



Hawaii Public Housing Authority  
State of Hawaii

**IFB CMB-2019-27**

**Invitation-For-Bids (IFB) to Provide  
Operational and Preventive Maintenance  
Services for 16 Elevators at Various HPHA  
Properties**

*Note: If this Invitation for Bids (IFB) was downloaded from the Hawaii Public Housing Authority website, interested bidders must provide the necessary contact information to the IFB Coordinator to be notified of changes and to ensure receipt of all applicable IFB information. Interested bidders are advised to complete the IFB Registration Form, email, fax or mail the form to the IFB Coordinator. The HPHA shall not be responsible for incorrect bid offers received as a result of missing addenda, clarifications, attachments or other pertinent IFB information not received by interested bidders.*

Issued October 2019



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

INVITATION FOR BIDS (IFB) No. CMB-2019-27

Notice is hereby given that pursuant to Chapter 103D, Hawaii Revised Statutes (HRS), the Hawaii Public Housing Authority (HPHA) will be accepting sealed bids to **Provide Operation and Preventive Maintenance Services for 16 Elevators at Various HPHA Properties, Job No. 19-009-000, located at Various Locations, Honolulu, Oahu, Hawaii.** Properties to include the following:

<b>Asset Management Project</b>	<b>Property Name</b>	<b>Property Location</b>
AMP 30	Salt Lake	2907 Ala Ilima St. Honolulu, Hawaii 96819
AMP 34	Kalakua Homes	1545 Kalakua Ave. Honolulu, Hawaii 96826
	Makua Alii	1541 Kalakua Ave. Honolulu, Hawaii 96826
	Paoakalani	1583 Kalakua Ave. Honolulu, Hawaii 96826
AMP 35	Punchbowl Homes	730 Captain Cook Avenue Honolulu, Hawaii 96813
	Makamae	21 South Kuakini Street Honolulu, Hawaii 96813
	Kalanihuia	1220 Aala Street Honolulu, Hawaii 96817
	Pumehana	1212 Kinau Street Honolulu, Hawaii 96814

The Invitation for Bids, Specifications, and Bid Offer Form may be picked up at the HPHA Contract and Procurement Office located at 1002 North School Street, Building D, Honolulu, Hawaii 96817 or downloaded at the HPHA website at [www.hpha.hawaii.gov](http://www.hpha.hawaii.gov) beginning Wednesday, October 30, 2019.

Sealed bids must be received at 1002 North School Street, Building D, Central Files Office not later than 2:00 p.m. Hawaii Standard Time (HST), Thursday, November 21, 2019. Public opening of bids will commence at 2:15 p.m. HST, Thursday, November 21, 2019 at the Contract and Procurement Office.

No supplemental literature, brochures or other unsolicited information should be included in the bid packet. Any such literature, brochures or other unsolicited information shall not be considered. Any bid offering, any other set of terms and conditions contradictory to those included in this IFB may be rejected without further notice.

Bidding documents may be examined or obtained at the HPHA Construction Management Branch (CMB), at the HPHA, at the HPHA, 1002 North School Street, Building "C", Honolulu, Hawaii 96817.

An INTENT TO BID is required and **must** be received by the HPHA at 1002 North School Street, Honolulu, Hawaii 96817, not later than **4:00 p.m.** HST, on November 12, 2019. The HPHA will acknowledge receipt of the Intent to Bid form, but it is the Contractor's responsibility to confirm that the HPHA has received its form. Intent forms are included in the bidding documents and are available at the above address. The Notice may be filed by fax at (808) 832-6030. Bidders must possess a valid State of Hawaii Contractor's License to be eligible to bid.

Bidders shall comply with all requirements of the bidding documents. Written questions may be directed to Sahar Ibrahim, HPHA Project Engineer at the above address and fax number or emailed to sahar.m.ibrahim@hawaii.gov. No questions shall be considered after November 12, 2019.

The HPHA may reject any and all bids and may waive any minor bid defects whenever the HPHA deems such action is in the best interest of the HPHA. The determination of the lowest responsible bidder will be made by the HPHA. The award of a contract to the lowest responsible and responsive bidder is subject to the availability, allocation and receipt of funds. Nothing in the bid documents shall be construed to obligate the HPHA to encumber a contract using funding sources not specifically budgeted for this purpose. The HPHA has the right to cancel this IFB if it is in its best interest.

The PRE-BID SITE INSPECTION MEETING is scheduled at **9:00 a.m., HST, Tuesday, November 5, 2019** at Kalakaua Homes, 1545 Kalakaua Ave., Honolulu, Hawaii 96826.

Inspection for each project will follow in this order:

<u>Property</u>	<u>Address</u>
1) Kalakaua Homes	1545 Kalakaua Ave., Honolulu
2) Makua Alii,	1541 Kalakaua Ave., Honolulu
3) Paoakalani	1583 Kalakaua Ave., Honolulu
4) Makamae	21 S. Kuakini St. Honolulu
5) Pumehana	1212 Kinau St., Honolulu
6) Punchbowl Homes	730 Captain Cook Ave., Honolulu
7) Kalanihuia	1220 Aala St., Honolulu
8) Salt Lake	2907 Ala Ilima St. Honolulu

All interested Contractors and Subcontractors shall confirm their visit with Ms. Sahar Ibrahim, Project Engineer, at (808) 832-5987 or email to sahar.m.ibrahim@hawaii.gov. Attendance by all bidders on this project is highly recommended.

Hawaii Public Housing Authority  
Hakim Ouansafi  
Executive Director

Hawaii Awards & Notices Data System (HANDS)



# IFB Table of Contents

## Section 1 – Administrative Overview

I.	Authority .....	8
II.	IFB Organization .....	8
III.	Contracting Office .....	8
IV.	Procurement Timeline .....	10
V.	Pre-Bid Conference and Site Inspection .....	10
VI.	Submission of Questions.....	11
VII.	Submission of Notice of Intent to Bid and Sealed Bids .....	11
VIII.	Discussions with Bidders Prior to Bid Submission .....	12
IX.	Opening of Bids.....	12
X.	Additional Materials and Documentation .....	13
XI.	IFB Amendments .....	13
XII.	Cancellation of Invitation for Bids .....	13
XIII.	Costs for Bid Preparation .....	13
XIV.	Modification of Bids .....	13
XV.	Withdrawal of Bids .....	14
XVI.	Late Withdrawal and Late Modification .....	14
XVII.	Mistakes in Bids .....	14
XVIII.	Rejection of Bids .....	14
XIX.	Notice of Award.....	15
XX.	Protests .....	16
XXI.	Availability of Funds .....	17
XXII.	Monitoring and Evaluation.....	17
XXIII.	General and Special Conditions of the Contract .....	17
XXIV.	Cost Principles .....	18
XXV.	Campaign Contributions by State and County Contractors.....	18

## Section 2 – Specifications

I.	Introduction	
	A. Purpose or Need.....	19
	B. Area of Service .....	19
	C. Funding Source and Period of Availability .....	19
II.	General Requirements	
	A. Qualifying Requirements (Bid Preparation).....	20
	B. Type of Contract .....	26
	C. Single or Multiple Contracts to be Awarded .....	27
	D. Single or Multi-Term Contracts to be Awarded .....	27
	E. Statutory Requirements of Section 103-55, HRS.....	28
	F. Bid Price .....	29
	G. Contract Price Adjustment Due to Increase in State Wages.....	29
	H. Price Adjustment by the State.....	31

III.	Scope of Work	
	A. Services Activities .....	31
	B. Management Requirements & Qualifications .....	31
	C. Minimum and/or Mandatory Requirements for Goods and Services .....	34
	D. Emergency Work .....	35
	E. Maintenance Service Specifications .....	35
IV.	Contract Monitoring and Remedies	
	A. System Evaluation .....	35
	B. Protection of Property and Work .....	35
	C. Monitoring .....	36
	D. Damages .....	36
	E. Termination .....	37

### Section 3 – Bid Offer Form and Instructions

#### General Instructions for Completing Bid Offer Form

I.	Notice of Intent to Bid .....	39
II.	Bid Forms .....	39
III.	HUD Forms.....	41
IV.	General Conditions.....	41

### Section 4 – Bid Evaluation & Award

I.	Bid Evaluation .....	42
II.	Method of Award .....	42

### Section 5 – Attachments

1.	Notice of Intent to Bid and Qualification Questionnaire	Due November 12, 2019
2.	Wage Certificate	Due November 21, 2019
3.	Bid Offer Form	Due November 21, 2019
4.	Maintenance Services Specifications	For Bidder's Information
5.	Sample Contract Based on Competitive Sealed Bids for Goods and Services	For Bidder's Information
6.	Sample Contract – Attachment S1, Scope of Services	For Bidder's Information
7.	Sample Contract – Attachment S2, Compensation and Payment Schedule	For Bidder's Information
8.	Sample Contract – Attachment S3, Time of Performance	For Bidder's Information

- |   |   |
|---|---|
| 9. Sample Contract – Attachment S4, Certificate of Exemption from Civil Service | For Bidder's Information                        |
| 10. Sample Contract – Attachment S5, Special Conditions                         | For Bidder's Information                        |
| 11. State General Conditions, AG-008 103D General Conditions                    | 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 November 21, 2019                           |
| 15. 2019 and 2020 Hawaii State Government Observed Holidays                     | For Bidder's Information                        |
| 16. Maintenance Wage Rate – Form HUD 4750                                       | To be completed and submitted by the low Bidder |

# **Section 1**

## **Administrative Overview**

### **I. Authority**

This Invitation-For-Bids (IFB) is issued under the provisions of Chapter 103D, HRS, and the related Hawaii Administrative Rules (HAR). The United States Department of Housing and Urban Development (HUD) regulations shall apply when the Contract executed includes an allocation of Federal funds. Prospective bidders are held responsible for presumptive knowledge of all requirements of the cited authorities; the submission of a bid offer by a 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      Scope of Work and Specifications – Provides interested bidders with a general description of the tasks to be performed, delineates applicant responsibilities, and defines applicable deliverables

Section 3      Bid Offer Form and Instructions – Describes the required format and content of the bid submission

Section 4      Bid Evaluation & Award – Describes how 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 contact information for 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

The designated IFB Coordinator for this solicitation is:

Ms. Sahar Ibrahim  
Construction Management Branch  
Hawaii Public Housing Authority  
1002 North School Street, Bldg. C  
Honolulu, Hawaii 96817  
Telephone: (808) 832-5987  
Email: [sahar.m.ibrahim@hawaii.gov](mailto:sahar.m.ibrahim@hawaii.gov)

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

The office responsible for monitoring the services performed under the Contract is the Property Management and Maintenance Services Branch. The designated Contract Administrator for this solicitation is:

Mr. Earl Nakaya  
Property Management and Maintenance Services Branch  
Hawaii Public Housing Authority  
1002 North School Street, Bldg. E  
Honolulu, Hawaii 96817  
Telephone: (808) 832-4677

Any changes to the Contract Administrator or his 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.

