



Hawaii Public Housing Authority
State of Hawaii

IFB PMB-2011-11

Invitation-for-Bids for the Provision of Gas And Electric Ranges
for Various State and Federal Low Income Public Housing
Complexes Statewide

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 March 31, 2011



NEIL ABERCROMBIE
GOVERNOR



DENISE M. WISE
EXECUTIVE DIRECTOR

BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
HONOLULU, HAWAII 96817

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

INVITATION FOR BIDS (IFB) No. PMB-2011-11

Notice is hereby given that pursuant to Chapter 103D, Hawaii Revised Statutes, the Hawaii Public Housing Authority (HPHA), will be accepting sealed bids for the **Provision of Gas & Electric Ranges for Various State and Federal Low Income Public Housing Complexes Statewide.**

The Invitation for Bids, Specifications, and Bid Offer Form may be picked up at the Contract and Procurement Office on Oahu located at 1002 North School Street, Building D, Honolulu, Hawaii 96817 beginning March 31, 2011. Sealed bids must be received at 1002 North School Street, Building D no later than 10:00 a.m., Thursday, April 21, 2011. Opening of bids will commence at 10:15 a.m. Hawaii Standard Time (HST) on Thursday, April 21, 2011.

The HPHA will conduct a Pre-Bid Conference on Friday, April 8, 2010 at the HPHA Building E Conference Room, 1002 North School Street, Honolulu, Hawaii 96817 from approximately 9:00 a.m. – 10:00 a.m. HST. No site visitation to follow. Please call the respective Officer-In-Charge to set up a site visitation date. 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 (808) 832-6038.

HAWAII PUBLIC HOUSING AUTHORITY

Denise M. Wise
Executive Director



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13.	Instructions to Offerors, form HUD 5369-B	For Bidder's information
14.	Certification and Representations of Offerors, form HUD 5369-C	Due April 21, 2011

Section 1
Administrative Overview

Section 1

Administrative Overview

I. Authority

This Invitation-For-Bids (IFB) is issued under the provisions of Chapter 103D, Hawaii Revised Statutes (HRS), and the related Hawaii Administrative Rules (HAR). 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, and submission of a valid executed bid by any prospective bidder shall constitute admission of such knowledge.

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 applicant responsibilities, and defines deliverables (as applicable)
- Section 3 Bid Proposal – Describes the required format and content for the bid
- Section 4 Bid Evaluation & Award – Describes how the bids will be evaluated by the State Contracting Office
- 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:

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 Hawaii Public Housing Authority (HPHA) reserves the right to change the IFB Coordinator and/or Contract Administrator.

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 by the Officer-In-Charge. The Officer-In-Charge for each Asset Management Project (AMP)/Management Unit (MU) is designated as follows:

Group	AMP/MU	Address	Officer-In-Charge
I	AMP 30	99-132 Kohomua Street Aiea, HI 96701	Ms. Mary Jane Hall-Ramiro Ph: (808) 483-2550
I	AMP 31	2250 Kalena Drive Honolulu, HI 96819	Mr. Gerald Kita Ph: (808) 832-3336
I	AMP 32/33	521 North Kukui Street Honolulu, HI 96817	Ms. Cynthia Yoshida Ph: (808) 832-3153
I	AMP 34	1545 Kalakaua Avenue Honolulu, 96826	Ms. Janice Mizusawa Ph: (808) 973-0193
I	AMP 35	730 Captain Cook Ave Honolulu, HI 96813	Ms. Gail Lee Ph: (808) 586-9723
I	AMP 40	1475 Linapuni Street Honolulu, HI 96819	Mr. Robert Faleafine Ph: (808) 832-6075
I	AMP 44	85-186 McArthur Street Waianae, HI 96792	Ms. Veronica Malabey Ph: (808) 697-7171

I	AMP 45	41-1027 Kamau Place Kaneohe, HI 96744	Mr. Patrick Mauga Ph: (808) 233-3766
I	AMP 49	310 North Cane Street Wahiawa, HI 96786	Mr. Ligo Leuli Ph: (808) 622-6360
I	MU 42	94-941 Kau'olu Place Waipahu, HI 96797	Ms. Venus Katano Ph: (808) 675-0099
II	AMP 39	2015 Holowai Place Wailuku, HI 96793	Ms. Ione Godsey Ph: (808) 243-5001
III	AMP 38	4726 Malu Road Kapaa, HI 96746	Ms. Sandra Kouchi Ph: (808) 821-4415
IV	AMP 43	78-6725 Makolea Street Kailua-Kona, HI 96740	Mr. Paul Sopoaga Ph: (808) 322-1915
IV	AMP 46	65-1191 Opelo Rd. Kamuela, HI 96743	Mr. Mark Sayers (808) 887-8130
V	AMP 37	600 Wailoa Street Hilo, HI 96720	Ms. Tammy Passmore Ph: (808) 933-0474
VI	AMP 39	Maunaloa, HI 96770	Ms. Ione Godsey Ph: (808) 243-5001

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

Activity	Scheduled Dates
Public notice announcing IFB	March 31, 2011
Distribution of bid specs/bid offer form	March 31, 2011
Pre-Bid Conference	April 8, 2011
Site Visitation Period	April 9 – 20, 2011
Bid submittal deadline	April 21, 2011
Bid Opening	April 21, 2011
Notice of award	May 2011
Contract execution	June 2011
Contract start date	July 1, 2011

The HPHA reserves the right to amend or revise the timetable without prior written notice. Contract execution and start date are subject to the availability of funds.

V. Pre-Bid Conference & Site Visitation

Interested bidders are strongly encouraged to attend an optional Pre-Bid Conference on Friday, April 8, 2011 at the HPHA Building E Conference Room, 1002 North School Street, Honolulu, Hawaii 96817 from approximately 9:00 a.m. – 10:00 a.m. Hawaii Standard Time (HST). No site visitation to follow. Please call the respective Officer-In-Charge to set up a site visitation date. All interested bidders are strongly encouraged to attend.

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 visitation.

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 purposes. Formal official written responses to substantive questions will be provided to each interested bidder as set forth in section VI herein below. Any changes required will be issued as an addendum to the IFB.

VI. Submission of Questions

Interested bidders may submit questions to the IFB Coordinator identified in Section III of this IFB. The deadline for submission of written questions is 4:30 p.m. HST on April 13, 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 15, 2011.

VII. Submission of Sealed Bids

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

Interested Bidders shall also follow the U.S. Department of Housing and Urban Development's Instructions to Offerors Non-Construction form HUD 5369-B and Certifications and Representations of Offers Non-Construction Contract, form HUD 5369-C. The instructions can be downloaded from HUDClips at www.hudclips.org and is attached at Section 5 of this IFB. See Attachment 10.

- B. **Bid Submittal.** Sealed bids must be postmarked by 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 or facsimile submissions of the Bid Offer shall not be**

accepted.

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

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

- D. Confidential Information.** If an interested bidder believes that any portion of a bid contains information that should be withheld as confidential, the interested bidder may request in writing for nondisclosure of designated proprietary data 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 potential 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 shall not be

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 April 21, 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, the HPHA shall publicly open the bid as soon as possible, inform all interested bidders about 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 bid was not properly opened during the posted bid opening date and time.

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, 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 applicants' 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 HPHA or to the fair treatment of other bidders. Mistakes in bids shall be handled in accordance with section 3-122, HAR, and HUD requirements at HUD Handbook 7460.8.

XV. Rejection of Bids

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

A bid may be automatically rejected if it is:

1. Unreasonable in Price: A bid is unreasonable in price, if a) 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, or b) the bid is determined by the HPHA 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 a) there is a reasonable doubt that the bid would result in the lowest overall cost, even though it is the lowest bid, or b) 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 lowest total bid price in each group for the initial 12-month period ending June 30, 2012 and option year one (1) and option year two (2) of the Bid Offer Form. See Attachment 2. Interested bidder(s) must submit a bid for each appliance listed in each group to be considered responsive. The award of the initial 12-month Contract period shall not be deemed a commitment on the part of the HPHA to automatically exercise the additional 12-month option periods. The Successful Bidder of each group may not

necessarily be the same bidder; and

2. In the case of a tie, the bid shall be awarded to the present Contractor providing it is one of the tied bidders and whose previous business and/or performance indicate that it was responsible. If the present Contractor is not a tied bidder, the bid award shall be 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, and to all further approvals, including the approval of HUD, 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 July 1, 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 Contract start 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 10.

XVII. Protests

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

- (1) A state purchasing agency's failure to follow procedures established by Chapter 103D, HRS;
- (2) A state purchasing agency's failure to follow any rule established by Chapter 103D, HRS; or
- (3) A state purchasing agency's failure to follow any procedure, requirement, or evaluation criterion in a request for proposals issued by the state purchasing agency.

The Notice of Protest shall be mailed by USPS or hand delivered to the head of the State 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 is subject to the availability and allocation of State and/or Federal funds. The HPHA shall retain the authority to cancel an award and/or not exercise the option periods due to the lack of available 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 allocated for purposes other than the provision of appliances.

