

Hawaii Public Housing Authority
State of Hawaii

IFB PMB-2011-09

Invitation-For-Bids to Furnish Laundry Concession Services at
Hookipa Kahaluu, Kaneohe Apartments, and Kauhale Ohana
Under Asset Management Project 45 on the Island of Oahu

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

Issued April 5, 2011



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

INVITATION FOR BIDS (IFB) No. PMB-2011-09

Notice is hereby given that pursuant to Chapter 103D, Hawaii Revised Statutes (“HRS”), the Hawaii Public Housing Authority (HPHA), will be accepting sealed bids to **Furnish Laundry Concession Services at Hookipa Kahaluu, Kaneohe Apartments and Kauhale Ohana Under Asset Management Project 45 on the Island of Oahu:**

- Hookipa Kahaluu (1072) 47-330 Ahuimanu Road, Kaneohe, HI 96744
- Kaneohe Apartments (1069) 45-507 & 45-513 Pahia Road, Kaneohe, HI 96744
- Kauhale Ohana (1090) 41-1260 Kalanianaʻole Hwy, Waimanalo, HI 96795

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 April 5, 2011.

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, April 26, 2011. 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, April 26, 2011.

A Notice of Intent to Bid is required and must be received by the HPHA’s Central Files, 1002 North School Street, Building D, Honolulu, Hawaii 96817 no later than Monday, April 18, 2011. The Notice of Intent to Bid may be filed by fax at (808) 832-6039.

The HPHA will conduct a Pre-Bid Conference on Tuesday, April 12, 2011 at the Koolau Village Community Hall, 41-1027 Kamau Place, Kaneohe, Hawaii 96744 from approximately 9:00 a.m. – 10:00 a.m. Hawaii Standard Time (HST) with a site visitation to follow at approximately 10:15 a.m. HST. 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



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 Notice of Intent of Offer and Sealed Bids	3
VIII.	Discussions with Bidders Prior to Submission.....	4
IX.	Opening of Bids.....	4
X.	Additional Materials and Documentation.....	5
XI.	IFB Amendments.....	5
XII.	Cancellation of Invitation for Bids	5
XIII.	Costs for Bid Preparation.....	5
XIV.	Mistakes in Bids.....	5
XV.	Rejection of Bids	5
XVI.	Notice of Award.....	6
XVII.	Protests.....	7
XVIII.	Availability of Funds	7
XIX.	Monitoring and Evaluation	8
XX.	General and Special Conditions of the Contract.....	8
XXI.	Cost Principles	8

Section 2 – Service Specifications

I.	Introduction	
	A. Overview, Purpose or Need	10
	B. Area of Service	10
II.	General Requirements	
	A. Specific Requirements	10
	B. Single or Multiple Contracts to be Awarded	15
	C. Single or Multi-Term Contracts to be Awarded	15
	D. Bid Price	15
III.	Scope of Work	
	A. Service Activities.....	15
	B. Management Requirements	18
IV.	Performance Monitoring & Remedies	
	A. Monitoring	20
	B. Damages.....	20

C.	Termination.....	21
----	------------------	----

Section 3 – Bid Offer Application Instructions

	General Instructions for Completing Bid Offer Application	23
I.	Notice of Intent to Offer and Questionnaire	23
II.	Bid Offer Forms.....	23
III.	General Conditions	24

Section 4 – Bid Evaluation & Award

I.	Bid Evaluation	26
II.	Method of Award.....	26

Section 5 – Attachments

1.	Notice of Intent to Bid and Qualifications Questionnaire	Due April 18, 2011
2.	Bid Offer Form	Due April 26, 2011
3.	Sample Contract Based on Competitive Sealed Bid for Goods and Services (6/22/2009)	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, AG-008 Rev. 4/15/2009	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 – Provides 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:

Phyllis Ono
Property Management and Maintenance Services Branch
1002 North School Street, Bldg. D
Honolulu, Hawaii 96817 Telephone: (808) 832-4687

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

For the purpose of this solicitation, the Officer-In-Charge shall be the primary point of contact for the Successful Bidder'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.