The Officer-in-Charge shall be the primary point of contact for the Successful Bidder's day-to-day operational issues and reporting requirements. No changes to the Contract shall be implemented based on verbal instructions of the Officer-in-Charge. The designated Officer-in-Charge for each specified location is designated as follows:

<b>Asset Management Project</b>	<b>Property Name</b>	<b>Property Location</b>	<b>Officer-in-Charge</b>
AMP 30	Salt Lake	2907 Ala Ilima St. Honolulu, HI 96819	Ms. Mary Jan Hall-Ramiro Ph: 483-2550
AMP 34	Kalakua Homes	1545 Kalakua Ave. Honolulu, HI 96826	Ms. Stephanie Fo Ph: 586-9724
	Makua Alii	1541 Kalakua Ave. Honolulu, HI 96826	Ms. Stephanie Fo Ph: 586-9724
AMP 34	Paoakalani	1583 Kalakua Ave. Honolulu, HI 96826	Ms. Stephanie Fo Ph: 586-9724

AMP 35	Punchbowl Homes	730 Captain Cook Avenue Honolulu, HI 96813	Ms. Stephanie Fo Ph: 586-9724
	Makamae	21 South Kuakini Street Honolulu, HI 96813	Ms. Stephanie Fo Ph: 586-9724
	Kalanihuaia	1220 Aala Street Honolulu, HI 96817	Ms. Stephanie Fo Ph: 586-9724
	Pumehana	1212 Kinau Street Honolulu, HI 96814	Ms. Stephanie Fo Ph: 586-9724

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

#### IV. Procurement Timeline

<u>Activity</u>	<u>Scheduled Dates</u>
Public Notice Announcing IFB	October 30, 2019
Distribution of Bid Specs/Bid Offer Form	October 30, 2019
Pre-Bid Conference	November 05, 2019, 9:00 a.m. HST
Notice of Intent to Bid deadline	November 12, 2019, 9:00 a.m. HST
Written Questions Due to the HPHA	November 12, 2019
Bid Submittal Deadline	November 21, 2019, 2:00 p.m. HST
Bid Opening	November 21, 2019, 2:15 p.m. HST
Notice of Award	December 5, 2019
Contract Execution	December 18, 2019
Contract Start Date	December 18, 2019, 12:00 p.m. HST

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. No services shall be provided prior to the execution of a Contract.

#### V. Pre-Bid Conference and Site Inspection

Interested bidders are strongly encouraged to attend the Pre-Bid Conference scheduled at 9:00 a.m. HST, Tuesday, November 05, 2019 located at Kalakaua Homes, 1545 Kalakaua Ave., Honolulu, Hawaii 96826 with a site inspection of the properties following the Pre-Bid Conference.

Prior to submittal of the bid, interested bidders may visit the properties to thoroughly familiarize themselves with existing conditions and the nature of work to be performed. Interested bidders may contact the IFB Coordinator to arrange for a site visit during the site inspection period from Tuesday, November 05, 2019 through Tuesday, November 12, 2019,. No additional compensation shall be allowed due to any misunderstanding or error regarding the conditions/layout or work to be performed at the properties.

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 are only intended as general guidance purposes. Formal written responses to substantive questions will be provided to each registered interested bidder as set forth in Section VI below. All changes to the IFB will be issued as an addendum to the IFB.

## **VI. Submission of Questions**

Interested bidders may submit written questions to the IFB Coordinator identified in paragraph III of Section I of this IFB. The deadline for submission of written questions is Tuesday, November 12, 2019. All written questions will receive a written response from the HPHA. The HPHA's response to written questions shall be issued in an addendum and sent to all registered interested bidders via mail, electronic mail, or facsimile not later than Tuesday, November 19, 2019.

## **VII. Submission of Notice of Intent to Offer and Sealed Bids**

**A. Forms/Formats.** The Bid Offer Form is attached in Section 5 of this IFB. See Attachment 3.

Bidders shall 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](http://www.hudclips.org) and are attached in Section 5 of this IFB. See Attachments 13 and 14.

**B. Notice of Intent to Bid Submittal** – The Notice of Intent to Bid is required and **must** be received by the HPHA at 1002 North School Street, Honolulu, Hawaii 96817, not later than **4:00 p.m., HST, on November 12, 2019.** The HPHA will acknowledge receipt of the Intent to Bid form, but it is the Bidder's responsibility to confirm that the HPHA has received its form. The intent form is attached in Section 5 of this IFB. See Attachment 1. The Intent to Bid form may be filed by fax at (808) 832-6030.

**C. Bid Submittal.** Sealed bids must be hand delivered to or mailed to and received by the HPHA Central Files Office located at 1002 North School Street, Building D, Honolulu, Hawaii 96817 not later than 2:00 p.m. HST, Thursday, **November 21, 2019.** Other methods of delivery services shall be considered hand deliveries and considered submitted on the actual date and time received at the HPHA Central Files Office. Sealed bids post-marked prior to the specified bid due date and time, but received after the specified bid due date and time shall be considered late and shall be rejected. **Electronic mail or facsimile submissions of the Bid Offer shall not be accepted.**

Bid offers shall be submitted in a sealed envelope identified as a sealed bid in response to this IFB (IFB No. CMB-2019-27). Any bid document submissions not sealed and identified with the IFB number on the envelope or submitted via electronic mail or facsimile shall be automatically rejected. There shall be no exceptions to this requirement.

- D. Confidential Information.** If a bidder believes that any portion of a bid contains information that should be withheld as confidential, the bidder may request in writing for nondisclosure of designated proprietary data and provide justification to support confidentiality. Such data shall accompany the bid, 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 shall not be withheld.**

### **VIII. Discussion with Bidders Prior to Bid Submission**

Discussions may be conducted with potential bidders to promote understanding of the HPHA requirements.

### **IX. Opening of Bids**

All bid submissions shall be date and time stamped by the HPHA upon receipt of the bid submittal at the designated location. Bid submissions include bid offers, modifications to bids, and withdrawals of bid offers. All bid submissions received shall be held in a secure place by the HPHA and shall not be opened and examined for evaluation purposes until after the bid opening. 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 publicly. Public bid opening will commence at 2:15 p.m. HST, Thursday, **November 21, 2019** at the HPHA Construction Management Office, 1002 North School Street, Building C, Honolulu, Hawaii 96817.

In the unlikely event that the HPHA receives a bid that is misplaced or mishandled through no fault of the bidder, the HPHA shall publicly open the bid as soon as possible, inform all 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 at the HPHA by the posted due date and time and that the bid was not 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, samples, or brochures received as part of the bid submission shall not be examined or tested and will not be deemed to vary any of the provisions of the 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 chapter 3-122, HAR. Interested bidders registered with the HPHA using the IFB Registration Form will be notified of all amendments through written communication which may include electronic mail, facsimile, or United States Postal Services (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 sole discretion of the HPHA when it is determined to be in the best interest of the State.

## **XIII. Costs for Bid Preparation**

All costs incurred by bidders in the preparation and submission of bids are the sole responsibility of the bidders. All 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 Notice of Intent to Bid and Qualification Questionnaire and the Bid Offer Form shall be the sole responsibility of the bidder.

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

## **XIV. Modification of Bids**

Bids submitted may be modified prior to the established due date and time by the following documents in accordance with section 3-122-16.07, HAR:

- (1) A written notice accompanying the actual modification received in the HPHA Central Files Office, stating that a modification to the bid is submitted.
- (2) A facsimile or electronic written notice submitted either by facsimile machine or electronic mail to the IFB Coordinator. Bidder shall submit the original signed written notice and modification to the HPHA Central Files Office within two (2) business days of receipt of the facsimile or the electronic transmittal. If the written notice is submitted less than two (2)

business days prior to the established due date and time for the receipt of bid offers, the bidder shall submit the original signed written notice and the modification to the HPHA Central Files Office not later than the established due date and time for receipt of bid offers.

Modified bid offers shall be submitted in a sealed envelope identified as a modified sealed bid in response to this IFB (IFB No. CMB-2019-27).

#### **XV. Withdrawal of Bids**

Bids submitted may be withdrawn prior to the established due date and time by the following documents in accordance with section 3-122-16.07, HAR:

- (1) A written notice received by the IFB Coordinator; or
- (2) A notice by facsimile machine or electronic mail to the IFB Coordinator.

#### **XVI. Late Withdrawal and Late Modification**

Any notice of withdrawal or notice of modification of a bid with the actual modification is considered late when received by the HPHA after the established due date and time.

A late modification will not be considered for award.

Acceptance of a late withdrawal request shall be at the sole discretion of the HPHA Procurement Officer.

#### **XVII. Mistakes in Bids**

While 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, withdrawn, or waived by the HPHA to the extent that it is not contrary to the best interest of the State or to the fair treatment of other bidders. Mistakes in bids shall be handled in accordance with section 3-122-31, HAR and the HUD requirements pursuant to HUD Handbook 7460.8.

#### **XVIII. 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 demonstrate an understanding of the service specifications. All bids offering 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 the total bid price and unit prices.
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 bid is set at a very high price for the first item and subsequent items are set at extremely low prices.

All bid offers submitted not using the prescribed Bid Offer Form as provided in this IFB or does not conform to the bid submission instructions may be determined non-responsive.

The HPHA reserves the right to reject bid offers in whole or in part at the sole discretion of the HPHA when it is determined to be in the best interest of the State.