XIX. Monitoring and Evaluation

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

Failure to comply with all material terms of the Contract may be cause for suspension or termination as provided in the general conditions. The Successful Bidder may be required to submit additional written reports, including a corrective action plan, in response to monitoring conducted by the HPHA. These additional reports shall not be considered a change to the scope of work of the Contract, but shall continue for the duration of time as deemed necessary by the HPHA.

XX. General and Special Conditions of Contract

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

Any necessary special conditions may also be imposed contractually by the HPHA. In the case of a conflict between the special conditions and the general conditions, the special conditions shall apply.

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

XXI. Cost Principles

The HPHA shall utilize standard cost principles at Section 3-123, HAR, which are available on the State Procurement Office website. Nothing in this section shall be construed to create an exemption from any cost principle arising under federal and state 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 appliances to meet the agency's goal of providing safe, sanitary, and decent housing. The purpose of this IFB is to procure gas and electric ranges for various State and Federal low income public housing complexes statewide.

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 primary Contract period and all option periods. The address of each group is located in Attachment 3.

C. Funding source and period of availability

Funds are subject to appropriation by HUD, the State's Director of Finance and allocation by the Governor and/or State Legislature. Funding and period of availability may change upon notice by the STATE to the HPHA.

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

If there should be insufficient funds for any portion of the remainder Contract period beyond the initial 12-month period ending June 30, 2012, the STATE may terminate the Contract or revise the amount/quantity of services required without penalty. Services will be reduced or rescheduled at the same bid price.

The HPHA reserves the right to pay for the provision of appliances using available State or Federal sources. Any additional services purchased under the

terms of the Contract resulting from this IFB shall be at the same or similar contracted rates.

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 for Federal complexes 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.

However, instead of separately applying for these (paper) certificates at the various state/federal agencies, the HPHA recommends that interested bidders 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>
Commercial General Liability (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>\$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 Combined single limit of <u>\$2,000,000.00</u> .

Workers Compensation as Insurance to include Employer's Liability.
required by laws of the State of Hawaii. 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.

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

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

7. Interested bidders are advised that if awarded a Contract under this solicitation, the Successful Bidder shall, upon award of the Contract, furnish proof of compliance with the requirements of section 3-122-112, HAR:
 - Chapter 237, HRS, tax clearance;
 - Chapter 383, HRS, unemployment insurance;
 - Chapter 386, HRS, workers' compensation;
 - Chapter 392, HRS, temporary disability insurance;
 - Chapter 393, HRS, prepaid health care; and
 - One of the following:
 - i. The Successful Bidder shall be registered and incorporated or organized under the laws of the State of Hawaii (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. The 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:	12 months
Length of each extension:	Up to 12 months
Maximum length of contract:	36 months

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

- The Contractor experienced cost savings and has unexpended funds available that can be used to provide additional services; or
- The HPHA determines there is an ongoing need for the services and has funds to extend services up 24 months but not to exceed 12-months at a time. Contract extensions shall be awarded at the same or comparable rates as the Primary Contract. Exceptions shall be granted upon satisfactory justification such as increase in cost of services or cost of living increase as provided herein; and
- A Supplemental Contract must be executed prior to expiration of the Primary Contract; and
- The HPHA may be required to obtain HUD approval if federal HUD funds are to be used ; and
- The Contractor must obtain written approval and a notice to proceed by the STATE with the extension; and

- The STATE has determined that the Contractor has satisfactorily provided services over the current Contract term; and
- Necessary State and/or Federal funds are appropriated and allotted for an extension.

The Primary Contract is being executed for a 12-month period beginning July 1, 2011 and ending June 30, 2012.

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

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

D. Statutory requirements of Section 103-55, HRS

Interested bidders shall complete and submit the attached wage certification by which the interested bidder certifies that the services required will be performed pursuant to section 103-55, HRS. See Attachment 1.

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

E. Bid Price

The total bid price shall be based on delivery and installation of new gas & electric ranges, and the removal and disposal of the replaced range to the various HPHA complexes on Oahu, East Hawaii, West Hawaii, Maui, Kauai, and Molokai. Prices shall include all labor, material, equipment, freight charges, delivery charges, applicable taxes, and any other costs incurred in the performance of this Contract.

The HPHA is not responsible for and shall not pay overtime pay resulting from the Successful Bidder's scheduling of employees. Interested bidders should account for any published wage increase in their bid offer. The HPHA shall not approve requests for contract adjustments due to wage increase during the term of the contract that are known. It is the sole responsibility of the Successful Bidder to comply with Section 103-55, HRS.

The interested bidder's bid price shall include all administrative and personnel costs and any increase in costs for benefits required by law that are automatically increased as a result of increase wages, such as federal old age benefits, workers' compensation, temporary disability insurance, unemployment insurance, and prepaid health insurance

The Successful Bidder shall be determined on the total bid price for the specified appliance in each group for the 12-month period ending June 30, 2012 and option year one (1) and option year two (2).

F. Contract Price Adjustment

Each bid offered herein shall be firm for the primary contract period, option year one (1) and option year two (2).

A maximum of five percent (5%) or the change of the consumer price index for that period, whichever is lower, shall dictate the allowable escalation in bid price for each item listed in the Bid Offer. To be considered allowable, the price increase must be imposed by the manufacturer and documented in writing. In addition, the HPHA shall grant exceptions upon satisfactory justification such as an increase in freight charges, delivery charges and applicable taxes.

Escalation will also be allowed during the subsequent two (2) 12-month option periods provided the Successful Bidder's request is due to price increase(s) imposed upon the Successful Bidder by the manufacturer. Accordingly, the Successful Bidder shall furnish appropriate documentation to support its request for price increases.

Within seven (7) days after date of award, the Successful Bidder shall furnish the HPHA's Contract and Procurement Office with a copy of their price list which was current at the time of bid opening. The Successful Bidder shall identify their Price List with the bid/contract number and the items awarded by annotating the line item number alongside the appropriate model number. The Successful Bidder is advised to comply with this requirement as its Price List will be part of the Contract file and will be the basis upon which any future request(s) for price increase(s) will be based. Failure to submit the Price List in a timely manner will result in rejection of any request for price increase(s) in the future.

III. CONTRACT MONITORING & REMEDIES

A. Monitoring

- a. The satisfactory provision of goods and services shall be monitored by the Officer-In-Charge and Contract Administrator. Performance will be monitored on an ongoing basis by the HPHA through desk monitoring, site inspection and/or other methods by the Officer-In-Charge and Contract

Administrator.

- b. Should the Successful Bidder fail to comply with the requirements of the Contract, 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 assess the Successful Bidder directly.
- c. 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, the HPHA reserves the right to purchase in the open market, a corresponding quantity of services, and to deduct from the Successful Bidder this cost and from any monies due or that may thereafter become due the Successful Bidder such as the cost to the HPHA of procuring such services. In case money due to the Successful Bidder is insufficient for this 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 the Successful Bidder fails to perform in whole or in part any of its obligations, which liquidated damages may be deducted from any payments due or to become due to the Successful Bidder.
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, and buildings. 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 to the Successful Bidder is insufficient for this purpose, the Successful Bidder shall pay the difference upon demand by the HPHA.

C. Product Quality

Ranges furnished under these provisions and specifications shall be new and free from defects. An unacceptable range must be replaced with an item of acceptable quality within one (1) week of notification. Best quality shall be determined solely at the discretion of the HPHA. The replacement of any unacceptable item shall not relieve the Successful Bidder from the responsibility imposed upon it by the Contract. The acceptability of any range is judged solely by the HPHA. Payment, whether partial or final, shall not be construed to be an acceptance of an unacceptable appliance.

D. Termination

The HPHA reserves the right to terminate any Contract without penalty for cause or convenience as provided in the general conditions.

IV. SCOPE OF WORK

In return for the bid price(s) submitted, the HPHA will purchase all of their requirements of the item(s) listed herein for complexes on all islands from the successful bidder in each group. It is provided, however, that when the quality level or product design is not suited to the HPHA's purpose, an exception to this commitment may be granted by the Procurement Officer upon written notice to the Successful Bidder.

The estimated quantities listed in Attachment 4 are for the purpose of calculating single unit pricing without giving weight to any particular item. No guarantee to purchase an exact amount is intended or implied. For this reason, vendors are urged to bid only on regular stock items to avoid inventory hardships that could arise from stocking materials for the HPHA use only.

The HPHA anticipates to enter into contract with an Energy Savings Company (ESCO) in Fall 2011 to conduct a financial rate audit on utility consumption for the HPHA. At that time, the HPHA reserves the right to purchase ranges from the Successful Bidder or from another company for those selected AMPs under the ESCO contract.

A. Management Requirements & Qualifications (Minimum 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, vacation, or changes.
- c. The Successful Bidder shall be solely responsible for the behavior and conduct of their employees or agents on the HPHA property and shall instruct personnel to fully cooperate with the Officer-In-Charge.
- d. The Successful Bidder agrees to remove any of his employees from servicing or providing services to HPHA, upon written request by the Officer-In-Charge.