<u>AMP</u>	<u>Address</u>	<u>Officer-In-Charge</u>
45	41-1027 Kamau Place Kaneohe, HI 96744	Mr. Patrick Mauga Ph: (808) 233-3766

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

IV. Procurement Timeline

<u>Activity</u>	<u>Scheduled Dates</u>
Public notice announcing IFB	April 5, 2011
Distribution of bid specs/bid offer form	April 5, 2011
Pre-Bid Conference and Site Visitation	April 12, 2011
Site Visitation Period	April 12 – 18, 2011
Deadline to submit written questions	April 15, 2011
State response to written questions	April 20, 2011
Notice of Intent To Bid deadline	April 18, 2011
Bid submittal deadline	April 26, 2011
Bid Opening	April 26, 2011
Notice of award	April/May 2011
Contract execution	May 2011
Contract start date	May 15, 2011

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 is subject to availability of funds.

V. Pre-Bid Conference & Site Visitation

Interested bidders are strongly encouraged to attend an optional Pre-Bid Conference on Tuesday, April 12, 2011 at the Koolau Village Community Hall, 41-1027 Kamau Place, Kaneohe, Hawaii 96744 from approximately 9:00 a.m. – 10:00 a.m. Hawaii Standard Time (HST) with a site visitation to follow at approximately 10:15 a.m. HST. All interested bidders are strongly encouraged to attend.

Impromptu questions will be permitted at the Pre-Bid Conference 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 offer, interested bidders may inspect the complexes 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 bidders must contact the Officer-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 April 15, 2011. All written questions will receive a written response from the HPHA. The HPHA's responses to interested bidder's written questions will be sent to an interested bidder via mail, electronic mail, or facsimile no later than April 20, 2011 or as soon as practicable.

VII. Submission of Sealed Bids

- A. Forms/Formats** – Bid offer forms are attached at Section 5 of this IFB. See Attachment 2.
- B. Bid Submittal** – Sealed bids must be postmarked by the United States Postal Service (USPS) or hand delivered by the date and time designated in the procurement timeline. Any sealed bids post-marked or received after the designated date and time shall be considered late and rejected. Note that postmarks must be by the USPS or the sealed 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.**

Bid offers 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 electronic mail or facsimile shall be automatically rejected. There shall be no exceptions to this requirement.

- C. **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, April 26, 2011 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.

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 offer 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:

1. Awarded to the responsible and responsive bidder submitting the highest percentage (%) of all monthly gross receipts for the 60-month period ending April 30, 2016 located on the Bid Offer Form. See Attachment 2. Interested bidders must submit a bid for the 60-month period to be considered responsive; and
2. 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 May 15, 2011. 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, Hawaii Administrative Rules ("HAR"). The Successful 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 9.

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, Hawaii Revised Statutes;
- (2) A state purchasing agency's failure to follow any rule established by Chapter 103D, Hawaii Revised Statutes; 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 Contracting Office conducting the protested procurement and the Procurement Officer who is conducting the procurement (as indicated below) within five (5) working days of the postmark of the Notice of Non-Award sent to the protestor; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the Contract. 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 complexes 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, as necessary.

XX. General and Special Conditions of Contract

The general conditions that will be imposed contractually are included as an attachment. See Attachment 9. 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 laundry concession services to meet the agency's goal of providing safe, sanitary, and decent housing. The purpose of this IFB is to provide laundry concession services at Hookipa Kahaluu, Kaneohe Apartments and Kauhale Ohana under Asset Management Project 45 on the Island of Oahu.

B. Area of Service

The Successful Bidder shall be required to certify that it is capable of providing services to all complexes within each group during the initial Contract period and all option periods. The complexes within each group are as follows:

- Hookipa Kahaluu (1072) 47-330 Ahuimanu Road, Kaneohe, HI 96744
- Kaneohe Apartments (1069) 45-507 & 45-513 Pahia Road, Kaneohe, HI 96744
- Kauhale Ohana (1090) 41-1260 Kalaniana'ole Hwy, Waimanalo, HI 96795

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.

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 HPHA.

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 must be submitted directly to the DLIR and not to the HPHA.

Alternately, 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 \$12.00 to the Hawaii Information Consortium, LLC (HIC).

6. The Successful Bidder 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 Successful Bidder shall provide the following minimum insurance coverage.

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

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 Branch, 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 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 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 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 Successful Bidder shall furnish a copy of the policy or policies.

Failure of the Successful Bidder 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 Successful Bidder.