## **XIX. Notice of Award**

If an award is made, the award shall be as follows:

- a. Awarded to the responsible and responsive bidder, which submits the lowest base bid price in the sealed bid forms.
- b. The bidder(s) must submit a bid for all the operational and preventive maintenance services/requirements stated in the maintenance service specifications and cost for the elevators' spare parts.
- c. In the case of a tie, the bid shall be awarded by the flip of a coin or some other random means of selection to be determined by the State.

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

The Successful Bidder shall receive a Notice of Award, which will indicate that the bidder has been selected to provide services under this IFB

No work shall be undertaken by the Successful Bidder prior to the Contract start date of December 18, 2019. The HPHA shall not be liable for any work, Contract

costs, expenses, loss of profits, or any damages whatsoever incurred by the Successful Bidder prior to the start of the Contract.

In accordance with section 3-122-112, HAR, Responsibility of Offerors, the Successful Bidder shall produce documents to the Procurement Officer to demonstrate compliance with applicable rules and statutes. The Successful Bidder receiving an award shall be required to enter into a formal written contract with the HPHA. The General Conditions of the resulting Contract are attached and service specifications are included. See Attachments 11 and 12.

**XX. Protests**

An actual or prospective 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 rules established by chapter 103D, HRS; or
3. A state purchasing agency’s failure to follow procedures, requirements, or evaluation criteria in the solicitation issued by the state purchasing agency.

Pursuant to section 103D-701, HRS, an actual or prospective offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. A protest shall be submitted in writing within five (5) business days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest of an award or proposed award shall be submitted within five (5) business days after the posting of award of the Contract. The Notice of Protest shall be mailed by USPS or hand delivered to the Head of the State Contracting Agency conducting the protested procurement and the Procurement Officer who is conducting the procurement. Delivery services other than USPS shall be considered hand deliveries and considered submitted on the date of actual receipt by the State Contracting Office.

<b>Head of State Contracting Office</b>		<b>Procurement Officer</b>	
Name:	Hakim Ouansafi	Name:	Rick T. Sogawa
Title:	Executive Director	Title:	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

Any notice to award, if any, resulting from this solicitation shall be posted on the Hawaii Awards & Notices Data System on the State Procurement Office website: <https://hands.ehawaii.gov/hands/awards>.

## **XXI. Availability of Funds**

All bidders and the Successful Bidder are notified that the award of a Contract and any subsequent Contract renewal or extension are subject to allotments made by the Director of Finance, State of Hawaii, pursuant to chapter 37, HRS, and are 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 the services at federal public housing properties with State funds.

## **XXII. Monitoring and Evaluation**

The Successful Bidder's performance of the Contract will be monitored and evaluated by the Officer-in-Charge and the HPHA Contract Administrator or their designated representative(s).

## **XXIII. General and Special Conditions of Contract**

The State General Conditions, AG-008 103D General Conditions are attached for bidder's information and reference. See Attachment 11. The State General Conditions may be found on the SPO website at [www.spo.hawaii.gov](http://www.spo.hawaii.gov).

The Federal General Conditions, Form HUD 5370-C is provided for bidder's information and reference. See Attachment 12.

The State and Federal General Conditions shall be incorporated into the Contract with the Successful Bidder. In the event of a conflict between the State and Federal General Conditions, the more restrictive shall apply.

The HPHA may also impose contractually any special conditions deemed necessary. See Attachment 10. 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 modifications to the scope of work and or reporting requirements arising from unforeseeable conditions.

#### **XXIV. Cost Principles**

The HPHA shall utilize standard cost principles in chapter 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 the Federal and State laws.

#### **XXV. Campaign Contributions by State and County Contractors Prohibited**

If awarded a Contract in response to this solicitation, the Successful Bidder agrees to comply with section 11-355, HRS, which states that campaign contributions are prohibited from a State and County government Contractor during the term of the Contract if the Contractor is paid with funds appropriated by the legislative body between the execution of the Contract through the completion of the Contract.

(END OF SECTION)

## Section 2 Specifications

### I. Introduction

#### A. Purpose or need

The Hawaii State Legislature established the Hawaii Public Housing Authority (HPHA) under chapter 356D, HRS. The HPHA is a public body and a body corporate and politic and is attached to the Department of Human Services for administrative purposes only. The HPHA's role is to address the housing needs of low-income families of Hawaii. The HPHA seeks to procure refuse collection services to meet the agency's goal of providing safe, sanitary, and decent housing.

The purpose of this IFB is to competitively procure maintenance services to 16 elevators at various HPHA properties under Asset Management Projects 30, 34 and 35 on Oahu.

#### B. Area of Service

The successful bidder shall be required to provide operational and preventive maintenance services for the all 16 elevators listed below during the Initial Contract Period and all applicable option periods:

Project	Address	No. of Stories	No. of Elevators
Kalakaua Homes	1545 Kalakaua Ave	10	2
Makua Alii	1541 Kalakaua Ave	19	2
Paoakalani	1583 Kalakaua Ave	16	2
Pumehana	1212 Kinau St	20	2
Punchbowl Homes	30 Captain Cook Ave.	7	2
Makamae	21 South Kuakini St.	4	2
Kalanihuia	1220 Aala St.	15	2
Salt Lake	2907 Ala Ilima St.	7	2
Total elevator maintenance			16

#### C. Funding source and period of availability

Funds are subject to appropriation by the State Director of Finance and/or the United States Congress and allocation by the Governor, State Legislature and/or the United States department of Housing and Urban Development. Funding and period of availability may change upon notice by the STATE to the HPHA.

**It is understood that no award shall be binding unless the HPHA and/or the State Comptroller indicate that there is an available and 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 received. The availability of funds in excess of the amount certified as available shall be contingent upon future appropriations or special fund revenues. The use of federal funds may require the prior written approval by HUD.

If there should be insufficient funds for any portion of the remainder Contract period beyond the Initial Contract period, 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 unit bid price(s).

## **II. General Requirements**

### **A. Qualifying requirements**

1. The Successful Bidder shall comply with the chapter 103D, HRS, Cost Principles for Purchase of Goods and Services and applicable HUD rules.
2. The bidder must have the appropriate license from the State of Hawaii, Department of Commerce and Consumer Affairs at the time of bid opening. The bidder shall provide the license number on the Offer Form where indicated. Award will not be made to any bidder failing to meet this qualification requirement.
3. 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.
4. The Successful Bidder shall, upon award of the Contract, furnish proof of compliance with the requirements of section 3-122-112, HAR:
  - a. Chapter 237, HRS, tax clearance;
  - b. Chapter 383, HRS, unemployment insurance;
  - c. Chapter 386, HRS, workers' compensation;
  - d. Chapter 392, HRS, temporary disability insurance;
  - e. Chapter 393, HRS, prepaid health care; and

- f. One of the following:
- i. The Successful Bidder shall be registered and incorporated or organized under the laws of the State of Hawaii as a “Hawaii business” as follows:

**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; or

- ii. The Successful Bidder shall be registered to do business in the State of Hawaii as a “compliant non-Hawaii business” as follows:

**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.

4. Certifications of Eligibility

**Prior to award of a Contract, bidders shall submit the following documents to the HPHA to demonstrate compliance with Federal and State laws:**

- a. Tax Clearance, Form A-16;

- b. Department of Labor and Industrial Relations, Application for Certification of Compliance, Form LIR #27; and
- c. Certificate of Good Standing issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG).

Instead of separately applying for these paper certificates at the various State and Federal agencies, the HPHA recommends that 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 is hosted by the Hawaii Information Consortium, LLC (HIC) and 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. Bidders electing to use the HCE services will be required to pay an annual subscription fee of \$12.00 to the HIC.

5. Indemnification

The Successful Bidder shall defend, indemnify, and hold harmless the State of Hawaii, the HPHA, its elected and appointed officials, officers, and employees from and against all liability, loss, damage, cost, and expense, including all attorney fees and all claims, suits, and demands arising out of or resulting from the acts or omissions of the Successful Bidder or the Successful Bidder's officers, employees, agents or subcontractors.

6. Insurance Requirements

Within 15 days after award of the Contract and prior to the execution of the Contract, the Successful Bidder shall furnish to the Contracting Officer valid certificate(s) of insurance as evidence of the following minimum insurance coverage requirements:

<u>Coverage</u>	<u>Limit</u>
<b>Commercial General Liability</b> (occurrence form)	<u>\$2,000,000.00</u> combined single limit per occurrence for bodily injury and property damage.

<u>Coverage</u>	<u>Limit</u>
<b>Automobile Insurance</b> 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> .
<b>Workers Compensation</b> as required by applicable State laws.	Insurance to include Employer's Liability. Both such coverages shall apply to all employees of the Successful Bidder and to all employees of sub-contractors (in case any sub-contractor fails to provide adequate similar protection for all his/her employees).

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

“The State of Hawaii, the Hawaii Public Housing Authority, its elected and appointed officials, officers, and employees shall be named as additional insured, except for Professional Liability Insurance and Workers Compensation Insurance, with respect to operations performed for the State of Hawaii and HPHA under this Contract.”

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

To satisfy the minimum coverage limits required by the Contract, the Successful Bidder may use an umbrella policy in addition to the mandatory insurance policies (i.e., General liability Insurance, Automobile Insurance, and Workers Compensation) provided that the HPHA approves, and the umbrella policy follows the underlying coverage forms.

Upon execution of the Contract and before the effective date of the Contract, the Successful Bidder agrees to deposit with the HPHA, valid certificate(s) of insurance necessary to satisfy the HPHA of the Successful Bidder's compliance with the insurance provisions of the Contract and to keep such insurance in effect and the certificate(s) on deposit with the HPHA during the entire term of the

Contract. Upon request by the HPHA, the Successful Bidder shall furnish a copy of the policy or policies.

Failure of the Successful Bidder to provide and keep in force such insurance shall be regarded as material default under the Contract. The HPHA shall be entitled to exercise any or all of the remedies provided in the 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 or to fulfill the indemnification provisions and requirements of the 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 the Contract.

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

The Successful Bidder will immediately provide written notice to the contracting department or agency should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

7. During the performance of the 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 without limitation 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.