2. Administrative

- a. The 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. Section 103-10, HRS, provides that the HPHA shall have 30 calendar days after receipt of invoice or satisfactory delivery of goods or performance of the services to make payment. For this reason, the HPHA will reject any bid submitted with a condition requiring payment within a shorter period. Further, the HPHA will reject any bid submitted with a condition requiring interest payments greater than that allowed by Section 103-10, HRS, as amended.
- b. The Successful Bidder shall submit a monthly invoice, one (1) original, for services rendered to:

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

The aging date of the invoice shall be the date received by the HPHA.

- c. All invoices shall reference the Contract number assigned to the contract. Payment shall be in accordance with Section 103-10, HRS, upon certification by the Officer-In-Charge that the Successful Bidder has satisfactorily provided the goods and services specified.
- d. Payment shall be made on the basis of actual units delivered and installed by the Successful Bidder. The Successful Bidder shall submit monthly invoices for payment, listing the specific product/units, housing complex and dates of delivery rendered for

the previous month. The Successful Bidder shall clearly indicate any adjustments made to the billing statement for work not performed such as liquidated damages for failure to deliver the products within the required timeline.

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

B. Minimum and/or Mandatory Requirements for Goods/Services

1. Product Identification and Ordering

- a. Interested bidders must identify the exact brand or manufacturer name, product model, and model number of each product offered on the bid offer form. Catalog cuts and owners manuals are required for each product and must be clearly identified as the product that is offered for each line item in this IFB. Failure to do so shall be sufficient grounds for rejection of bid offer.

If any of the called for elements of information are missing from the interested bidder's bid offer, the HPHA will be unable to determine from the information given whether the product is acceptable or not.

- b. All ranges shall be marked for identification. The manufacturer's standard nameplate data shall be placed on all ranges according to the manufacturer's standard practice. The nameplate shall be securely fastened to a main part of each range in an accessible place.

The range shall also bear a permanent record of the manufacturer's name and address, the range model and serial number. Gas ranges shall also include the manufacturer's normal hourly BTU input rating for the oven, broiler and top burners.

2. Product Literature Certifications

- a. Interested bidders must include with its bid one (1) copy printed factory literature of model to be furnished.
- b. The Successful Bidder must provide written instructions for care and operation of each range. A user's manual covering care and operation with must be provided with every range installed.
- b. The Successful Bidder shall, upon request by HPHA, furnish for each

model offered a Descriptive Parts Book and a Service Manual. This data will be required for proper ordering of replacement parts. The number of copies shall be that required for complex use and other appropriate HPHA personnel.

- c. Energy Efficiently Ratings are to be plainly marked on all documents for products submitted for bid, as applicable.
- d. Approval Requirements. UL Listing and copy of UL labels in brochure. The brochure should include all models bid and be noted by pen as which item(s) are included in the bid.

3. Product Quality & Workmanship

- a. The finished range shall be clean, well-made, and free from any defects which may affect appearance or serviceability.
- b. Reference to standards, codes, regulations and specifications, shall mean the latest revision in effect at the date of this IFB.
- c. The range(s) offered and furnished under this specification shall be of a make and general type which has been manufactured for at least one (1) year and has given satisfactory service.
- d. When requested, a sample product shall be made available to the Procurement Officer for examination as to compliance with the applicable specifications.
- e. Welding and brazing shall be complete, uniform and properly fused, having no holes, slags inclusions, scale of flux deposits and shall not be cracked, fractured or undercut. Soldering shall be complete, clean, adherent and without pin-holes. Bolts, nuts, screws, studs and other types of fasteners, when used shall not be broken, fractured, stripped, or loose and shall have locked washers or shall have self-locking type when used on structural parts subject to vibration.

4. Delivery, Installation & Disposal of Ranges

- a. An order form with specific instructions shall be issued by the HPHA. Free standing electric ranges shall be delivered and installed. The HPHA is responsible to disconnect and install gas ranges. Drop-in electric and slide-in gas ranges will be delivered and unpacked for inspection by the HPHA. Old ranges will be removed and disposed of from various units in the HPHA complexes on the islands of Oahu, Maui, East and West Hawaii, Molokai and Kauai. A list of complexes is attached and identified. See Attachment 3.

- b. The Successful Bidder shall coordinate delivery and/or removal with the authorized HPHA representative identified in the order. The Successful Bidder personnel shall ensure range(s) is in operating condition upon installation.
- c. Deliveries to Oahu complexes shall be made within 14 calendar days after receipt of the HPHA's order form. Deliveries to the neighbor island destinations shall be made within 21 calendar days after receipt of the HPHA's order form.
- d. Interested bidders are advised that elevators are available only in the Oahu elderly complexes and at Salt Lake Apartments. It shall be the Successful Bidder's responsibility to provide any/all delivery equipment, as required.
- e. The HPHA shall inspect all ranges upon delivery or within 24 hours of installation for defects or problems. Any reports or defects or malfunctions shall be abated, repaired or replaced within 24 hours of notice.
- f. Old ranges to be replaced shall be carefully disconnected and removed. Old ranges shall be properly disposed of in an approved landfill or approved recycler.
- g. Floor scratches, gouges, wall and cabinet damage caused by the removal or installation of a range shall be corrected by the Successful Bidder.

5. Product Ordering & Substitutions

- a. The HPHA shall have the right to purchase any quantity of ranges at the prices quoted on the Bid by the Successful Bidder.
- b. Only one (1) make and model shall be offered and furnished for each size on each bid offer and shall be indicated by the interested bidder in the Bid Offer Form.
- c. If the Successful Bidder is unable to deliver the product(s) under Contract, it shall be the Successful Bidder's responsibility to obtain prior approval of the HPHA to deliver an acceptable substitute. In the event the Successful Bidder needs to substitute products, the HPHA reserves the right to terminate the Contract.
- d. If a particular item is discontinued from a manufacturer's line, the request to terminate must be in writing to the Procurement Officer and shall include a copy of the Successful Bidder's running record of purchases for the line item, by name of agency, transaction date, and quantity sold. The

effective date of termination will be determined by the Procurement Officer, not to exceed 10 days from date of receipt of the written request by the HPHA's Procurement Officer. The Successful Bidder shall honor all orders placed prior to the effective termination date.

In the event of the termination of a line item, the HPHA reserves the option to purchase the item from another Contractor for the remainder of the Contract period or until the Successful Bidder can secure distribution rights for an acceptable substitute, or rebid the item whichever is in the best interest of the HPHA.

6. Warranties

- a. The warranty period for all ranges shall be for a minimum of one (1) year from date of acceptance. The date of acceptance shall be designated as the date that the new range is satisfactorily received and installed in proper working order. Full coverage shall include costs for parts, labor and any other expenses incurred in performing warranty work.
- b. During the warranty period, repairs on electric and gas ranges shall be completed within 48 hours after notification. If an electric or gas range is not repaired within seven (7) calendar days after initial notification of the problem the Successful Bidder shall deliver a new replacement range. The Successful Bidder shall have repair parts readily available during the term of the Contract.
- c. For after hours, State holidays and weekend services, the Successful Bidder shall furnish to the HPHA, the name and telephone number for emergency calls. The Successful Bidder shall repair or replace and install any part necessary to make it operative, or furnish loaner if requested, to avoid any unreasonable interruption of service.
- d. During the warranty period, the Successful Bidder shall ensure all repairs are completed by a certified technician using approved parts so as not to void the manufacturer's warranty. If replacement parts are used and such use voids the warranty, the Successful Bidder shall replace the appliance at no additional cost to the HPHA.

7. Technical Specs. Technical specifications are provided for the following:

- Group 1: Free Standing Electric Ranges
- Group 1A: Drop In Electric Range
- Group 2: Free Standing and Slide-In Gas Ranges

**TECHNICAL SPECIFICATIONS
FREE STANDING RANGES, ELECTRIC
GROUP 1**

1. General Description

Ranges shall be white or off-white in color, with a minimum of four (4) cooking surfaces, the 20" and 24" ranges and may have three (3) of the 6" cooking units with oven and broiler below.

2. Width, Height, and Depth

This IFB is requesting bid prices for 20", 24" and 30" electric ranges. The Successful Bidder shall contact the Officer-In-Charge or designee for actual measurements of the opening prior to the delivery of the unit. The unit must fit the opening. Actual width dimensions may be plus or minus one inch (+/- 1") of nominal size.

H. Operating Service

115/230 volts or 120/208 volts, 3-wire, single-phase 60-HZ. The type of operating service required will be specified by the Officer-In-Charge or designee for each complex.

115/230 volts or 120/208 volts, 4-wire single-phase 60-Hz will be required for modernization or renovation projects.

4. Applicable Specifications. Ranges shall conform to the following:

- a. All electric ranges shall be equipped with the oven and range controls on the front panel or back panel. The control switches shall be located on the front panel below the cooking surface and above the oven door for the 20" and 24" ranges. The front of the panel shall be so designed that the knobs will be protected from overheating when range is being used for broiling. The control switches for the 30" width range can be located on the front panel or on the back panel.

Burner Indicator Lights. The range shall have at least one (1) light to indicate when a burner is on.