The procuring of such required policy or policies of insurance shall not be construed to limit Successful Bidder’s liability hereunder or to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, the Successful Bidder 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 Successful Bidder 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; and
 - One 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
Hawaii business. A business entity referred to as a “Hawaii business” is registered and incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, the 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”).
Compliant non-Hawaii business. A business entity referred to as a “compliant non-Hawaii business,” is not incorporated or organized under the laws of the State of Hawaii but is registered to do business in the State. 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 Successful Bidder 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 Successful Bidder shall insert similar provisions in all subcontracts.
10. The Successful Bidder shall have a permanent office in Hawaii from where it 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.

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: Sixty months
Length of each extension: None
Maximum length of contract: 60 months

The initial period shall commence on the Contract start date. The Contract is being executed for a 60-month period beginning May 15, 2011 and ending May 14, 2016.

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

D. Bid Price

The total bid price shall be the percentage (%) of all monthly gross receipts to be paid by the Successful Bidder to the HPHA for the 60-month period ending May 14, 2016 located on the Bid Offer Form. See Attachment 2. Interested bidders must submit a bid for the 60-month period to be considered responsive.

III. SCOPE OF WORK

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

1. Laundry Concession Services

The Successful Bidder will furnish, install and maintain at its own expense, new or refurbished washing machines and/or new or refurbished dryers (hereafter referred to as appliances) in such numbers as agreed in this Contract. The Successful Bidder also, as may be mutually agreed upon, provides machines for vending soaps, detergents and bleaches and for changing money. Reference hereafter to appliances shall include reference to such vending and money changing machines. The HPHA shall have the right to determine at any time during the period of this Contract that any of said appliances are surplus to its requirements, whereupon said surplus appliances shall be promptly removed by the Successful Bidder at its expense.

It shall be the Successful Bidders' responsibility to ensure all appliances are properly maintained, in good working order and condition, including any

check meters and attachments, making all necessary repairs and replacement of parts.

Full title to these appliances shall remain with the Successful Bidder. The Successful Bidder assumes the full risk and responsibility for any loss, destruction or damage occurring to these appliances, except when attributed to the HPHA by reason of the negligence of its officers, agents or employees while acting within the scope of their employment.

The Successful Bidder shall coordinate with the Officer-in Charge, if necessary, to make arrangements for all normal utility services, including hot and cold water, gas, and electricity required for the proper operation of the appliances. The HPHA shall pay for all utility charges as noted such gas, electric, and water.

The Successful Bidder shall post telephone number, address and procedures for obtaining a refund in the event a machine malfunctions.

The facility shall be cleaned and maintained daily by the HPHA. The HPHA's responsibility shall include but not be limited to the following:

- a. Lint catchers – cleaned;
- b. Sweep and wet mop floor (when necessary, caution signs must be set up indicating "WET FLOOR");
- c. Empty all trash containers;
- d. Wipe all appliances and dust all furniture; and
- e. Clean and sanitize scrub basin.

The Successful Bidder shall maintain and repair the appliances furnished under this Contract. The Successful Bidder shall have an inventory of parts. The Successful Bidder shall post in the laundry facility the name and phone number of a contact person in case of an emergency.

Repairs shall be completed within forty-eight (48) hours after receipt of service call from the Officer-In-Charge. When the Successful Bidder is unable to complete repairs within forty-eight (48) hours because of unavailability of parts, the Successful Bidder shall contact the Officer-In-Charge and advise of the expected completion date. At the discretion of the Officer-In-Charge unacceptable delays will be subject to liquidated damages.

The Officer-In-Charge, however, has the authority to direct the Successful Bidder to install replacement machine(s) under the following conditions:

- a. For any washer or dryer that is down for more than fourteen (14) calendar days;

- b. If more than one (1) washer and/or one (1) dryer is down at a given time;
- c. Any washer or dryer with history of excessive repair calls; or
- d. When directed by the HPHA.

The Successful Bidder assumes complete liability for all taxes applicable to the operation, equipment, income or transaction of the laundry facility.

Upon termination of this Contract, the Successful Bidder shall remove all equipment installed for the purpose of operating under this Contract. The Successful Bidder shall repair any/all damages incurred in the installation or removal of said appliances. Repairs shall be completed within 30 days after receipt of notification by Officer-In-Charge.

The failure of the HPHA to insist, in any one or more instances upon strict performance of any of the covenants or Contracts hereof, shall not be construed as a waiver or a relinquishment of such covenant or Contract in any other insurance, but the same shall continue and remain in full force and effect.