8. Business Office

The Successful Bidder shall have a permanent office where he/she conducts business will be accessible in person or via telephone during normal Hawaii State government business hours from 7:45 a.m. to 4:30 p.m. HST to address requests that require immediate attention. See Attachment 15 for 2019 and 2020 Hawaii State Government Observed Holidays. Answering services are not acceptable. A permanent office location and phone number shall

be stated in the Bidder's bid offer.

9. Section 3 of the U.S. Housing Act of 1968

- 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 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 Successful Bidder agrees to send to each labor organization or representative of workers with which the Successful Bidder has a collective bargaining agreement or any other understanding, a notice advising the labor organization or workers' representative of the Successful Bidder's commitments under this section 3 clause. It 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; set forth minimum number and job titles subject to hire, disclose the availability of apprenticeship and training positions, and the qualifications for each; provide 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 Successful Bidder 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 Successful Bidder will not subcontract with any subcontractor where the Successful Bidder has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

- e. The Successful Bidder shall certify that any vacant employment positions, including training positions, that are filled (1) after the Successful Bidder 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 Successful Bidder'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.
- 10. The bidder shall provide a minimum of three (3) financial references as requested on the Notice of Intent to Bid. Financial references will be contacted upon the receipt of Bidder Offer
  - 11. No performance or payment bond is required.
  - 12. A bid security deposit is not required for this IFB.

**B. Type of Contract**

- 1. The Successful Bidder shall be required to enter into a formal written Contract, Contract Based on Competitive Sealed Bids for Goods and Services, with the HPHA in accordance with the laws, rules and regulations of the State of Hawaii. See Attachments 5 – 12. The stated requirements appearing elsewhere in this IFB shall be incorporated and shall become part of the terms and conditions of the Contract.

By submission of the bid offer, bidders warrant and represent that they have read and are familiar with the contractual and service requirements set forth in the IFB and its attachments, and the provisions of which are expressly incorporated into this IFB by reference.

All bid offers received shall become the property of the HPHA. The Successful Bidder's bid offer shall be incorporated into the resulting Contract by reference.

Subsequent to the award and within 10 days after the prescribed forms are presented for signature, the Successful Bidder shall execute and deliver to the HPHA a Contract in the form included in

this IFB and in such number of copies as required by the HPHA.

2. Subcontracting

No work or services shall be subcontracted or assigned without the prior written approval of the HPHA. No subcontract shall under any circumstances relieve the Successful Bidder of his/her obligations and liabilities under the Contract with the HPHA. All persons engaged in performing the work covered by the Contract shall be considered employees of the Successful Bidder.

3. Contract Modification

The Contract may be modified only by a written document signed by the HPHA and personnel authorized to sign contracts on behalf of the Successful Bidder as designated in a Corporate Resolution.

4. Laws, Rules, Ordinances and Regulations

Reference to Federal, State, City and County laws, ordinances, rules and regulations and standard specifications in this IFB shall include all amendments thereto effective as of the date of this IFB.

**C. Single or multiple contracts to be awarded**

Single                       Multiple                       Single & Multiple

**D. Single or multi-term contracts to be awarded**

Single term ( $\leq$  12 mos)                       Multi-term ( $>$  12 mos)

Initial term of contract:                      Up to 12 months

Length of each extension:                      Up to 12 months; may be less than 12 months when it is in the best interest of the State

Maximum length of contract:                      60 months

The initial Contract period shall commence December 18, 2019, 12:00 p.m. HST, and end December 17, 2020, 12:00 p.m. HST.

The following conditions must be met for an extension:

1. The Contractor experienced cost savings and has unexpended funds available that can be used to provide additional services; or

2. The HPHA determines there is an ongoing need for the services and has funds to extend services up to 48 months with no single extension period to exceed 12 months. Contract extensions shall be awarded at the same rates as provided in the accepted bid offer. Exceptions shall be granted upon satisfactory justification such as increase in cost of services or cost of living as provided in the Contract; and
3. A Supplemental Contract must be executed prior to expiration of the current Contract; and
4. The HPHA may be required to obtain HUD approval if federal HUD funds are to be used; and
5. The HPHA will be required to obtain the State Department of Human Resource Development's written approval of the extension prior to execution of a Supplemental Contract; and
6. The Contractor must obtain written approval and a Notice to Proceed by the State with the extension; and
7. The State has determined that the Contractor has satisfactorily provided services over the current Contract term; and
8. Necessary State and/or Federal funds are appropriated and allotted for an extension.

The option to extend the Contract will be exercised at the sole discretion of the HPHA. Nothing in this IFB shall be construed or interpreted to mean that the HPHA is obligated to exercise the option years on the resulting Contract. The Contract may be extended, without the necessity of rebidding, at the same rates as proposed in the accepted bid offer unless price adjustments are made and approved as provided herein.

**E. Statutory Requirements of Section 103-55, HRS**

Prior to entering into a Contract in excess of \$25,000, an interest bidder shall certify that it complies with section 103-55, HRS, wages, hours, and working conditions for employees of the Contractor performing the 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 resulting Contract, the Successful Bidder shall be obligated to provide such increased wages.

Bidders shall complete, certify and submit the attached Wage Certification by which the bidder certifies that the services required will be performed pursuant to section 103-55, HRS. See Attachment 2.

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. 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 perform wages not less than those increased wages.

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

**F. Bid Price**

The bid price per service shall be the all-inclusive unit cost to the HPHA, including without limitation, technical service, administrative and supervisory personnel costs, benefits, equipment and equipment maintenance, applicable taxes and all other necessary costs to provide the services specified in the IFB. Other costs may include, without limitation, costs for benefits required by law that are automatically increased as a result of increase wages, including without limitation, federal old age benefits, workers' compensation, temporary disability insurance, unemployment insurance, and prepaid health insurance.

The bid price per month shall be applicable to the testing and preventive maintenance services provided during normal work hours . The HPHA shall not be responsible for and shall not pay overtime pay resulting from the Successful Bidder's scheduling of employees.

Bidders should account for any published wage increase in the bid price. 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.

**G. Contract Price Adjustment Due to Increase in State Wages**

At the release of this solicitation, the wages effective January 1, 2019 for State employees performing similar work are known and published by the

Department of Human Resources Development. If wages increase after the execution of the Contract, the Successful Bidder may request an increase in Contract price in order to correspondingly increase the wages of the Successful Bidder's employees performing the work. The wage increase would correspond to an increase in costs for benefits required by law that are automatically increased. Increased wages include federal old age benefits, workers' compensation, temporary disability insurance, unemployment insurance, and prepaid health insurance.

The Successful Bidder, however, shall not be paid for any reimbursement of retroactive pay negotiated by the State.

The Successful Bidder's request for the increase must meet the following criteria:

1. At the time of bidding, if the Successful Bidder's hourly wage rate is greater than the prevailing State wage, the Successful Bidder's requests for increase will not be considered.
2. At the time of the request, the Successful Bidder must or must have provided documentation to show that it is in compliance with section 103-55, HRS, that its employees are being paid not less than the known wage of the listed State position. Documentation shall include employee payroll records and a statement that the employees are being utilized for this Contract.
3. Request for an increase must be made in writing to the HPHA on a timely basis:
  - a. A request for increase for the initial Contract period must be made as soon as practicable after the State wage agreements are made public. Approved request will be retroactive to the date of increase for the State employees with adequate documentation that the Successful Bidder provided its employees a wage increase.
  - b. A request for increase for an option period of the Contract must be made prior to the start of the option period. The Successful Bidder may contact the Contract Administrator listed in Section 1 of this Invitation for Bids to obtain the current wage information or download the information from the Department of Human Resource Development website at the following address:

<http://dhrd.hawaii.gov/state-hr-professionals/class-and-comp/salary-schedules/bu-03-white-collar-non-supervisor-bu-04-white-collar-supervisor/>

## **H. Price Adjustment by the State**

Emergency Services. The Successful Bidder agrees to make unscheduled emergency calls when requested by the Project Manager in emergency situations or if the Project Manager anticipates the need for services that are due to circumstances that cannot be predicted at the time of this IFB.

## **III. SCOPE OF WORK**

The Successful Bidder shall provide operation and preventive maintenance services described in Attachment 4 to include all labor, equipment, tools, supplies and materials required to perform the work in accordance with the provisions, specifications, General Conditions, and procedural requirements, included and/or referenced in this IFB.

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

The Successful Bidder shall provide operation and preventive maintenance services described in Attachment 4 to include all labor, equipment, tools, supplies and materials required to perform the work in accordance with the Contract specifications.

### **B. 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. The Successful Bidder shall be solely responsible for the behavior and conduct of their employees or agents on the HPHA property.
- b. The Successful Bidder shall ensure that no personnel employed under this Contract has been convicted of selling, dealing, or using illegal drugs in or around any state or federal public housing under the jurisdiction of the HPHA.
- c. Smoking of tobacco or any other plant material is strictly prohibited on HPHA properties. The CONTRACTOR agrees and shall adhere to this no-smoking prohibition while on HPHA property. Such violation may be considered a breach of this Contract and result in suspension or termination.

- d. No drinking of alcoholic beverages.
- e. During the performance of this contract, the Successful Bidder agrees not to discriminate against any employee or applicant for employment according to State, Federal laws on discrimination.
- f. The Successful Bidder shall bear full responsibility for the safety and appropriateness of its workers' apparel and personal gear.

2. Administrative

- a. Document all equipment or assembly replacement in the log for the individual car. Provide complete name of part or assembly installed, and include location of replaced equipment or assemblies. Provide manufacturer's warranty and registration for new equipment installed.
- b. A copy of the repair and maintenance schedule/logs shall be kept in the elevator machine room along with copies of the maintenance report.

3. Payment

The HPHA shall compensate the Successful Bidder for elevators maintenance services rendered at the accepted bid price per hour.