- b. The range body back panel and underside shall have (a) coat of porcelain enamel; (b) coat of high temperature baked enamel, (c) baked on black enamel; (d) galvanized or aluminized steel.
- c. Top burner units shall be plug-in type "Tilt-Lock" hinge type and should be provided with a means to hold the unit in level position. All wiring in top burner box area shall be properly secured for protection of user from electrical shocks.

- d. The standard electric range connection cord shall be provided with each range and shall be included in the bid price.
- e. The interior of the 20" oven shall be furnished in a light color and tint that will make maximum use of the available light to aid the vision of the user. The 30" width ovens shall be equipped with a viewing window, and interior light.
- f. Bake elements shall be a minimum of 2,000 watts for the 20" and 24" range and a minimum of 2,400 watts for the 30" range. Broil elements shall be a minimum of 2,300 watts for all range sizes.
- g. Each range shall be equipped with at least two (2) leg levelers.
- h. Equipment and Accessories. The equipment and accessories supplied with each range shall be those normally supplied with the manufacturer's standard production for the type range ordered. Each range shall have two (2) oven racks.

**TECHNICAL SPECIFICATIONS
DROP-IN RANGE, ELECTRIC
GROUP 1A**

1. General Description

Ranges shall be white or off-white in color, with a minimum of four (4) cooking surfaces.

2. Width, Height, and Depth

This IFB is requesting a bid price for a 30" electric range. The Successful Bidder shall contact the Officer-In-Charge or designee for actual measurements of the opening prior to the delivery of the unit. The unit must fit the opening. Actual width dimensions may be plus or minus one inch (+/- 1") of nominal size.

3. Operating Service

115/230 volts or 120/208 volts, 3-wire, single-phase 60-HZ. The type of operating service required will be specified by the Officer-In-Charge or designee for each complex.

115/230 volts or 120/208 volts, 4-wire single-phase 60-Hz will be required for modernization or renovation projects

4. Applicable Specifications. Range shall conform to the following:

- a. The electric range shall be equipped with the oven and range controls on the front panel. The control switches shall be located on the front panel below the cooking surface and above the oven door. The range with control knobs on the front panel shall be so designed that the knobs will be protected from overheating when range is being used for broiling.

Burner Indicator Lights. The range shall have a light for each top burner and oven unit that will clearly indicate when burner is on. The indicator light shall be an integral part of, or adjacent to, each control switch or adjacent to each top burner unit.

- b. The range body back panel and underside shall have (a) coat of porcelain enamel; (b) coat of high temperature baked enamel, (c) baked on black enamel; or (d) galvanized or aluminized steel.
- c. Top burner units shall be plug-in type "Tilt-Lock" hinge type and should be provided with a means to hold the unit in level position. All wiring in top burner box area shall be properly secured for protection of user from electrical shocks.

- d. The standard electric range shall be provided with the manufacturer's recommended wiring. HPHA will connect the wires per the vendor's or manufacturer's instructions. The Successful Bidder shall verify the connections prior to re-energizing the range circuit.
- e. The 30" and width ovens shall be equipped with a viewing window and interior light.
- g. Bake elements shall be a minimum of 2,400 watts for the 30". Broil elements shall be a minimum of 2,300 watts.
- h. Each range shall be equipped with at least two (2) leg levelers.
- i. Equipment and Accessories. The equipment and accessories supplied with each range shall be those normally supplied with the manufacturer's standard production for the type range ordered. Each range shall have two (2) oven racks.

TECHNICAL SPECIFICATIONS FOR FREE STANDING GAS RANGES & SLIDE-IN GAS RANGES GROUP 2

1. General Description

Ranges shall be white or off-white in color, new cabinet type, and free standing flush-to-wall, with an open cooking top, oven and broiler below. Ranges or parts thereof supplied under this specification shall fulfill the construction and performance requirements of American National Standard Institute (ANSI) Z21.1 and Z21.20 (when applicable) (Latest Revision).

2. Width, Height and Depth

This IFB is requesting bid prices for a 20-inch range width with hinged top and a 30-inch range width with hinged top. The Successful Bidder shall contact the Officer-In-Charge or designee for the actual measurements of the opening prior to the delivery of the unit. The unit must fit the opening size. Actual width dimensions may be plus or minus one inch (+/-1") of nominal size.

3. Operating Service

The Successful Bidder shall be ready to submit evidence that the ranges proposed for supply under this specification have been tested and comply with American Standard Z21.1 for operation with natural, mixed or liquid petroleum gas (LPG). Certification shall be by AGA, or a third party certifier acceptable to the HPHA. Acceptable evidence of meeting the applicable requirement of the standard shall be a photocopy of the AGA Appliance Certificate or a listing including the igniter device in the AGA "Directory of Certified Appliances and Accessories."

4. Applicable Specifications. Gas ranges shall conform to the following:

- a. Ranges shall be current standard models of the manufacturer except for additional requirements specified herein. All ranges of the same classification, including parts and assemblies thereof, shall be identical. Oven Light shall be provided.
- b. Manual gas valves shall be of the limited displacement type complying with American Standard Z21.1. Gas valves shall be provided with either (1) a convertible orifice set for the gas specified on the HPHA order form or (2) a fixed orifice hood for use with the gas specified on the HPHA order form. All ranges must be provided with a convertible gas pressure regulator.
- c. Burners. The cooking top shall be provided with a minimum of four burners. Each burner shall be rated at no less than 9,000 BTU, and no more than 12,500

BTU, with simmer settings not in excess of 1,400 BTU per hour. Simmer settings shall be similar to a "high-low burner" type.

- d. The gas range shall be equipped with the oven and range controls on the front or back panel. If the control switches are located on the front panel, the controls shall be below the cooking surface and above the oven door. The range with control knobs on the front panel shall be so designed that the knobs will be protected from overheating when range is being used for broiling
- e. Grates. Each top burner shall be provided with a porcelain enamel cast iron or steel grate.
- f. Automatic Ignition. All burners shall be equipped with a means for automatic ignition of the gas and shall meet the applicable requirements of ANSI Z21.20. The electronic ignition system may be either spark, coil, glow bar or a combination of these. Failure of the oven burner ignition shall activate a means for shutting off gas to the oven burner.

The ignition wiring in the back of the range shall not be exposed, but shall be hidden and enclosed in a case.

- g. Cooking Top. The range top shall be hinged at the back for easy cleaning and access to burners, valves, and pilot(s). It may have a supporting rod to hold top in raised position or be removable. The supporting rod, when in the raised position, shall be designed to prevent accidental closing of the range top. A counter-balanced top is also acceptable. The range top shall be designed to hold the burner grates in position when the range top is raised. Cooking top may be removable.
- h. Insulation. Blanket-type insulation shall be glass fiber, installed in a manner to prevent sagging, and be of sufficient thermal efficiency to meet surface and handle temperature tests specified in American Standard Z21.1. (Latest Revision)
- i. Ovens, Broilers, and Burner Boxes. The baking oven, burner box, and broiling section shall be porcelain enamel coated steel or stainless steel. The broiling section shall be either of the pull-out type or of the swing-door type. Stops shall be provided so that oven racks and broiler pans cannot be completely pulled out by accident.
- j. Oven Thermostat Control. An oven thermostat control shall be provided for controlling oven temperatures down to 140 degrees F.
- k. Oven Doors. Oven doors shall be of the drop-shelf type, counter balanced and provided with a device which shall hold the door fully closed. Oven windows shall be provided. Hinges shall be of a type that permits ready removal and

replacement of hinge brackets and parts subject to wear. Oven doors shall be provided with a means for adjusting a misaligned door.

- l. Oven Vents. Oven shall be provided with a vent designed to deflect moisture and fumes away from the wall behind the range.
- m. Aeration Bowls. Aeration bowls shall be corrosion-resisting steel, plated steel, or steel coated with porcelain enamel.
- n. Exterior Surfaces. The exterior surface of the gas range shall be porcelain enamel or stainless steel, except body sides may be finished in synthetic baked-on enamel capable of withstanding 250 degrees F, with trim in accordance with the manufacturer's standard practice. The back guard, manifold shield, aeration bowls, and burners may be porcelain enamel. The range body back panel, legs, and/or base shall be porcelain enamel, baked-on enamel, galvanized or aluminized steel.
- o. Back Splashes. Each range shall be equipped with a back splasher not less than four (4) inches higher than the top cooking surface and extending the full width of the range top.
- p. Drip Pans. Ranges shall be provided with removable porcelain enameled or stainless steel drip pan or pans, or shall be provided with a one (1) piece combination drip-pan and cook top. The pans shall have a minimum 1/8-inch vertical lip to collect spillovers, and shall have a handle or other means for ready pull-out from the front of the range.
- q. Oven Door. The 30" ranges shall have a removable oven door.
- r. Equipment and Accessories. The equipment and accessories supplied with each range shall be those normally supplied with the manufacturer's standard production for the type range ordered. Each range shall have one (1) broiler rack and two (2) oven racks.
- s. Leg Levelers. Each range shall be equipped with at least two (2) leg levelers.
- t. Appliance Connectors. Appliance connectors shall be equal in performance and construction to American National Standards Institute Z21.24. Fitting and line sizes to match existing connector supplied in four foot (4') lengths. Connector to be suitable for use with synthetic gas at operating pressure of existing gas system.