The Successful Bidder warrants that it has not employed any person to solicit or secure this Contract upon any Contract for commission, percentage, brokerage or contingency fee. Breach of this Covenant shall give the HPHA the right to immediately cancel this Contract.

2. Charges to Residents

The Successful Bidder agrees that its charges to tenants at the various complexes shall not be in excess of the minimal prevailing rates in the neighborhoods for similar appliance capacities, wash cycles and drying cycles. The Successful Bidder also agrees that the cost shall be per load and not on the capacity. These charges/rates, can be adjusted based upon the neighborhoods' prevailing rates during the Contract period by mutual consent of the Successful Bidder and the HPHA. These adjustments must be requested in writing to the Contract Administrator and must be approved by the Contractor Administrator in writing prior to any changes.

Charges/rates for washing and drying and the percentage of all monthly gross receipts are stated on the Bid Offer Form.

3. Hours of Operation

Hours of operation shall be set by the Officer-In-Charge. The Successful Offeror shall not be responsible for the operation of the laundry concession.

4. Maintenance, Repairs and Improvements

The Successful Offeror shall maintain and repair the appliances furnished under this Contract. The Successful Offeror shall have an inventory of parts on the island where the laundry concession is located. Repairs shall be completed within forty-eight (48) hours after receipt of service call from the Officer-In-Charge. When the Successful Offeror is unable to complete the repairs within forty-eight (48) hours because of unavailability of parts, the Successful Offeror shall contact and advise the Officer-In-Charge of the expected completion date. At the discretion of the Officer-In-Charge unacceptable delays will be subject to liquidated damages.

The Officer-In-Charge has the authority to direct the Successful Offeror to install replacement machine(s) under the following conditions:

- a. For any washer or dryer that is down for more than fourteen (14) calendar days;
- b. If more than one (1) washer and/or one (1) dryer is down at a given time;
- c. A washer or dryer has a history of repair calls, or
- d. When directed to by the HPHA.

The Successful Offeror shall obtain the prior written approval of the HPHA before making any improvements to the premises. Any such improvement, including but not limited to buildings, fences, electrical, plumbing, and venting, erected on or moved onto the premises by the Successful Offeror with the prior written approval of the HPHA shall remain the property of the Successful Offeror and the Successful Offeror shall have the right to remove such improvement, prior to the termination of this Contract provided, however, that the premises are restored to the original condition. When the HPHA gives written notice to the Successful Offeror to remove the improvements and no action is taken within thirty (30) days after such notice is issued, the HPHA shall remove the same and charge the cost of removal and storage, if any, to the Successful Offeror.

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

1. Personnel

- a. The Successful Bidder shall ensure that all personnel meet the minimum qualifications, including licensing and experience requirements, as appropriate.
- b. The Successful Bidder shall maintain and implement a plan to ensure minimal disruption of services due to staff vacancies or changes.

- c. The Successful Bidder 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. The Successful Bidder agrees to remove any of its employees from servicing or providing services to HPHA, upon written request by the Officer-in-Charge.

2. Administrative

- a. The Successful Bidder 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 Successful Bidder 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. The Successful Bidder shall pay the HPHA, for the rights and privileges granted to operate a laundry concession, a percentage of all monthly gross receipts derived each calendar day of the calendar month following the calendar month. All such payments shall be accompanied by a sworn statement or such other evidence, as the HPHA may require, certifying and showing the gross receipts derived each month from the operation of all appliances on premises. The Successful Bidder shall keep the HPHA informed of the time or times when the receipts are to be collected or removed from the appliances and the HPHA shall have the right to have a representative present at the time of each collection of receipts. The failure of the Successful Bidder to inform the HPHA of such collection dates and times shall be deemed to be a material breach of the Contract.
- b. The Successful Bidder shall submit the monthly collections to:

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

The Successful Bidder shall coordinate with the Officer-In-Charge if necessary, to make arrangements for all normal utility services, including hot and cold water, gas and electricity required for the proper operation of the appliances. The HPHA shall pay for all utility charges as noted such as gas, electric, and water.