All compensation shall be subject to the following:

- a. The Successful Bidder employing 15 or more persons agree and shall take appropriate initial and continuing steps to provide written notice to participants, beneficiaries, applicants, and employees that it does not discriminate on the bases of handicap, pursuant to 24 CFR Part 8, section 8.54(a)-Notice.
- b. Subject to section 356D-6.5, HRS, smoking of tobacco or any other plant material is strictly prohibited on HPHA properties. Furthermore, pursuant to section 328J-1 and 328J-2, HRS, "smoking" includes the use of electronic smoking device and shall be prohibited in all enclosed or partially enclosed areas. The successful Bidder agrees and shall adhere to these no-smoking laws while on HPHA properties. Such violation may be considered a breach of the

resulting Contract and result in suspension or termination of the Contract. It shall be considered a violation of State law and subject to prosecution to the fullest extent under the law.

- c. Separate invoices shall be submitted to the HPHA for services rendered at AMP 30 – Salt Lake Apartments, and for each property under AMP 34 and AMP 35.
- d. The Successful Bidder shall submit on a monthly basis one (1) original itemized invoice for services rendered to:  
  
Hawaii Public Housing Authority  
Property Management and Maintenance Services Branch  
1002 North School Street  
P.O. Box 17907  
Honolulu, HI 96817
- e. 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 or designee that the Successful Bidder has satisfactorily performed the services specified. Payment shall be made on the basis of actual man-hours of elevator maintenance services rendered by the Successful Bidder.
- f. The Successful Bidder shall submit monthly itemized invoices for payment, listing service dates, elevator technician names, and man-hours of maintenance services rendered for the previous month. Invoices shall be submitted to the HPHA not earlier than the first of the subsequent month. A copy of the Schedule Deviation Incident Report shall be attached to each invoice as applicable.
- g. Charges for billable emergency situations or approved additional work required in preventive maintenance services shall be submitted on a separate invoice and may be paid through other means such as State purchase orders. Charges will be at the rates submitted in the Bid Offer and as listed in the Elevator Operation and Preventive Maintenance Service Specifications.
- h. Invoice for the month of June shall be submitted to the HPHA by the 20<sup>th</sup> of June for work performed for the period from June 1<sup>st</sup> to June 15<sup>th</sup> for payment processing in order to comply with the HPHA's fiscal year-end close out processes.

For work performed for the period from June 16<sup>th</sup> to June 30<sup>th</sup>, the invoice shall be submitted to the HPHA not later than July 15<sup>th</sup> for payment processing.

- i. For final payment, the Successful Bidder must submit a valid tax clearance certificate and a “Certification of Compliance for Final Payment” (Form SPO-22).

An original tax clearance certificate, not over two (2) months old with an original green certified copy stamp or a valid HCE Certificate of Vendor Compliance, in lieu of the tax clearance certificate, is acceptable.

A copy of Form SPO-22 is available at [www.spo.hawaii.gov](http://www.spo.hawaii.gov). Select “Forms for Vendors/Contractors” from the Chapter 103D, HRS, link.

## **C. Minimum and/or Mandatory Requirements for Goods/Services**

### **1. General**

- a. The Successful Bidder shall coordinate and establish a scheduled with the Project Manager for the specified maintenance services. The Project Manager shall be notified not less than five (5) business days of any changes to the scheduled date of service.
- b. The Successful Bidder shall provide maintenance services as scheduled with the Project Manager and shall have every maintenance service verified by the Project Manager or designated Project representative. The Successful Bidder shall obtain the Project Manager or designated representative’s signature or initials to confirm their presence.
- c. The Successful Bidder shall provide mandated performance tests as specified in the American Society of Mechanical Engineers Code for Elevators and Escalators manual, in effect as of the date of bid. The tests will be witnessed by a licensed State Elevator Inspector. The Successful Bidder shall obtain the Project Manager or designated representative’s signature or initials to confirm their test performance.
- d. All work must be done between 8:00 a.m. and 4:00 p.m., HST, Monday through Friday, excluding weekends and state holidays.

## **2. Clean-up**

- a. General: At completion of each operational and/or maintenance service or emergency service, the Successful Bidder shall clean up and remove all rubbish, grease and debris from the premises resulting from this work, and keep the entire areas clean and neat.
- b. Successful Bidder should keep the guard rails, overhead sheaves and beams, counterweight frames, tops of cars, pits, and machines, cleaned. Remove accumulated rubbish from the pit. Oil reservoirs shall be kept properly sealed to prevent leakage.

### **D. Emergency Work**

1. The Successful Bidder shall provide 24-hour service capabilities to handle emergency service, repair or replacement. Billable emergency services shall be paid for by the HPHA to the Successful Bidder on an actual time and material basis. The Successful Bidder will be paid via a purchase order.
2. The Successful Bidder shall start work within 60 minutes upon notification by the AMP Manager to an emergency situation. An emergency situation includes a threat to public health, life or safety by reason of hazardous conditions.
3. The Successful Bidder must use the specified hourly wage rate listed the Maintenance Specifications for all emergency situations.

### **E. Maintenance Services Specifications (see Attachment 4)**

## **IV. CONTRACT MONITORING & REMEDIES**

### **A. System Evaluation**

1. The satisfactory performance of services shall be monitored by the HPHA Project Engineer, Consultant, Project Manager and/or his/her designated representative(s).
2. Successful Bidder shall at least annually and as requested by HPHA, evaluate the elevator performance criteria of each elevator, including the group dispatch system, as detailed in the specifications. Ride quality and operation noise levels shall be evaluated. The performance results shall be submitted to the HPHA. The HPHA may request this evaluation at any time if the Elevator Equipment is not performing properly.

## **B. Protection of Property and Work**

1. Protection: The Successful Bidder is responsible for providing continuous protection of his work from damage and is expected to protect the HPHA's property from loss or injury during this course of the maintenance Contract.
2. Damage or loss: Any repairs required or failure of equipment shall be corrected or replaced by the contractor unless residents, agents, or employees of the HPHA directly caused the loss.

## **C. Monitoring**

1. The satisfactory performance of work shall be monitored by the Officer-in-Charge and the Contract Administrator or their designated representative(s). Performance will be monitored on an ongoing basis by the HPHA through desk monitoring, site inspection and/or other methods deemed as appropriate by the Contract Administrator and his/her designated representative(s).
2. Should the Successful Bidder fail to comply with the requirements of the Contract, the HPHA may request a written corrective action plan that shall include the corrective actions to be taken, a timeline for implementation, and the responsible parties. The HPHA will monitor the Successful Bidder for implementation of the corrective action plan. The HPHA reserves the right to request regular or additional reports on progress towards compliance with the Contract and the corrective action plan
3. In the event the Successful Bidder fails, refuses, or neglects to perform the services in accordance with the requirements of this IFB and the resulting Contract, the HPHA reserves the right to purchase in the open market, a corresponding quantity of services, and deduct from the Successful Bidder the costs from monies due or that may thereafter become due to the Successful Bidder. Such costs may include the HPHA's cost of procuring such services. In the event that monies due to the Successful Bidder are 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.
4. Failure or refusal of the Successful Bidder to perform services as required may be grounds to suspend or terminate the Contract as detailed in the General Conditions.

## **D. Damages**

1. The Successful Bidder shall repair all damages caused by the Successful Bidder's equipment or employees to existing utilities and structures, including without limitation, water lines, electric conduits, sewer lines, buildings, and plantings. If such repairs are not completed within an agreed upon timeline, the HPHA reserves the right to purchase services for the necessary repairs from the open market and to deduct all repairs costs from monies due or may thereafter become due to the Successful Bidder. In the event money due to the Successful Bidder is insufficient for the purpose, the Successful Bidder shall pay the difference upon demand by the HPHA.

## **E. Termination**

The HPHA reserves the right to terminate the Contract without penalty for cause or convenience as provided in the AG-008 103D General Conditions.

### **Termination Terms:**

1. If Successful Bidder fails to perform or begin to perform the work required by the terms of this Contract in a diligent and satisfactory manner, the HPHA may perform or cause to be performed all or any part of the work required under this Contract after 15 calendar days written notice to Successful Bidder. Successful Bidder agrees that it shall reimburse the HPHA for any expense incurred therefore or the HPHA, at its election, may deduct the amount from any sum owed or to be owed Successful Bidder under this Contract. The waiver by the HPHA of a breach of any provision of these specifications by Successful Bidder shall not operate or be construed as a waiver of any subsequent breach by Successful Bidder.
2. If Successful Bidder violates any of the provisions of the Contract or fails to properly provide the services required by the Contract, the HPHA shall advise Successful Bidder of specific deficiencies and shall allow 15 days to correct these deficiencies to the HPHA's total satisfaction. The HPHA may terminate Preventive Maintenance with 30 days written notice to Successful Bidder if any of the provisions of this Contract are not completed by Successful Bidder to the full satisfaction of the HPHA.
3. The HPHA may terminate this agreement immediately if the Successful Bidder performs in the following actions /procedures:
  - a. Any act or omission which creates a safety hazard to any person using any elevator.

- b. Any lapse in elevator operation of any elevator in excess of 14 calendar days except for "Scheduled Repairs".
  - c. Failure of the Successful Bidder's employees to be properly licensed by the State of Hawaii.
  - d. Improper use of the HPHA's property/building.
  - e. Violation of any applicable statute, ordinance, rule, law, code or regulation in regards to the Contract Documents.
  - f. Receipt of two concurrent unacceptable safety inspections, except discrepancies noted as building responsibility, from the State of Hawaii Elevator Inspection Department pertaining to the elevator equipment included in this agreement
  - g. An elevator callback ratio in excess of one (1) callback, per elevator, per month over a four-month period.
4. If the HPHA chooses to modernize any of the equipment, that equipment may be eliminated from Preventive Maintenance with 30 days written notice to Successful Bidder by the HPHA.
  5. If the HPHA fails to pay current monthly invoices within 30 days of receipt of said invoice, Successful Bidder may on 30 days written notice to the HPHA, terminate this Contract.

(END OF SECTION)

## Section 3 Bid Offer Form and Instructions

### General Instructions for Completing Bid Offer Form

- A. *Bid offers shall be submitted to the HPHA using the form prescribed in this IFB; do not alter the Bid Offer Form as provided in this IFB.*

*Note: Bid offers submitted using a re-created form, altered Bid Offer Form, or other forms may be rejected and deemed non-responsive.*

- B. *Bidders shall complete the Seal Bid Offer Form in its entirety. A written response is required for each item unless indicated otherwise.*
- C. *No supplemental literature, brochures or other unsolicited information should be included in the bid packet.*
- D. *Notice of Intent to Offer and Questionnaire, Bid documents, and all certifications should be completed.*

#### I. **Notice of Intent to Bid**

The Notice of Intent to Bid and Qualification Questionnaire must be completed and submitted to the HPHA by the required due date and time, and in the form prescribed by the State Contracting Office. Facsimile transmissions will be accepted. See Attachment 1.