Section 3
Bid Offer Forms and Instructions

Section 3

Bid Offer Forms and Instructions

General Instructions For Completing Bid Offer 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.*

I. Bid Offer Forms

The bid forms 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. Email and facsimile transmissions shall not be accepted.

Interested bidders are reminded to submit the following certifications:

- a. Wage Certification;
- b. Department of Labor and Industrial Relations, Certificate of Compliance with Section 3-122-112, HAR, Form LIR#27;
- c. Department of Commerce and Consumer Affairs, Certificate of Good Standing; and
- d. If applicable, corporate resolution evidencing who is authorized to sign bid documents and contracts on behalf of the interested bidder.

In lieu of items b, c, and d above the interested bidders may register via the online system, "Hawaii Compliance Express" at <http://vendors.ehawaii.gov/hce/> and submit the CERTIFICATE OF VENDOR COMPLIANCE as issued by the State Procurement Office. Interested Bidders are responsible to review the minimum specifications, general conditions, and special conditions carefully. Submission of a bid offer shall be regarded as the Bidder's assurance that he/she is willing and able to comply with the specifications, general conditions, and special conditions. The HPHA shall not consider any offers that are contingent upon changes or exceptions to the specifications, general conditions and special conditions. Bid offers that are conditioned upon changes or exceptions shall be automatically rejected.

Submission of a bid offer shall also be regarded as an interested Bidder's assurance that he/she is willing and able to begin services effective July 1, 2011 as specified in this IFB. The HPHA shall not consider offers from interested bidders who are unable to provide the contracted services effective July 1, 2011.

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 page one (1) of the bid form. 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 form on page one (1), is unsigned or the affixed signature is a facsimile or a photocopy, the bid shall be automatically rejected.

A bid security deposit is not required for this IFB. Bid forms are attached to this IFB.

Bid Quotation. Bid price shall be based on delivery and installation of new appliances, and the removal and disposal of the replaced appliances to the various HPHA complexes on Oahu, East Hawaii, West Hawaii, Maui, Kauai, Lanai and Molokai. Refer Attachment 3. Prices shall include all labor, material, equipment, freight charges, delivery charges, applicable taxes, and any other costs incurred in the performance of this Contract.

The successful bid shall be determined by the total bid price for each group for the initial 12-month period ending June 30, 2012, option year one (1) and option year two (2).

The option to extend the Contract will be at the sole discretion of the HPHA and determined to be in the best interests of the State. The Contract shall be extended at the same rates as proposed in the original bid unless price adjustments are provided herein.

II. HUD Forms

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

The form HUD 5369-B is provided for bidder's information and reference. Form HUD 5369-B is attached and can also be found at www.hudclips.org. See Attachment 13.

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

The form HUD 5369-C must be completed and submitted to the HPHA with the bid form by the required due date and time, and in the form prescribed by the state contracting office. The certification must be signed and dated by an authorized representative. Form HUD 5369-C is attached and can also be found at www.hudclips.org. See Attachment 14.

C. General Conditions, form 5370-C

The form HUD 5370-C is provided for interested bidder's information and reference. See Attachment 12.

III. General Conditions

The State of Hawaii's General Conditions of the Contract are attached for the interested bidder's review and information. See Attachment 10.

The general conditions shall be incorporated into the Contract with the Successful Bidder.

(END OF SECTION)

Section 4

Bid Evaluation & Award

Section 4 Bid Evaluation & Award

I. Bid Evaluation

Each bid offer will be reviewed by the HPHA. A bid offer determined to be in exact conformity of the requirements in the IFB, shall be known as a “responsible bid.” Information provided in/with the Bid Offer that results in a determination that the interested bidder has the technical and financial capacity to deliver the goods or services, shall be known as a “responsive bid.”

II. Method of Award

Award shall be made to the lowest responsible and responsive bidder’s Grand Total bid price per group that includes the bid price per unit and the removal and disposal cost per unit for the initial 12-month period, option year one (1) and option year two (2). To be considered a responsive bid and eligible for an award, the interested bidder must bid on all ranges or refrigerators within a group. The Successful Bidder for each group may not necessarily be the same bidder.

Nothing in this IFB shall be construed or interpreted to mean that the HPHA is obligated to exercise its option periods. The option to extend the Contract will be at the sole discretion of the HPHA.

The Contract may be extended without the necessity of rebidding at the same rates as proposed in the original bid, if price adjustments are made and conditions are met as described in Section 2 Specification of this IFB.

Pursuant to Section 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 for each group that is not awarded a Contract.

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

Section 5 Attachments

- | | |
|--|--------------------------|
| 1. Wage Certificate | Due April 21, 2011 |
| 2. Bid Offer Form | Due April 21, 2011 |
| 3. Listing of Properties by Geographic Area | For Bidder's information |
| 4. Estimated Quantities by Geographic Area | For Bidder's information |
| 5. Sample Contract Based on Competitive Sealed Bids for Goods and Services (6/22/2009) | For Bidder's information |
| 6. Sample – Attachment S1, Scope of Services | For Bidder's information |
| 7. Sample – Attachment S2, Compensation and Payment Schedule | For Bidder's information |
| 8. Sample – Attachment S3, Time of Performance | For Bidder's information |
| 9. Sample – Attachment S4, Certificate of Exemption from Civil Service | For Bidder's information |
| 10. Sample – Attachment S5, Special Conditions | For Bidder's information |
| 11. General Conditions, AG-008 Rev. 4/15/2009 | For Bidder's information |
| 12. General Conditions, Federal form HUD 5370-C | For Bidder's information |
| 13. Instructions to Offerors, form HUD 5369-B | For Bidder's information |
| 14. Certification and Representations of Offerors, form HUD 5369-C | Due April 21, 2011 |

WAGE CERTIFICATE

SUBJECT: BID NO.: IFB PMB-2011-11

DESCRIPTION OF PROJECT

PROVISION OF GAS & ELECTRIC RANGES FOR VARIOUS STATE AND FEDERAL LOW INCOME PUBLIC HOUSING COMPLEXES STATEWIDE

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

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

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

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

BIDDER: _____

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

Please Print

NAME: _____

TITLE: _____

DATE: _____

IFB-PMB-2011-11
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

1. All interested bidders must complete the following items:

2a. Give the history of the interested bidder's experience in the operation of appliance services or similar businesses in the State of Hawaii. Include the number of years of experience: (Attach separate pages if necessary.)

2b. Give the names and addresses of companies or government agencies at which the interested bidder has provided or is currently providing appliance services mentioned in Question 2a, together with the dates of services:

Firm or Agency	Contact Person	Telephone No.	Dates of Service

4. Insurance coverage to be provided by:

Commercial General Liability: _____

Name of Agent: _____

Telephone Number: _____

Workers Comp: _____

Automobile Insurance: _____

Signature of Offeror _____

Offeror: _____

Group Number	GRAND TOTAL
Group 1	\$
Group 2	\$
Group 3	\$
Group 4	\$
Group 5	\$
Group 6	\$

The Grand Total amount listed above should be the same as the Grand Total amount in the subsequent pages of the Bid Form. If there is a discrepancy between the bid prices, the HPHA shall use the most accurate bid price.

Note: Interested bidders are strongly encouraged to double check their bid offer form for accuracy.

Island of Oahu

Group 1	Description	Initial 12-Month Period		Option year 1		Option year 2		*TOTAL Bid Price
		Bid Price Per Unit	Remove & Disposal Cost Per Unit	Bid Price Per Unit	Remove & Disposal Cost Per Unit	Bid Price Per Unit	Remove & Disposal Cost Per Unit	
	20" Free Standing Range, Electric							
	24" Free Standing Range, Electric							
	30" Free Standing Range, Electric							
	30" Drop-in Range, Electric							
	4 prong cord							
	20" Free Standing Range, Gas							
	30" Free Standing Range, Gas							
	30" Slide-in Range, Gas							
	gas conversion							
GRAND TOTAL Group 1								

*The TOTAL Bid Price is the sum of the Bid Price Per Unit and the Removal & Disposal Cost Per Unit for the 12 month period, option year 1 and option year 2.

Island of Maui

Group 2		Initial 12-Month Period	Option year 1	Option year 2	*TOTAL Bid Price
Description	Bid Price Per Unit	Remove & Disposal Cost Per Unit	Bid Price Per Unit	Bid Price Per Unit	Remove & Disposal Cost Per Unit
20" Free Standing Range, Electric					
24" Free Standing Range, Electric					
30" Free Standing Range, Electric					
30" Drop-in Range, Electric					
4 prong cord					
20" Free Standing Range, Gas					
30" Free Standing Range, Gas					
30" Slide-in Range, Gas					
gas conversion					
GRAND TOTAL Group 2					

*The TOTAL Bid Price is the sum of the Bid Price Per Unit and the Removal & Disposal Cost Per Unit for the 12 month period, option year 1 and option year 2.