IV. PERFORMANCE MONITORING & REMEDIES

A. Monitoring

1. The performance of work shall be monitored by the Officer-In-Charge and the Contract Administrator. Performance will be monitored on an ongoing basis by the HPHA through desk monitoring, site inspection and/or other methods.
2. The Successful Bidder 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 Successful Bidder 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 Successful Bidder or to directly assess the Successful Bidder.
3. In the event the Successful Bidder 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 Successful Bidder the cost of procuring such services and from any moneys due or that may thereafter become due the Successful Bidder. In case money due to the Successful Bidder is insufficient for the purpose, the Successful Bidder 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 Successful Bidder fails to perform in whole or in part any of its obligations in accordance with the terms of paragraph 9 of the General Conditions.
2. The Successful Bidder shall repair all damages caused by the Successful Bidder'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 Successful Bidder. In the event money due the Successful Bidder is insufficient for the purpose, the Successful Bidder 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. Notice of Intent to Offer

The Notice of Intent to Offer must be completed and submitted to the HPHA by the required due date and time, and in the form prescribed by the HPHA. Electronic mail and facsimile transmissions shall not be accepted.

Interested bidders must complete the questionnaire completely, including the notary public affidavit, and at least three references for whom it has performed similar services.

Notice of Intent to Offer and Questionnaire forms are attached to this IFB. See Attachment 1.

II. 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 be shall be the percentage (%) of all monthly gross receipts to be paid by the Successful Bidder to the HPHA for the 60-month period ending May14, 2016 located on the Bid Offer Form. See Attachment 2. Interested bidders must submit a bid for the 60-month period to be considered responsive.

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 responsible and responsive bidder submitting the highest percentage (%) of all monthly gross receipts to be paid by the Successful Bidder to the HPHA for the 60-month period ending May 14, 2016 located on the Bid Offer Form. See Attachment 2. Interested bidders must submit a bid for the 60-month period to be considered responsive.

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

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

(END OF SECTION)

Section 5

Attachments

- | | |
|---|--------------------------|
| 1. Notice of Intent to Offer | Due April 18, 2011 |
| 2. Bid Offer Form | Due April 26, 2011 |
| 3. Sample Contract Based on Competitive Sealed Bid for Goods and Services (6/22/2009) | 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 | For Bidder's information |

NOTICE OF INTENT TO BID
&
QUALIFICATIONS QUESTIONNAIRE

**FURNISH LAUNDRY CONCESSION SERVICES FOR HOOKIPA
KAHALUU, KANEOHE APARTMENTS, AND KAUAHALE OHANA
UNDER ASSET MANAGEMENT PROJECT 45 ON THE ISLAND OF
OAHU**

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

Having been first duly sworn and deposed, the undersigned states that he/she has the minimum qualifications required in IFB no. PMB-2011-09 and that he/she is furnishing the following information as proof of his/her qualifications:

1. Notice of Intent to Bid on IFB PMB-2011-09.
[] Yes (If "yes", complete questionnaire.)
[] No (If "no", complete questions 1a, sign and date notice of intent)
Reason for not submitting a bid: _____

1a. Name of Bidder: _____

2. Business Organization:
 Individual Partnership Corporation Joint Venture
- Offeror is:
 Individual Partnership Corporation Joint Venture
- State of Incorporation Hawaii Other: _____

3. Principal Office Address: _____

3a. Payment Address:
(if different from
above) _____

4. Give the history of the Bidder's experience in the operations of a business providing laundry concession services or similar businesses in the State of Hawaii. Include the number of years of experience: (Attach separate pages if necessary.)

4b. Give the names and addresses of companies or government agencies at which the Bidder has provided or is currently providing laundry concession services as mentioned in Question 4a, together with the dates of services:

<u>Name</u>	<u>Address & Telephone</u>	<u>Dates</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

5. Who would be our management and account contact?

<u>Name & Title</u>	<u>Address</u>	<u>Telephone No.</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. Financial References: Provide at least three references as to the Bidder's financial ability to provide laundry concession services for the HPHA.

<u>Name of Reference</u>	<u>Address</u>	<u>Telephone No.</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. If the Bidder intends to submit a bid offer under another parent company, subsidiary or affiliate, indicate the name of that company: _____

The Bidder hereby authorizes the Hawaii Public Housing Authority to confirm all or any of the foregoing information with any financial institution or any other source for the purpose of determining financial capability, experience and responsibility of the bidder.

The undersigned has carefully read and understands the terms and conditions specified in the Invitation for Bids and Specifications.