#### II. **Bid Offer Form**

The Bid Offer Form must be completed and submitted to the HPHA by the required due date and time and in the form prescribed by the HPHA. See Attachment 3. **Email and facsimile transmissions shall not be accepted.**

Bidders are responsible to carefully review the Specifications, General Conditions, and Special Conditions. 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 of the IFB. The HPHA shall not consider bid 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 a bidder's assurance that he/she is willing and able to begin services effective December 18, 2019, 12:00 p.m. HST. The HPHA shall not consider bid offers from bidders who are unable to provide the specified services effective December 18, 2019, 12:00 p.m. HST.

Bidders shall submit their bid offer under the 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 fields on the Bid Offer Form. Failure to do so may delay execution of the resulting Contract if awarded.

**The bidder's authorized signature shall be an original signature in ink.** If page 1 of the Bid Offer Form is not signed or the affixed signature is a facsimile or a photocopy, the bid offer shall be automatically rejected unless waived by the HPHA pursuant to section 3-122-31(c)(1)(B), HAR.

The successful bid shall be the lowest responsive and responsible Grand Total Bid Price as submitted on the Bid Offer Form. The Grand Total Bid Price is the sum of the 60-month Total Bid Prices for all properties to include gate guard, roving patrol, special events, administrative and/or judicial hearing hours as solicited. See Attachment 3. Bidders shall submit a bid price for all line items and complete the Bid Offer Form in its entirety and conform to all requirements of the IFB to be considered responsive and eligible for award.

The bid price per hour shall be the all-inclusive price charged to the HPHA including, without limitation, maintenance services, administrative and supervisory personnel costs, benefits, equipment and equipment maintenance, applicable taxes and all other necessary costs to provide the services.

Bidders are reminded to submit the following certifications and documentations along with the Bid Offer Form:

- A. Department of Labor and Industrial Relations, Certificate of Compliance with section 3-122-112, HAR, Form LIR#27;
- B. Department of Commerce and Consumer Affairs, Certificate of Good Standing;
- C. Hawaii State Tax Clearance Certificate;
- D. Federal Tax Clearance Certificate;
- E. Wage Certificate;
- F. Corporate Resolution evidencing who is authorized to sign bid and contractual documents on behalf of the bidder;
- G. Certification and Representations of Offerors, Form HUD 5369-C; and

In lieu of providing separate certificates for items A, B, C, and D above, bidders may register via Hawaii Compliance Express (HCE), an online application at <http://vendors.ehawaii.gov/hce/> and submit the HCE Certificate of Vendor Compliance instead.

### **III. 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](http://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 Offer 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](http://www.hudclips.org). See Attachment 14.

#### **C. General Conditions for Non-Construction Contracts, Form HUD 5370-C**

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

Form HUD -5370-C is attached to this IFB and can also be found at [www.hudclips.org](http://www.hudclips.org)

### **IV. AG-008 103D General Conditions**

The AG-008 103D General Conditions of the Contract are attached for bidder's review and information. The AG-008 103D General Conditions shall be incorporated into the Contract with the successful bidder.

(END OF SECTION)

## **Section 4 Bid Evaluation & Award**

### **I. Bid Evaluation**

All bid offers received by the due date and time 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 “responsive bid.” Information provided in/with the bid offer that results in a determination that the bidder has the technical and financial capacity to deliver the goods or services shall be known as a “responsible bid.”

### **II. Method of Award**

An award shall be made to the responsive and responsible bidder submitting the lowest Grand Total Bid Price on the Bid Offer Form. The Grand Total Bid Price is the sum of the 36-month Total Bid Prices for all properties to include gate guard, roving patrol, special events, and administrative and/or judicial hearing hours as solicited.

To be considered a responsive bid and eligible for an award, the bidder shall submit a bid price for all line items listed, complete the Bid Offer Form in its entirety and conform to all requirements of the IFB.

In the event there are no responsive and responsible bid offers, the HPHA may use an alternative procurement method pursuant to section 3-122-35, HAR. The HPHA may re-solicit or conduct an alternative procurement method for the services.

(END OF SECTION)

## Section 5 Attachments

- |   |   |
|---|---|
| 1. Notice of Intent to Bid and Qualification Questionnaire                      | Due November 12, 2019                           |
| 2. Wage Certificate   | Due November 21, 2019                           |
| 3. Bid Offer Form   | Due November 21, 2019                           |
| 4. Maintenance Services Specifications  | For Bidder's Information                        |
| 5. Sample Contract Based on Competitive Sealed Bids for Goods and Services      | For Bidder's Information                        |
| 6. Sample Contract – Attachment S1, Scope of Services                           | For Bidder's Information                        |
| 7. Sample Contract – Attachment S2, Compensation and Payment Schedule           | For Bidder's Information                        |
| 8. Sample Contract – Attachment S3, Time of Performance                         | For Bidder's Information                        |
| 9. Sample Contract – Attachment S4, Certificate of Exemption from Civil Service | For Bidder's Information                        |
| 10. Sample Contract – Attachment S5, Special Conditions                         | For Bidder's Information                        |
| 11. State General Conditions, AG-008 103D General Conditions                    | 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 November 21, 2019                           |
| 15. 2019 and 2020 Hawaii State Government Observed Holidays                     | For Bidder's Information                        |
| 16. Maintenance Wage Rate – Form HUD 4750                                       | To be completed and submitted by the low Bidder |

NOTICE OF INTENT TO BID  
&  
QUALIFICATION QUESTIONNAIRE

**PROVIDE PREVENTIVE MAINTENANCE SERVICES FOR 16 ELEVATORS AT  
VARIOUS HPHA PROPERTIES**

Hawaii Public Housing Authority  
Construction Management Branch Office  
1002 North School Street, Bldg. "C"  
Honolulu, HI 96817

Having been first duly sworn and deposed, the undersigned states that he/she has the minimum qualifications required in the Technical Specifications and that he/she is furnishing the following information as proof of his/her qualification:

1. Notice of Intent To Bid on **IFB-CMB-2019-27**. [ ] Yes [ ] No  
*(If yes, continue with the questionnaire. If no, fill in item #'s 1 and 1a (Page 1), your Signature and Returned to Construction Management by\_\_\_\_\_..*

1a. Name of Bidder: \_\_\_\_\_

1b. Contractor License No.: \_\_\_\_\_

2. Business Organization:

Individual     Partnership     Corporation     Joint Venture

Offeror is

Individual     Partnership     Corporation     Joint Venture

State of Incorporation  Hawaii  Other:\_\_\_\_\_

3. Principal Office Address:\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3a. Payment Address:\_\_\_\_\_

\_\_\_\_\_

4. All Bidders must complete or answer the following items:

4a. Give the history of the Bidder's experience in maintenance of elevators or similar businesses in the State of Hawaii. Include the number of years of experience: (Attach separate pages if necessary.)

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

<u>Name</u>	<u>Address</u>	<u>Dates</u>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

5. Financial References: Give at least three references as to the Bidder's financial ability to provide elevator maintenance services for the Hawaii Public Housing Authority.

<u>Name of Reference</u>	<u>Address</u>	<u>Phone No.</u>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

The Bidder authorizes the Hawaii Public Housing Authority to confirm all or any of the foregoing information with any financial institution or any other source.

The undersigned has carefully read and understands the terms and conditions specified in the Invitation For Bids Specifications by reference made part of this bid and hereby submits the following offer to perform the work specified.

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

Date: \_\_\_\_\_

Respectfully Submitted,

Telephone No.: \_\_\_\_\_

\_\_\_\_\_  
*Exact Legal Name of Offeror*

Fax No.: \_\_\_\_\_

\_\_\_\_\_  
*Authorized Signature (Original)*

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

\_\_\_\_\_  
*Title*

Social Security or Federal I.D. No.:

\_\_\_\_\_  
*Street Address*

\_\_\_\_\_  
*City, State, Zip Code*

STATE OF HAWAII )  
 ) SS  
CITY & COUNTY OF \_\_\_\_\_)

\_\_\_\_\_ and \_\_\_\_\_, being  
duly sworn, depose and say: that he/she/they is/are the \_\_\_\_\_ and  
\_\_\_\_\_, respectively of \_\_\_\_\_, in  
whose behalf he/she/they makes/make this affidavit; that he/she/they has/have read the foregoing  
Notice of Intent to Bid and Qualification Questionnaire, the answers and the information  
submitted; and that the answers and information are true and correct to the best of his/her/their  
knowledge and belief.

By \_\_\_\_\_  
Its \_\_\_\_\_

Subscribed and sworn to before me this

\_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
Notary Public / State of Hawaii

My commission expires \_\_\_\_\_

**WAGE CERTIFICATE**

***SUBJECT: BID NO.: IFB-CMB-2019-27***

**DESCRIPTION OF PROJECT**

**PROVIDE PREVENTIVE MAINTENANCE SERVICES FOR  
16 ELEVATORS AT VARIOUS HPHA PROPERTIES**

Pursuant to Section 103-55, Hawaii Revised Statutes (HRS.), I hereby certify that if awarded the contract is in excess of \$25,000.00 the services will 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. All applicable laws of the Federal and State governments relating to worker's compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

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-CMB-2019-27

FORM OF BID (PROPOSAL)

FOR

FURNISHING LABOR AND MATERIALS REQUIRED FOR  
**OPERATIONAL AND PREVENTIVE MAINTENANCE SERVICES  
TO 16 ELEVATORS AT VARIOUS HPHA PROPERTIES**

**HPHA JOB NO. 19-009-000**

To: Procurement Officer  
Hawai'i Public Housing Authority (HPHA)  
1002 North School Street  
Honolulu, Hawai'i 96817

1. The undersigned Bidder, has visited the work sites and is familiar with the conditions under which the work is to be performed and has read the specifications and other contract documents relating to **HPHA Job No. 19-009-000, Provide Operational and Preventive Maintenance Services for 16 Elevators at Various HPHA Properties , Honolulu, Oahu, Hawaii.** The Bidder hereby proposes to furnish all labor, materials, equipment, tools, transportation, permits, incidentals, supplies and services required to perform the following, in place complete, all the work shown and called for, all according to the true intent and meaning of the contract documents for the following price(s).