Island of Kauai

Group 3		Initial 12-Month Period	Option year 1	Option year 2	*TOTAL Bid Price
Description	Bid Price Per Unit	Remove & Disposal Cost Per Unit	Bid Price Per Unit	Bid Price Per Unit	Remove & Disposal Cost Per Unit
20" Free Standing Range, Electric					
24" Free Standing Range, Electric					
30" Free Standing Range, Electric					
30" Drop-in Range, Electric					
4 prong cord					
20" Free Standing Range, Gas					
30" Free Standing Range, Gas					
30" Slide-in Range, Gas					
gas conversion					

GRAND TOTAL Group 3

*The TOTAL Bid Price is the sum of the Bid Price Per Unit and the Removal & Disposal Cost Per Unit for the 12 month period, option year 1 and option year 2.

Island of Hawaii - West

Group 4		Initial 12-Month Period		Option year 1		Option year 2		*TOTAL Bid Price	
Description	Bid Price Per Unit	Remove & Disposal Cost Per Unit	Bid Price Per Unit	Remove & Disposal Cost Per Unit	Bid Price Per Unit	Remove & Disposal Cost Per Unit	Bid Price Per Unit	Remove & Disposal Cost Per Unit	*TOTAL Bid Price
20" Free Standing Range, Electric									
24" Free Standing Range, Electric									
30" Free Standing Range, Electric									
30" Drop-in Range, Electric									
4 prong cord									
20" Free Standing Range, Gas									
30" Free Standing Range, Gas									
30" Slide-in Range, Gas									
gas conversion									
GRAND TOTAL Group 4									

*The TOTAL Bid Price is the sum of the Bid Price Per Unit and the Removal & Disposal Cost Per Unit for the 12 month period, option year 1 and option year 2.

Island of Hawaii - East

Group 5	Initial 12-Month Period	Option year 1	Option year 2	*TOTAL Bid Price
	Bid Price Per Unit	Bid Price Per Unit	Bid Price Per Unit	
Description	Remove & Disposal Cost Per Unit	Remove & Disposal Cost Per Unit	Remove & Disposal Cost Per Unit	
20" Free Standing Range, Electric				
24" Free Standing Range, Electric				
30" Free Standing Range, Electric				
30" Drop-in Range, Electric				
4 prong cord				
20" Free Standing Range, Gas				
30" Free Standing Range, Gas				
30" Slide-in Range, Gas				
gas conversion				

GRAND TOTAL Group 5

*The TOTAL Bid Price is the sum of the Bid Price Per Unit and the Removal & Disposal Cost Per Unit for the 12 month period, option year 1 and option year 2.

Island of Molokai

Group 6		Initial 12-Month Period	Option year 1	Option year 2	*TOTAL Bid Price
Description	Bid Price Per Unit	Remove & Disposal Cost Per Unit	Bid Price Per Unit	Bid Price Per Unit	Remove & Disposal Cost Per Unit
20" Free Standing Range, Electric					
24" Free Standing Range, Electric					
30" Free Standing Range, Electric					
30" Drop-in Range, Electric					
4 prong cord					
20" Free Standing Range, Gas					
30" Free Standing Range, Gas					
30" Slide-in Range, Gas					
gas conversion					
GRAND TOTAL Group 6					

*The TOTAL Bid Price is the sum of the Bid Price Per Unit and the Removal & Disposal Cost Per Unit for the 12 month period, option year 1 and option year 2.

AMP Complex	Address	City
Oahu		
30	Puuwai Momi	99-132 Kohomua Street Aiea
30	Hale Laulima	1184 Waimano Home Road Pearl City
30	Waipahu I	94-111 Pupupole Street Waipahu
30	Waipahu II	94-132 Pupupuhi Street Waipahu
30	Salt Lake	2907 Ala Ilima Street Honolulu
31	Puahala Homes I	1638 Ahiahi Place Kalihi
31	Puahala Homes II	1638 Ahiahi Place Kalihi
31	Puahala Homes III	Ahiahi Pl. & Hala Dr. Kalihi
31	Puahala Homes IV	Lanakila Avenue Kalihi
31	Kalihi Valley Homes	2250 Kalena Drive Honolulu
31	Hauiki Homes	Meyers Street Honolulu
32	Mayor Wright Homes	521 North Kukui Street Honolulu
33	Ka'ahumanu Homes	Alokele & Kaiwiula Street Honolulu
33	Kamehameha Homes	1541 Haka Drive Honolulu
34	Makua Alii (Elderly)	1541 Kalakaua Avenue Honolulu
34	Paoakalani (Elderly)	1583 Kalakaua Avenue Honolulu
34	Kalakaua Homes - Low Rise	1545 Kalakaua Ave. Honolulu
34	Kalakaua Homes - Mid Rise	1545 Kalakaua Ave. Honolulu
35	Punchbowl Homes (Elderly-High)	730 Captain Cooke Avenue Honolulu
35	Punchbowl Homes (Family-Mid)	730 Captain Cooke Avenue Honolulu
35	Kalanihuia (Elderly)	1220 Aala Street Honolulu
35	Makamae (Elderly)	21 South Kuakini Street Honolulu
35	Pumehana (Elderly)	1212 Kinau Street Honolulu
35	Spencer House	1035 Spencer Street Honolulu
40	Kuhio Homes	1411 Linapuni Street Honolulu
40	Kuhio Park Terrace - Low Rise	1475 Linapuni Street Honolulu
44	Maili I	Maliona Street Maili
44	Nanakuli Homes	Lualei Place & Farrington Highway Nanakuli
44	Maili II	Keliikipi Street Maili
44	Waimaha - Sunflower	85-186 McArthur Street Waianae
44	Kau'iokalani	85-658 Farrington Highway Waianae

AMP Complex	Address	City
45 Waimanalo Homes	Humuniki Street & Humuna Place	Waimanalo
45 Koolau Village	41-1027 Kamau Place	Kaneohe
45 Kaneohe Apartments	45-503 & 45-507 Pahia Road	Kaneohe
45 Hookipa Kahaluu	47-330 Ahuimanu Road	Kaneohe
45 Kauhale Ohana	41-1260 Kalaniana'ole Highway	Waimanalo
49 Wahiawa Terrace	300 Palm Street	Wahiawa
49 Kupuna Home O' Waialua	67-088 Goodale Avenue	Waialua
49 Kauhale Nani	310 Cane Street	Wahiawa
50 Palolo Valley Homes	2107 Ahe Street	Palolo
MU 42 Hale Po'ai (Elderly)	1001 N. School Street	Kalihi
MU 42 Halia Hale (Elderly)	851 North School Street	Honolulu
MU 42 Kamalu (Elderly)	94-941 Kau'uolu Place	Waipahu
MU 42 Ho'olulu (Elderly)	94-943 Kau'olu Place	Waipahu
MU 42 Lai'ola (Elderly)	1 & 15 Ihoiho Place	Wahiawa
East Hawaii		
37 Hale Aloha O Puna (Elderly)	Keeau District	Keeau
37 Hale Olaloa (Elderly)	144 Kamana Street	Hilo
37 Kauhale O' Hanakahi	19 Pamala Street	Hilo
37 Lanikila I	600 Wailoa Street	Hilo
37 Lanikila II	600 Wailoa Street	Hilo
37 Lanikila III	600 Wailoa Street	Hilo
37 Lokahi	Lokahi Circle	Hilo
37 Pahala, Ka'u (Elderly)	96-1169 Kou Street	Pahala
37 Pomaikai Homes (Elderly)	929 Ululani Street	Hilo
37 Punahele Homes	Lokahi Place	Hilo
West Hawaii		
43 Hale Hookipa (Elderly)	Kealakekua, Kona	Kealakekua
43 Ka Hale Kahaluu	78-6725 Makalea Street	Kailua-Kona
43 Kaimalino	74-5060 Kealaka Street	Kailua-Kona
43 Kealakehe	74-991 Manawale'a Street	Kailua-Kona
43 Nani Olu (Elderly)	81-6650 Malahoa Highway	Kealakekua
46 Hale Hauoli (Elderly)	45-540 Kaniaka Place	Honokaa
46 Ke Kumu Ekolu	68-3385 Ke Kumu Place	Waikoloa
46 Ke Kumu Elua	68-3367 Ke Kumu Place	Waikoloa
46 Noelani I	65-1191 Opelo Road	Kamuela
46 Noelani II	65-1191 Opelo Road	Kamuela

IFB-2011-11

Attachment 4

Projected Quantities of Appliances By Geographic Area

Geographic Area	Gas Range						Electric Ranges					
	30" Slide						30" Drop					
	20"	30"	In	Conversion	Disposal	20"	24"	30"	In	4 Prong	Disposal	
Oahu	153	382	3	13	526	57	6	107	5	15	105	
Maui	0	13	0	0	13	0	0	17	0	0	17	
Molokai	0	0	0	9	0	0	0	0	0	0	0	
Kauai	0	0	30	30	30	16	0	0	0	0	16	
East Hawaii	0	0	5	0	5	0	0	0	2	0	2	
West Hawaii	7	0	4	11	11	0	0	27	5	0	32	
TOTALS	160	395	42	63	585	73	6	151	12	15	172	

These projected quantities by geographic areas are estimates and does not mean to imply that HPHA will purchase units at these definite quantities. The HPHA reserves the right to purchase more or less than the stated quantities as provided in IFB PMB-2011-11.