Date: _____

Respectfully Submitted,

Telephone No.: _____

Exact Legal Name of Offeror

Fax No.: _____

Authorized Signature (Original)

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

Title

Street Address

Social Security or Federal I.D. No.:

City, State, Zip Code

(HPHA Use Only) Verified by:	Date:
------------------------------	-------

STATE OF HAWAII)
) SS
COUNTY OF _____)

_____ and _____,

being

duly sworn, depose and say: that he/she/they is/are

the _____ and

_____, respectively of

_____, in whose behalf he/she/they makes/make this

affidavit; that he/she/they has/have read the foregoing Notice of Intent to Bid and

Qualification Questionnaire, the answers and the information submitted; and that the

answers and information are true and correct to the best of his/her/their knowledge and

belief.

By _____

Its _____

Subscribed and sworn to before me this

____ day of _____, 2011

Notary Public / State of Hawaii

My commission expires _____

IFB-PMB-2011-09
SEALED BID OFFER

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

Dear Procurement Officer:

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

That the undersigned further understands and agrees that by submitting this Sealed Bid Offer, 1) it is declaring its Bid Offer 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: _____

Respectfully Submitted,

Telephone No.: _____

Legal Name of Offeror

Fax No.: _____

Payment address, if other than street
address at right:

Authorized Signature (Original)

Title

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

Street Address

Social Security or Federal I.D. No.:

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

4.

Insurance coverage to be provided by:

Commercial General Liability: _____

Name of Agent: _____

Telephone Number: _____

Workers Comp: _____

Automobile Insurance: _____

Signature of Offeror _____



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
May 15, 2011, 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) n/a
(Identify state sources)

or (2) n/a
(Identify federal sources)

or both, in the following amounts: State \$ 0.00
 Federal \$ 0.00

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-2011-09 ("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

n/a _____ DOLLARS
(\$ 0.00), 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 (\$ 0.00).

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 n/a _____ DOLLARS (\$ 0.00) 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.

(Notary Stamp or Seal)

(Signature)

(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 _____



STATE OF HAWAII
SCOPE OF SERVICES

Contractor:**Complexes:**

Hookipa Kahaluu (1072) 47-330 Ahuimanu Road, Kaneohe, HI 96744

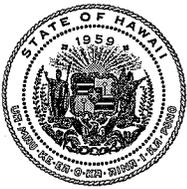
Kaneohe Apartments (1069) 45-507 & 45-513 Pahia Road, Kaneohe HI 96744

Kauhale Ohana (1090) 41-1260 Kalaniana'ole Hwy., Waimanalo, HI 96795

1. It is understood and agree that the following documents, and any amendments or addenda thereto, comprise the Contract between the parties and are fully a part of this Contract governing the work to be performed by the CONTRACTOR to furnish laundry concession services:
(1) CONTRACTOR's accepted bid offer dated April 26, 2011; (2) Invitation for Bids No. PMB 2011-09 and all addenda; (3) State General Conditions (AG-008 Rev. 4/15/2009); and (4) this Contract, Attachments S1, S2, S3, S4 and S5. These documents are collectively referred to as the "Contract Documents".
2. The CONTRACTOR shall, in a satisfactory and proper manner as determined by the STATE, and in strict accordance with the terms and conditions of the Contract Documents furnish laundry concession services at the low income public housing complexes located on the island of Oahu as listed above.
3. The STATE shall provide a suitable location with adequate space and utilities to include gas, electric and water at no additional cost to the CONTRACTOR.
4. The CONTRACTOR shall furnish, install and maintain at its own expense, new or refurbished washing machines and/or new or refurbished dryers, hereafter referred to as appliances, in such numbers as agreed upon in this Contract. The STATE shall determine at any time during the period of this Contract that any of said appliances are surplus to its requirements, whereupon said surplus appliances shall be promptly removed by the CONTRACTORS expense.
5. The CONTRACTOR shall install and maintain the following equipment at the CONTRACTORS expense:

Location: Hookipa Kahaluu	No. of Washers (Electric)	No. of Dryers (Gas)
Appliance Description:		
Front Load Washer (*accessible)	1	
Top Load Washer	4	
Front Load Dryer (*accessible)		3
Front Load Dryer		1
Stacked Front Load Dryers (2 drying pockets)		1

*Must meet the American with Disabilities Act Accessibility Guidelines



STATE OF HAWAII

SCOPE OF SERVICES

Location: Kaneohe Apartments		
Appliance Description:	No. of Washers (Electric)	No. of Dryers (Gas)
Front Load Washer (*accessible)	1	
Top Load Washer	3	
Front Load Dryer (*accessible)		1
Front Load Dryer		1
Stacked Front Load Dryers (2 drying pockets)		1