**BASE BID:** The Scope of Work covered under the Base Bid in general shall consist of without limitation, the following:

**BID ITEM NO. 1**

Performing all operations and furnishing all equipment, tools, materials and labor necessary to PROVIDE 12-MONTHS OF OPERATIONAL AND PREVENTIVE MAINTENANCE SERVICES TO 16 ELEVATORS WITH UP TO 48-MONTHS OF OPTIONS TO EXTEND at the following Properties on the Island of Oahu:

Kalakaua Homes	1545 Kalakaua Ave
Makua Alii	1541 Kalakaua Ave
Paoakalani	1583 Kalakaua Ave
Pumehana	1212 Kinau St
Punchbowl Homes	730 Captain Cook Ave.
Makamae	21 South Kuakini St.
Kalanihuia	1220 Aala St.
Salt Lake Apartments	2907 Ala Ilima St.

**BID ITEM NO. 1a: Operational and Maintenance Service for INITIAL 12 MONTHS:**

Property	Monthly Maintenance Cost per Elevator including all taxes		No. of Elev.	Monthly Maintenance Cost per Property including all taxes		No of months		Maintenance cost per Property for <b>INITIAL 12 MONTHS</b> including all taxes
Kalakaua Homes	\$	x	2	\$	x	12	=	\$
Makua Alii	\$	x	2	\$	x	12	=	\$
Paoakalani	\$	x	2	\$	x	12	=	\$
Pumehana	\$	x	2	\$	x	12	=	\$
Punchbowl Homes	\$	x	2	\$	x	12	=	\$
Makamae	\$	x	2	\$	x	12	=	\$
Kalanihuia	\$	x	2	\$	x	12	=	\$
Salt Lake	\$	x	2	\$	x	12	=	\$
<b>Total Elevator Maintenance Cost for INITIAL 12 MONTHS</b>								<b>\$</b>

**BID ITEM NO. 1b: Operational and Maintenance Service for OPTION YEAR 1:**

Property	Monthly Maintenance Cost per Elevator including all taxes		No. of Elev.	Monthly Maintenance Cost per Property including all taxes		No of months		Maintenance cost per Property for <b>YEAR 1</b> including all taxes
Kalakaua Homes	\$	x	2	\$	x	12	=	\$
Makua Alii	\$	x	2	\$	x	12	=	\$
Paoakalani	\$	x	2	\$	x	12	=	\$
Pumehana	\$	x	2	\$	x	12	=	\$
Punchbowl Homes	\$	x	2	\$	x	12	=	\$
Makamae	\$	x	2	\$	x	12	=	\$
Kalanihuia	\$	x	2	\$	x	12	=	\$
Salt Lake	\$	x	2	\$	x	12	=	\$
<b>Total Elevator Maintenance Cost for OPTION YEAR 1</b>								<b>\$</b>

**BID ITEM NO. 1c: Operational and Maintenance Service for OPTION YEAR 2:**

Property	Monthly Maintenance Cost per Elevator including all taxes		No. of Elev.	Monthly Maintenance Cost per Property including all taxes		No of months		Maintenance cost per Property for <b>YEAR 2</b> including all taxes
Kalakaua Homes	\$	x	2	\$	x	12	=	\$
Makua Alii	\$	x	2	\$	x	12	=	\$
Paoakalani	\$	x	2	\$	x	12	=	\$
Pumehana	\$	x	2	\$	x	12	=	\$
Punchbowl Homes	\$	x	2	\$	x	12	=	\$
Makamae	\$	x	2	\$	x	12	=	\$
Kalanihuia	\$	x	2	\$	x	12	=	\$
Salt Lake	\$	x	2	\$	x	12	=	\$
<b>Total Elevator Maintenance Cost for OPTION YEAR 2</b>								<b>\$</b>

**BID ITEM NO. 1d: Operational and Maintenance Service for OPTION YEAR 3:**

Property	Monthly Maintenance Cost per Elevator including all taxes		No. of Elev.	Monthly Maintenance Cost per Property including all taxes		No of months		Maintenance cost per Property for <b>YEAR 3</b> including all taxes
Kalakaua Homes	\$	x	2	\$	x	12	=	\$
Makua Alii	\$	x	2	\$	x	12	=	\$
Paoakalani	\$	x	2	\$	x	12	=	\$
Pumehana	\$	x	2	\$	x	12	=	\$
Punchbowl Homes	\$	x	2	\$	x	12	=	\$
Makamae	\$	x	2	\$	x	12	=	\$
Kalanihuia	\$	x	2	\$	x	12	=	\$
Salt Lake	\$	x	2	\$	x	12	=	\$
<b>Total Elevator Maintenance Cost for OPTION YEAR 3</b>								<b>\$</b>

**BID ITEM NO. 1e: Operational and Maintenance Service for OPTION YEAR 4:**

Property	Monthly Maintenance Cost per Elevator including all taxes		No. of Elev.	Monthly Maintenance Cost per Property including all taxes		No of months		Maintenance cost per Property for <b>YEAR 4</b> including all taxes
Kalakaua Homes	\$	x	2	\$	x	12	=	\$
Makua Alii	\$	x	2	\$	x	12	=	\$
Paoakalani	\$	x	2	\$	x	12	=	\$
Pumehana	\$	x	2	\$	x	12	=	\$
Punchbowl Homes	\$	x	2	\$	x	12	=	\$
Makamae	\$	x	2	\$	x	12	=	\$
Kalanihuia	\$	x	2	\$	x	12	=	\$
Salt Lake	\$	x	2	\$	x	12	=	\$
<b>Total Elevator Maintenance Cost for OPTION YEAR 4</b>								<b>\$</b>

**RECAPITULATION OF BID ITEM 1:**

BID ITEM NO. 1a (Initial 12-Months)	\$ _____
BID ITEM NO. 1b (Option Year 1)	\$ _____
BID ITEM NO. 1c (Option Year 2)	\$ _____
BID ITEM NO. 1d (Option Year 3)	\$ _____
BID ITEM NO. 1e (Option Year 4)	\$ _____
<b>TOTAL</b>	<b>\$ _____</b>

**BID ITEM NO. 2 – MAN-HOUR RATES FOR REPAIR WORK.**

Repair work shall be pre-approved by the project engineer and will be paid to the Contractor on an actual time and material basis via Purchase Order. The man-hour rates for such services are as follows:

<u>SERVICES</u>	<u>HOURLY RATE (Including all taxes)</u>
Mechanic:	\$ _____ per hour_ x 100 hrs = \$ _____
Apprentice:	\$ _____ per hour_ x 100 hrs = \$ _____
Crew:	\$ _____ per hour_ x 100 hrs = \$ _____

**TOTAL ESTIMATED REPAIR WORK, including all taxes:** \$ \_\_\_\_\_

The 100 hours is provided for bid evaluation purpose only and does not reflect the actual amount of repair work.

**RECAPITULATION OF BID PROPOSAL:**

BID ITEM NO. 1 (1a, 1b, 1c, 1d and 1e)	\$ _____
BID ITEM NO. 2	\$ _____
<b>TOTAL</b>	\$ _____

**TOTAL BASE BID (Item No. 1 and Item No. 2) Including All Taxes:**

\_\_\_\_\_ Dollars (\$\_\_\_\_\_).

2. In submitting this bid, it is understood that the award of contract will be made to the lowest responsive and responsible Bidder for the Total Base Bid (Bid Item No. 1 and 2) including all taxes.
3. In submitting this bid, it is understood that the requirement of the Elevator Preventive Maintenance Specifications "Replacement Parts Inventory" will be enforced:  
\_\_\_\_\_ (**BIDDER TO INITIAL**)
4. In submitting this bid, it is understood that the Bidder has examined and is familiar with the existing site conditions and the Scope of Work as provided by the drawings and specifications and accepts all conditions of the work.
5. HPHA reserves the right to accept or reject any and all bids, and to determine the lowest responsive and responsible bidder.
6. The Bidder understands that this bid may not be withdrawn within 120 days after the opening of bids.
7. The Bidder understands that no supplemental literature, brochures or other unsolicited information should be included in the bid packet. Any such literature, brochures or other unsolicited information shall not be considered. Any bid offering any other set of terms and conditions contradictory to those included in this IFB may be rejected without further notice.
8. It is understood and agreed that if the Bidder fails to start work at the job site within 30 days as scheduled on the approved working schedule, the failure will be sufficient cause to terminate the contract as specified in the AG-008 103D General Conditions (Item 13 TERMINATION FOR DEFAULT). Work at the job site is defined as any Contractor operations as detailed in the working schedule approved by the HPHA.
9. Failure to complete the bid proposal in its entirety may cause a bid to be considered non-responsive.

10. Upon acceptance of this bid, the undersigned hereby agrees to enter into, execute and deliver the contract set forth in the specifications and furnish the required performance and payment bond within 15 calendar days after the Contract is presented to the undersigned for signature.
11. BIDDER SHALL BE RESPONSIBLE TO CONFIRM THE EXISTENCE OF ANY ADDENDUM TO THIS BID SOLICITATION BY TELEPHONING (808) 832-5896.
12. Receipt of the following addenda (if any) issued by the HPHA is acknowledged by the date(s) of receipt indicated below:

Addendum No. 1 \_\_\_\_\_ Addendum No. 3 \_\_\_\_\_  
 Addendum No. 2 \_\_\_\_\_ Addendum No. 4 \_\_\_\_\_

It is understood that failure to receive any such addendum shall not relieve the Bidder from any obligation under this Proposal as submitted.