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

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

- 1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the Invitation for Bids number PMB-2011-11 ("IFB") and the CONTRACTOR'S accepted bid ("Bid"), both of which, even if not physically attached to this Contract, are made a part of this Contract.
- 2. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Contract in a total amount not to exceed

DOLLARS

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

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

4. Bonds. The CONTRACTOR is required to provide or is not required to provide: a performance bond, a payment bond, a performance and payment bond in the amount of _____ DOLLARS (\$ 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 Fifty and No/100----- DOLLARS (\$ 50.00) per day, in accordance with the terms of paragraph 9 of the General Conditions.

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

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

STATE

(Signature)

Barbara E. Arashiro

(Print Name)

Executive Assistant

(Print Title)

(Date)

CONTRACTOR

(Name of Contractor)

(Signature)

(Print Name)

(Print Title)

(Date)

CORPORATE SEAL
(If available)

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: _____

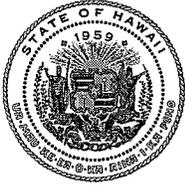
Notary Name: _____ Circuit

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: _____

1. It is understood and agreed that the following documents, thereto, comprise the Contract between the parties and are fully a part of this Contract governing the work to be performed by the CONTRACTOR for the provision of gas and electric ranges hereinafter known as appliances: (1) CONTRACTOR's accepted bid dated April 21, 2011; (2) Invitation for Bids No. PMB-2011-11 and all addenda; (3) State General Conditions (AG-008 Rev. 4/15/2009); (4) HUD General Conditions (form HUD-5370-C) and (5) this Contract including Attachments S1 – S5. These documents are collectively referred to as the "Contract Documents".

2. The CONTRACTOR shall furnish the following appliances to all State and Federal low income housing complexes located on the Island of Oahu, Kauai, Maui, Molokai and Hawaii (East and West):
 - a. 20" free standing range, electric
 - b. 24" free standing range, electric
 - c. 30" free standing range, electric
 - d. 30" drop-in range, electric
 - e. 20" free standing range, gas
 - f. 30" free standing ranges, gas
 - g. 30" slide-in range, gas

3. **Product Identification and Ordering**

All appliances shall be marked for identification. The manufacturer's standard nameplate data shall be placed on all ranges according to the manufacturer's standard practice. The nameplate shall be securely fastened to a main part of each range in an accessible place. The appliance shall also bear a permanent record of the manufacturer's name and address, the range model and serial number. Gas ranges shall also include the manufacturer's normal hourly BTU input rating for the oven, broiler and top burners.

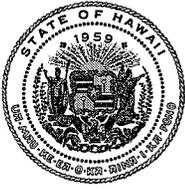
3. **Product Literature Certifications**

- a. The CONTRACTOR shall provide written instructions for care and operation of each appliance. A user's manual covering care and operation with must be provided with every appliance installed.

- b. The CONTRACTOR shall, upon request by the HPHA, furnish for each model offered a Descriptive Parts Book and a Service Manual. This data will be required for proper ordering of replacement parts. The number of copies shall be that required for project use and other appropriate HPHA personnel.

- c. Energy Efficiently Ratings are to be plainly marked on all documents for refrigerators.

- d. Approval Requirements. UL Listing and copy of UL labels in brochure. The brochure



STATE OF HAWAII
SCOPE OF SERVICES

should include all models bid and be noted by pen as to which item(s) are included in the bid.

4. Product Quality & Workmanship

- a. The finished appliances shall be clean, well-made, and free from any defects which may affect appearance or serviceability.
- b. Reference to standards, codes, regulations and specifications, shall mean the latest revision in effect at the date of the Invitation for Bids.
- c. The appliance(s) offered and furnished shall be of a make and general type which has been manufactured for at least one (1) year and has given satisfactory service.
- d. When requested, a sample product shall be made available to the STATE for examination as to compliance with the applicable specifications.
- e. Welding and brazing shall be complete, uniform and properly fused, having no holes, slags inclusions, scale of flux deposits and shall not be cracked, fractured or undercut. Soldering shall be complete, clean, adherent and without pin-holes. Bolts, nuts, screws, studs and other types of fasteners, when used shall not be broken, fractured, stripped, or loose and shall have locked washers or shall have self-locking type when used on structural parts subject to vibration.

5. Delivery, Installation & Disposal of Appliances

- a. The CONTRACTOR shall coordinate delivery and/or removal with the Officer-In-Charge as identified by the HPHA. The CONTRACTOR's personnel shall ensure that all appliances are in operating condition upon installation.
- b. Deliveries to Oahu complexes shall be made within fourteen (14) calendar days after receipt of the order. Deliveries to the neighbor island complexes shall be made within twenty-one (21) calendar days after receipt of the order.
- c. The CONTRACTOR is advised that elevators are available only in the elderly housing complexes, Salt Lake Apartments and Punchbowl Homes on the Island of Oahu. It shall be the CONTRACTOR's responsibility to provide any/all delivery equipment, as required.
- d. The HPHA shall inspect all appliances upon delivery or within 24 hours of installation for defects or problems. Any reports or defects or malfunctions shall be abated, repaired or replaced within 24 hours of notice.
- e. Floor scratches, gouges, wall and cabinet damage caused by the removal or installation of an appliance shall be corrected by the CONTRACTOR.



STATE OF HAWAII

SCOPE OF SERVICES

6. Product Ordering & Substitutions

- a. The HPHA shall have the right to purchase any quantity of appliances at the contract prices from the CONTRACTOR.
- b. If the CONTRACTOR is unable to deliver the product(s) under this Contract, it shall be the CONTRACTOR'S responsibility to obtain prior approval by the HPHA to deliver an acceptable substitute. In the event the CONTRACTOR needs to substitute products, the HPHA reserves the right to terminate the Contract.
- c. If a particular item is discontinued from a manufacturer's line, the request to terminate must be in writing to the HPHA's Procurement Officer and shall include a copy of the CONTRACTOR'S running record of purchases for the line item, by name of agency, transaction date, and quantity sold. The effective date of termination will be determined by the Procurement Officer, not to exceed ten (10) days from date of receipt of the written request by the Procurement Officer. The CONTRACTOR shall honor all orders placed prior to the effective termination date.

In the event of the termination of a line item, the HPHA reserves the option to purchase the item from another CONTRACTOR for the remainder of the Contract period or until the CONTRACTOR can secure distribution rights for an acceptable substitute, or rebid the item whichever is in the best interest of the HPHA.

7. Warranties

- a. The warranty period for all appliances shall be for a minimum of one (1) year from date of acceptance. The date of acceptance shall be designated as the date that the new appliance is satisfactorily received and installed in proper working order. Full coverage shall include costs for parts, labor and any other expenses incurred in performing warranty work.
- b. During the warranty period, repairs on appliances shall be completed within 48 hours after notification. If an appliance is not repaired within seven (7) calendar days after initial notification of the problem the CONTRACTOR shall deliver a new replacement appliance.
- c. During the warranty period, repairs on appliances shall be made within 12 hours to make it operative, if the CONTRACTOR is notified by 1:00 p.m. Hawaii Standard Time, Mondays to Fridays, except State holidays or the CONTRACTOR shall furnish a loaner, if requested by the HPHA to avoid unreasonable interruption of service.
- d. During the warranty period, the CONTRACTOR shall have available a supply of parts on hand to repair the appliances on Contract. If the parts are not available, the CONTRACTOR shall have seven (7) working days to make available the part(s) requested to repair the appliance. Thereafter, the CONTRACTOR shall install a new appliance and remove the old appliance if the repair is not done within the seven (7) working days of the original call.



STATE OF HAWAII

SCOPE OF SERVICES

- e. For after hours, State holidays and weekend services, the CONTRACTOR shall furnish to the HPHA, the name and telephone number for emergency calls. The CONTRACTOR shall repair or replace and install any part necessary to make it operative, or furnish loaner if requested, to avoid any unreasonable interruption of service.
 - f. During the warranty period, the CONTRACTOR shall ensure all repairs are completed by a certified technician using approved parts so as not to void the manufacturer's warranty. If replacement parts are used and such use voids the warranty, the CONTRACTOR shall replace the appliance at no additional cost to the HPHA.
8. **Technical Specs.** Technical specifications are provided in IFB-PMB-2011-11, dated March 31, 2011 for the following appliances:
- Group 1: Free Standing Electric Ranges
 - Group 1A: Drop In Electric Range
 - Group 2: Free Standing and Slide-In Gas Ranges



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

CONTRACTOR: _____

1. Subject to the receipt of Federal funds under the Annual Contributions Contract and Section 161 of the Housing & Community Development Act of 1992 (HCDA 1992), Public Law 102-550, approved October 28, 1992, the STATE agrees to pay the CONTRACTOR for services satisfactorily performed under this Contract a sum of money not to exceed _____ and No/100 Dollars (\$ _____) for the Contract period.