*Must meet the American with Disabilities Act Accessibility Guidelines

Location: Kauhale Ohana		
Appliance Description:	No. of Washers (Electric)	No. of Dryers (Gas)
Front Load Washer (*accessible)	1	
Top Load Washer	2	
Front Load Dryer (*accessible)		1
Front Load Dryer		2

*Must meet the American with Disabilities Act Accessibility Guidelines

6. The CONTRACTOR shall ensure all appliances are properly maintained, in good working order and condition, making all necessary repairs and replacement of parts.
7. Full title to the appliances shall remain with the CONTRACTOR. The CONTRACTOR assumes the full risk and responsibility for any loss, destruction or damage occurring to these appliances, except when attributed to the STATE by reason of the negligence of its officers, agents or employees while acting within the scope of their employment.
8. Maintenance, Repairs and Improvements

The CONTRACTOR shall maintain and repair the appliances furnished under this Contract. The CONTRACTOR shall post in the laundry facility the name and phone number of a contact person in case of an emergency.

Repairs shall be completed within forty-eight (48) hours after receipt of service call from the STATE. When the CONTRACTOR is unable to complete repairs within 48 hours because of unavailability of parts, the CONTRACTOR shall contact the Officer-In-Charge and advise the Officer-In-Charge of the expected completion date. At the discretion of the Officer-In-Charge unacceptable delays will be subject to liquidated damages.



STATE OF HAWAII
SCOPE OF SERVICES

The STATE, however, has the authority to direct the CONTRACTOR to install replacement machine(s) under the following conditions: for any washer or dryer that is down for more than 14 calendar days; if more than one (1) washer and/or one (1) dryer is down at a given time; any washer or dryer with history of excessive repair calls; or when directed by the STATE.

10. Charges to Residents

The CONTRACTOR agrees that its charges to residents for the use of these appliances shall not be in excess of the minimal prevailing rates in the neighborhood for similar appliance capacities, wash cycles and drying cycles. The CONTRACTOR also agrees that the cost shall be per load and not on the capacity. These charges/rates, can be adjusted based upon neighborhoods' prevailing rates during the Contract period by mutual consent of the CONTRACTOR and the STATE. Adjustments must be requested in writing to the STATE and must be approved by the STATE in writing prior to any changes.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

Contractor:**Complexes:****Hookipa Kahaluu (1072)** 47-330 Ahuimanu Road, Kaneohe, HI 96744**Kaneohe Apartments (1069)** 45-507 & 45-513 Pahia Road, Kaneohe HI 96744**Kauhale Ohana (1090)** 41-1260 Kalaniana'ole Hwy., Waimanalo, HI 96795

1. It is agreed and understood that the CONTRACTOR, for services satisfactorily performed, shall receive ___% of all monthly gross receipts derived each calendar day of the calendar month following the calendar month. The STATE shall receive ___% of all monthly gross receipts.
2. All payments shall be accompanied by a sworn statement or such other evidence, as the STATE may require, certifying and showing the gross receipts derived each month from the operation of all appliances on the premises.
3. The CONTRACTOR shall keep the STATE informed of the time(s) when the receipts are to be collected or removed from the appliances and the STATE shall have the right to have a representative present at the time of each collection of receipts. The failure of the CONTRACTOR to inform the STATE of such collection dates and times shall be deemed to be a material breach of this Contract.
4. Payments shall be sent to:

Hawaii Public Housing Authority
 Attention: Property Management and Maintenance Services Branch
 1002 North School Street
 P.O. Box 17907
 Honolulu, HI 96817



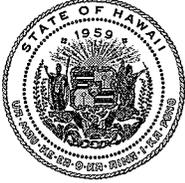
STATE OF HAWAII
TIME OF PERFORMANCE

Contractor:

Complexes:

Hookipa Kahaluu (1072) 47-330 Ahuimanu Road, Kaneohe, HI 96744
Kaneohe Apartments (1069) 45-507 & 45-513 Pahia Road, Kaneohe HI 96744
Kauhale Ohana (1090) 41-1260 Kalanianaʻole Hwy., Waimanalo, HI 96795

1. The term of this Contract for furnishing laundry concession services at Hookipa Kahaluu, Kaneohe Apartments and Kauhale Ohana under Asset Management Project 45 on the island of Oahu shall be for a 60-month period beginning May 15, 2011 and ending May 14, 2016.
2. No services shall be performed on this Contract prior to May 15, 2011.
3. Liquidated damages are 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. Liquidated damages may be deducted from any payments due or to become due to the CONTRACTOR.



