawaii
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
SALARY SCHEDULE

Effective Date: 03/01/2009
Bargaining Unit: 01 Blue Collar, Non-Supervisor

		A			A			A			A
BC01	ANN	32,772	BC09	ANN	44,544	WS01	ANN	33,960	WS09	ANN	47,268
	MON	2,731		MON	3,712		MON	2,830		MON	3,939
	8HR	126.08		8HR	171.36		8HR	130.64		8HR	181.84
	HRLY	15.76		HRLY	21.42		HRLY	16.33		HRLY	22.73
BC02	ANN	33,228	BC10	ANN	46,236	WS02	ANN	35,544	WS10	ANN	48,960
	MON	2,769		MON	3,853		MON	2,962		MON	4,080
	8HR	127.84		8HR	177.84		8HR	136.72		8HR	188.32
	HRLY	15.98		HRLY	22.23		HRLY	17.09		HRLY	23.54
BC03	ANN	34,164	BC11	ANN	47,928	WS03	ANN	36,576	WS11	ANN	50,856
	MON	2,847		MON	3,994		MON	3,048		MON	4,238
	8HR	131.44		8HR	184.32		8HR	140.64		8HR	195.60
	HRLY	16.43		HRLY	23.04		HRLY	17.58		HRLY	24.45
BC04	ANN	35,544	BC12	ANN	49,764	WS04	ANN	38,052	WS12	ANN	52,704
	MON	2,962		MON	4,147		MON	3,171		MON	4,392
	8HR	136.72		8HR	191.44		8HR	146.32		8HR	202.72
	HRLY	17.09		HRLY	23.93		HRLY	18.29		HRLY	25.34
BC05	ANN	36,960	BC13	ANN	51,576	WS05	ANN	39,576	WS13	ANN	54,672
	MON	3,080		MON	4,298		MON	3,298		MON	4,556
	8HR	142.16		8HR	198.40		8HR	152.24		8HR	210.24
	HRLY	17.77		HRLY	24.80		HRLY	19.03		HRLY	26.28
BC06	ANN	38,436	BC14	ANN	53,532	WS06	ANN	41,160	WS14	ANN	56,748
	MON	3,203		MON	4,461		MON	3,430		MON	4,729
	8HR	147.84		8HR	205.92		8HR	158.32		8HR	218.24
	HRLY	18.48		HRLY	25.74		HRLY	19.79		HRLY	27.28
BC07	ANN	39,972	BC15	ANN	55,560	WS07	ANN	42,816	WS15	ANN	58,884
	MON	3,331		MON	4,630		MON	3,568		MON	4,907
	8HR	153.76		8HR	213.68		8HR	164.64		8HR	226.48
	HRLY	19.22		HRLY	26.71		HRLY	20.58		HRLY	28.31
BC08	ANN	41,592				WS08	ANN	44,508			
	MON	3,466					MON	3,709			
	8HR	160.00					8HR	171.20			
	HRLY	20.00					HRLY	21.40			

Attachment 13

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