Subject to the availability and receipt of State funds, the STATE agrees to pay the CONTRACTOR for services satisfactorily performed under this Contract, a sum of money not to exceed _____ and No/100 Dollars (\$ _____) for the Contract period

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

2. Funds are subject to appropriation by the U.S. Congress and allocation by the U.S. Department of Housing and Urban Development (HUD) and the State of Hawaii. Funding and period of availability may change upon notice by HUD to the STATE. If there should be insufficient funds for any portion of the remainder of the Contract period beyond the initial 12-month period ending June 30, 2012, the STATE may terminate the Contract or revise the amount/quantity of services required without penalty.

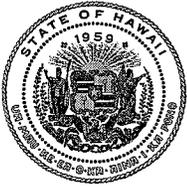
State funds are subject to appropriation by the State's Director of Finance and allocation by the Governor and/or State Legislature. Funding and period of availability may change upon notice by the STATE. If there should be insufficient state funds for any portion of the remainder of the Contract period beyond the initial 12-month period ending June 30, 2012, the STATE may terminate without penalty the Contract or may revise the amount/quantity of services required.

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

- a. CONTRACTOR shall submit an invoice, one original, for services rendered to:

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

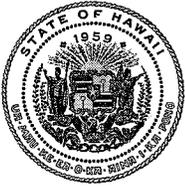
- b. Section 103-10, HRS provides that STATE shall have thirty (30) calendar days after receipt of invoice or satisfactory delivery of goods or performance of the services to make payment. The aging date of the invoice shall be the latter of the following: 1) date of invoice or 2) postmark of original invoice received via USPS or other method of delivery.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

- c. All invoices shall reference the Contract number assigned to this Contract. Payment shall be in accordance with Section 103-10, HRS, upon certification by the property management staff that the CONTRACTOR has satisfactorily provided the goods/services specified. Payment shall be made on the amount of appliances delivered and installed and disposed by the CONTRACTOR as detailed in the bid offer form.
 - d. Every four (4) weeks the Officer-In-Charge will submit a report to the CONTRACTOR listing any discrepancies or Contract violation(s) which need correction. These discrepancies or Contract violation(s) must be corrected by the next reporting period for payment adjustment purposes. Liquidated damages shall apply for failure to comply.
4. The CONTRACTOR shall be reimbursed at the accepted bid price per appliance, which shall be the all inclusive cost to STATE (including all applicable taxes) for delivery and installation of the appliance as specified in IFB-PMB-2011-11.
5. The CONTRACTOR may request adjustments to the contracted price per appliance due to documented manufacturer's increase in product costs. The CONTRACTOR must submit a written request for the price adjustment which includes a description of the calculations used to determine the requested adjustment. All price adjustments require written approval by the STATE.
6. The STATE reserves the right to purchase an indefinite amount of appliances. No term or condition in this Contract shall be interpreted as a commitment by the STATE to purchase a specific quantity of appliances.
7. The CONTRACTOR shall repair all damages caused by the CONTRACTOR's equipment or employees to existing utilities and structures, such as water lines, electric conduits, sewer lines, and buildings. If such repairs are not completed within a reasonable time, STATE reserves the right to purchase services for the necessary repairs from the open market and to deduct all repairs costs from moneys due or may thereafter become due to CONTRACTOR. In the event money due CONTRACTOR is insufficient for the purpose, CONTRACTOR shall pay the difference upon demand by STATE.



STATE OF HAWAII

TIME OF PERFORMANCE

CONTRACTOR:

1. The term of this Contract for Furnishing Electric and Gas Ranges at various low income public housing complexes statewide shall be for the period beginning July 1, 2011 and ending on June 30, 2012.
2. No goods or services shall be issued, delivered, or installed on this Contract before a Notice to Proceed is issued.
3. The option to extend the Contract will be at the sole discretion of the STATE. The Contract may be extended, without the necessity of rebidding, at the same rates as proposed in the original bid unless price adjustments are made and approved as provided in IFB-PMB-2011-11 or this Contract:

Initial term of Contract:	12 months
Length of each extension:	Up to 12 months (may be less than 12 months)
Maximum length of Contract:	36 months

4. The initial period shall commence on the Contract start date. The following conditions must be met for an extension:
 - a. The CONTRACTOR experienced cost savings and has unexpended funds available that can be used to provide additional services; or
 - b. The STATE determines there is an ongoing need for the services and has funds to extend services up to two (2) additional 12-month periods. The Contract extensions shall be awarded at the same or comparable rates as the Primary Contract. Exceptions shall be granted upon satisfactory justification such as increase in cost of services or cost of living increase as provided herein; and
 - c. A Supplemental Contract must be executed prior to expiration of the Primary Contract; and
 - d. The STATE may required to obtain HUD approval in writing of the extension prior to execution of a Supplemental Contract if federal HUD funds are to be used; and
 - e. The CONTRACTOR must obtain written approval and a notice to proceed by the STATE with the extension; and
 - f. The STATE has determined that the CONTRACTOR has satisfactorily provided services over the current Contract term; and
 - g. Necessary State and/or Federal funds are appropriated and allotted for an extension.
5. Liquidated damages is fixed at the sum of ONE HUNDRED DOLLARS (\$100.00) for each and every day per appliance 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

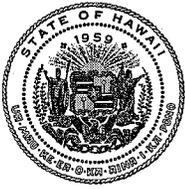
SPECIAL CONDITIONS

CONTRACTOR:

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

<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>\$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 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 his 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 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 CONTRACTOR's liability hereunder or to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, CONTRACTOR shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Contract.



STATE OF HAWAII

SPECIAL CONDITIONS

- e. The insurer shall notify the STATE in writing of any cancellation or change in provisions thirty calendar days prior to the effective date of such cancellation or change.
2. The CONTRACTOR shall have a permanent office on the island of Oahu or the geographic area awarded from 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 work to be performed under this Contract is subject to the requirement of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall to the greatest extent feasible be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
4. The STATE shall monitor the performance of work an ongoing basis through desk monitoring, site inspection and/or other appropriate methods.
5. In the event the CONTRACTOR fails, refuses, or neglects to perform the services in accordance with the requirements of the Invitation for Bids number IFB PMB-2011-11 or the Contract, the STATE reserves the right to purchase in the open market a corresponding quantity of services, and to deduct the cost of such services from any monies due or may thereafter become due the CONTRACTOR. In case money due to the CONTRACTOR is insufficient for the purpose, the CONTRACTOR shall pay the difference upon demand by the STATE. The STATE may also utilize all other remedies provided under the Contract and by law and rules.
6. In the event there is a conflict between the attached General Conditions from HUD 5370-C (05/2006) and the attached General Conditions AG-008 (4/15/2009), the more restrictive of the two shall apply.

GENERAL CONDITIONS

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GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Termination for Default.

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

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

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

14. Termination for Convenience.

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

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

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

d. Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/01/2014)

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

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

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

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

1. Definitions

The following definitions are applicable to this contract:

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

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

- (d) proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

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

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

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

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

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

12. Inspection and Acceptance

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

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

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

(ii) Any reasonable payment to a person, other than an officer or employee of a

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

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

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

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

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
Office of Labor Relations
OMB Approval No. 2577-0157 (exp. 1/01/2014)

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

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

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

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Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000
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1. Minimum Wages

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

in the classification under this Contract from the first day on which work is performed in the classification.

2. Withholding of funds

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

3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
 - (i) Name, address and Social Security Number;
 - (ii) Correct work classification or classifications;
 - (iii) Hourly rate or rates of monetary wages paid;
 - (iv) Rate or rates of any fringe benefits provided;
 - (v) Number of daily and weekly hours worked;
 - (vi) Gross wages earned;
 - (vii) Any deductions made; and
 - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
 - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

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

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

- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
- (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
- (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
- (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
 - (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD).

- (ii) The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations.
 - (iii) The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.
- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

6. Contract Work Hours and Safety Standards Act

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

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

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

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

7. Subcontracts

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

8. Non-Federal Prevailing Wage Rates

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

Instructions to Offerors Non-Construction

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



- 03291 -

1. Preparation of Offers

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

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

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

2. Submission of Offers

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

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

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

3. Amendments to Solicitations

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

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

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

4. Explanation to Prospective Offerors

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

5. Responsibility of Prospective Contractor

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

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

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

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

6. Late Submissions, Modifications, and Withdrawal of Offers

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

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

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

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

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

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

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

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

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

7. Contract Award

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

(b) The HA may

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

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

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

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

8. Service of Protest

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

9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here:]

Certifications and Representations of Offerors

Non-Construction Contract

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

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

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

1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

- (a) is, is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b) is, is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c) is, is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

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

(Check the block applicable to you)

- | | |
|---|---|
| <input type="checkbox"/> Black Americans | <input type="checkbox"/> Asian Pacific Americans |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans |
| <input type="checkbox"/> Native Americans | <input type="checkbox"/> Hasidic Jewish Americans |

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

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

- (1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);
- (ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

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

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

4. Organizational Conflicts of Interest Certification

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

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

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

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

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

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

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

5. Authorized Negotiators (RFPs only)

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

6. Conflict of Interest

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

7. Offeror's Signature

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

Signature & Date:

Typed or Printed Name:

Title:

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