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)

Denise M. Wise

(Print Name)

Executive Director

(Print Title)

(Date)

* 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)

(Print Name)

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

(Date)



STATE OF HAWAII

SPECIAL CONDITIONS

Contractor:**Complexes:**

Hookipa Kahaluu (1072) 47-330 Ahuimanu Road, Kaneohe, HI 96744
Kaneohe Apartments (1069) 45-507 & 45-513 Pahia Road, Kaneohe HI 96744
Kauhale Ohana (1090) 41-1260 Kalaniana'ole Hwy., Waimanalo, HI 96795

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 coverage.

<u>Coverage</u>	<u>Limit</u>
General Liability Insurance (occurrence form)	<u>\$2,000,000.00</u> 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 <u>\$100,000,000.00</u> each person and <u>\$100,000,000.00</u> per accident and property damage liability limits of <u>\$100,000,000.00</u> per accident OR combined single limit of <u>\$2,000,000.00</u> .
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 to all employees of sub-contractors (in case any sub-contractor fails to provide adequate similar protection for all its employees).
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 policy shall constitute primary insurance for the STATE, covering liability arising out of or resulting for occurrences during or in connections with the performance of the Contract.
b.	The CONTRACTOR F agrees to provide the STATE before the effective date of the Contract, certificate(s) of insurance to evidence the insurance provisions of this Contract. The CONTRACTOR shall 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 and any Supplemental Contracts. Upon request by the STATE, the CONTRACTOR shall furnish a copy of the policy or policies.
c.	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 and by law for default by the CONTRACTOR.
d.	The procuring of such required policy or policies of insurance shall not be construed to limit the CONTRACTOR's liability hereunder or to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance,



STATE OF HAWAII
SPECIAL CONDITIONS

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.

- e. The CONTRACTOR shall notify the HPHA in writing of any cancellation or change in provisions thirty (30) calendar days prior to the effective date of such cancellation or change.
 - f. The Hawaii Public Housing Authority is a self insured STATE agency. The CONTRACTOR'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 CONTRACTOR.
2. The CONTRACTOR shall have a permanent office in the State of Hawaii from where it conducts business and where it will be accessible to telephone calls for complaints or requests that need immediate attention. An answering service is not acceptable.
 3. The STATE shall monitor the performance of work on an ongoing basis through desk monitoring, site inspection and/or other appropriate methods.
 4. 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 2011-09 or the Contract, the STATE reserves the right to purchase in the open market, a corresponding quantity of services, and to deduct from CONTRACTOR this cost and from any monies due or that may thereafter become due the CONTRACTOR (the cost to the STATE of procuring such services). 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.

GENERAL CONDITIONS

Table of Contents

	<u>Page(s)</u>
1. Coordination of Services by the STATE.....	2
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.....	2
3. Personnel Requirements.....	3
4. Nondiscrimination.....	3
5. Conflicts of Interest.....	3
6. Subcontracts and Assignments.....	3
7. Indemnification and Defense.....	4
8. Cost of Litigation.....	4
9. Liquidated Damages.....	4
10. STATE'S Right of Offset.....	4
11. Disputes.....	4
12. Suspension of Contract.....	4
13. Termination for Default.....	5
14. Termination for Convenience.....	6
15. Claims Based on the Agency Procurement Officer's Actions or Omissions.....	8
16. Costs and Expenses.....	8
17. Payment Procedures; Final Payment; Tax Clearance.....	9
18. Federal Funds.....	9
19. Modifications of Contract.....	9
20. Change Order.....	10
21. Price Adjustment.....	11
22. Variation in Quantity for Definite Quantity Contracts.....	11
23. Changes in Cost-Reimbursement Contract.....	11
24. Confidentiality of Material.....	12
25. Publicity.....	12
26. Ownership Rights and Copyright.....	12
27. Liens and Warranties.....	12
28. Audit of Books and Records of the CONTRACTOR.....	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 section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Termination for Default.

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

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

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

14. Termination for Convenience.

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

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

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

d. Compensation.

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

supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

- (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. 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.

This page left intentionally blank.