BUSINESS ADDRESS

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

BIDDER NAME: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

HAWAII CONTRACTOR'S LICENSE NO.:

\_\_\_\_\_

FEDERAL TAXPAYER ID NO.:

\_\_\_\_\_

STATE TAXPAYER ID NO.:

\_\_\_\_\_

**SPECIFICATIONS FOR ELEVATOR FULL SERVICE OPERATION AND  
PREVENTIVE MAINTENANCE (“Preventive Maintenance”)**

**PART ONE - SCOPE OF WORK**

- 1.1 GENERAL**
- 1.2 PROTOCOL COMPLIANCE**
- 1.3 SERVICE QUALITY VALIDATION**
- 1.4 CONTRACT ADMINISTRATION**
- 1.5 INTENT AND ACCEPTANCE**
- 1.6 DEFINITIONS**
- 1.7 GENERAL REQUIREMENTS**
- 1.8 MAINTENANCE CONTROL PROGRAM (MCP)**
- 1.9 SERVICE REQUIREMENTS**
- 1.10 TESTING**
- 1.11 CHARTS-LOGS-INSPECTIONS**
- 1.12 DISPOSAL OF OILS/MATERIALS, ETC**
- 1.13 EXTENT OF COVERAGE**
- 1.14 EXCLUSIONS**
- 1.15 INSPECTION OF EQUIPMENT AND FEES**
- 1.16 REQUESTS FOR SERVICE**
- 1.17 WORK TICKETS**
- 1.18 HOURS OF WORK**
- 1.19 CONFIDENTIAL INFORMATION**
- 1.20 EXAMINATION OF RECORDS**
- 1.21 ELEVATOR CONTRACTOR’S EMPLOYEES' SAFETY AND ACCIDENT  
PREVENTION PROGRAM**

**PART TWO – EQUIPMENT TO BE MAINTAINED**

- 2.1 DESCRIPTION OF ELEVATOR TO BE SERVICED**

**PART THREE – REPLACEMENT PARTS INVENTORY**

- 3.1 MATERIALS**
- 3.2 MICROPROCESSORS**

## **PART ONE - SCOPE OF WORK**

### **1.1 GENERAL**

1. Elevator Contractor shall perform Full Operation and Maintenance Services (hereinafter referred to as the "Services" and/or the "Work") on the Elevator (the "equipment") specified herein which shall include preventive maintenance services. All equipment under this Contract shall be maintained in first-class operating condition. Elevator Contractor shall furnish all materials and labor, and comply with all requirements of current elevator Codes. Elevator Contractor shall place into operation a continuing system of Full Preventive Maintenance to provide necessary systematic services and preventive maintenance for the Elevator equipment described herein.
2. The Elevator Contractor shall be responsible for providing safe and reliable operating elevators in the performance of this contract. The Elevator Contractor shall not be excused from elevator shut downs allegedly caused by "FAULTY or DIRTY" building incoming electrical power unless the contractor provides competent data from the electrical power company or other credible independent source to confirm the building electrical power supply caused the elevator shut down /problem. The data shall be submitted, in writing, to the HPHA no later, than 14 calendar days following the electrical occurrence, allowing the HPHA to submit timely cost reimbursement claims to HECO. Elevator Contractor invoices for electrical power related elevator shut downs/problems shall be invalid in the event the required electrical data is received by the HPHA past the allowable date limit prescribed above.
3. All elevator service, repair and maintenance shall be conducted in a manner consistent with the HPHA's intent to provide uninterrupted elevator service. The specified elevators must provide reliable and safe transportation for HPHA, residents, staff and visitors on a continuous basis, 24 hours a day, 7 days a week, 365 days per year.
4. Elevator Contractor agrees to accept full responsibility for the equipment, as it exists on the effective date of this Contract, and to leave it in a condition acceptable to the HPHA at the termination date.
5. The HPHA may at any time employ the services of an Elevator Consultant to mediate any disputes between the HPHA and the Elevator Contractor. The cost of such disputes shall be borne equally by the HPHA and the Elevator Contractor.
6. The HPHA reserves the right to contract separately with the Elevator Contractor, or any other firm of the HPHA's choice, for elevator modernization or upgrade of elevator equipment. A 30 day notice shall be sent to the Elevator Contractor if the HPHA elects to select an alternate contractor for elevator modernization or upgrade of elevator equipment. There shall be no monetary payment to the Elevator Contractor for early termination of this agreement. Any upgrades or component changes to the elevator system shall be warranted by the contractor modernizing or upgrading the elevator equipment, for a period of one year, commencing when the modernization or upgrade has been accepted by HPHA, State of Hawaii Elevator Inspector and Elevator Consultant, which also includes the contractor's completion

of all Punch List items required by the Elevator Inspector and Elevator Consultant. At the end of the one year warranty period the upgrades or component changes shall be included in the Scope of Work and covered by the terms, of this maintenance agreement, at no additional cost.

7. Neither the HPHA nor Elevator Contractor may assign this Contract without the written consent of the other party.
8. No covenant or condition of the Contract may be waived, except by the written consent of the other party. Forbearance or indulgence by either party in any regard whatsoever shall not constitute a waiver of a covenant or condition to be performed by the other party.
9. Any written notification required to be provided pursuant to the terms of this Contract shall be by means of hand delivery, overnight US Mail or private carrier, or by prepaid postage, certified mail, with a return receipt required. The notice shall be effective upon the date of transmission by the sending party.
10. Any amendment to this Contract shall be in writing and signed by each duly authorized representative(s) for each respective organization executing this Contract.

## **1.2 PROTOCOL COMPLIANCE**

1. Elevator Contractor shall insure that any and all protocols regarding the provision of Contract services established by the HPHA shall be specifically followed. Elevator Contractor shall work with the HPHA and any authorized agent contracted to the HPHA, to insure proper compliance with said protocols.

## **1.3 SERVICE QUALITY VALIDATION**

1. Insofar as the services provided by the Elevator Contractor fails to comply with required standards or has not been provided as per the HPHA's established protocols, the HPHA shall not be obligated to compensate Elevator Contractor for any such service until such deficiencies have been corrected by the Elevator Contractor and a successful re-inspection by the HPHA or Elevator Consultant is completed.

## **1.4 CONTRACT ADMINISTRATION**

1. Notwithstanding any other provisions of this Contract, or any document referenced herein, the HPHA, shall be the only entity authorized to make changes in or redirect the work required by this Contract. Where the HPHA's approval is required under the terms of this Contract, it shall be construed to mean the approval of the HPHA. In the event Elevator Contractor effects any change at the direction of any other individual, the change shall be considered as having been made without authority and an adjustment shall not be made to the Contract price or performance requirements as a result thereof.

## **1.5 INTENT AND ACCEPTANCE**

1. Elevator Contractor acknowledges that the HPHA has provided free access to and sufficient time for adequate examination of the equipment and review of service records. Elevator Contractor further acknowledges that the specified elevators

listed have been inspected by Elevator Contractor and that Elevator Contractor has determined that it is in serviceable operating condition. Elevator Contractor accepts full and complete responsibility for Full Service Maintenance and Repair of the specified elevators listed, as is condition, in accordance with this Contract.

## **1.6 DEFINITIONS**

1. **Preventive Maintenance:** Those services required by Elevator Contractor is to provide Preventive Maintenance as defined in this Contract, to prevent malfunctions or shutdowns due to normal wear and tear, to provide for safe operating elevators and to prolong the life of all elevator equipment.
2. **Cleanliness:** The Elevator Contractor is required to maintain the entire elevator system in a clean manner at all times. This includes without limitation: removal of oily rags, removal of dirt, grease, and lint-maintaining the exterior of all equipment free of lint, dirt, oil, grease-clean all machine room equipment including, floors, controller/selector, car top, hoistway door track, hanger, interlock, header, strut, hoistway side of sills, underside of car platform, car guides, car door operator, track, hangers, inside area of header, crosshead, guide rail/bracket, fascia, dust cover, pit and inside car station/hall station/lantern/lobby panel. The cleaning must be to a minimum of Elevator Industry Standards which is stated above, and shall be to the full satisfaction of the HPHA. If the HPHA or its authorized representative decides the cleaning level is below the HPHA's standards, the HPHA has the option of bringing in another Elevator Contractor to perform the cleaning (with notice provided per Section 1.15.1 below). All costs of the cleaning by another Elevator Contractor plus the cost of supervision by the HPHA shall be paid by the Elevator Contractor that is performing the Preventive Maintenance under this Contract.
3. **Obsolescence:** Obsolescence is defined as a replacement part not being available for purchase by the Elevator Contractor. Elevator Contractor shall provide written documentation the replacement part is not available and that the Elevator Contractor has exhausted all research in obtaining such replacement parts. Such research would be the review of all firms as listed in the latest edition of Elevator World-"The Source". All local supply firms, including other Elevator Contractors must also be researched for availability of replacement parts. If the replacement part is not available, the HPHA shall pay the cost for such replacement part. Elevator Contractor shall provide all documentation of the replacement costs. All labor to install the new replacement part is included in the Contract at no additional cost to the HPHA. The new replacement part, after being installed, shall be included in this Contract and future replacement is included in this Contract at no extra cost to the HPHA. If Elevator Contractor installs a replacement part different than the original equipment, the new replacement shall not be of the "proprietary" type and the Elevator Contractor shall provide, in writing, the manufacture, type and model of the proposed replacement part.

## **1.7 GENERAL REQUIREMENTS**

1. All maintenance performed by Elevator Contractor shall be based upon the performance specifications of individual equipment as published by the equipment manufacturer or as otherwise indicated herein.

2. Elevator Contractor shall comply with approved Elevator Equipment Industry Safety Standards. Elevator Contractor shall provide a copy of their Safety Program to Elevator Consultant and the HPHA within five (5) calendar days after award of contract.
3. In performance of this Contract, Elevator Contractor agrees to carry out all Work in strict compliance with all laws, Codes, rules and regulations set forth with regard to the equipment by Municipal, State and Federal authorities having jurisdiction in effect on the Preventive Maintenance commencement date over the Work or any part thereof.
4. Elevator Contractor shall provide the HPHA, within 5 calendar days from the start of Preventive Maintenance and prior to commencement of work, Material Safety Data Sheets (“MSDS”) for products Elevator Contractor intends to employ under this Contract. It shall remain the responsibility of Elevator Contractor to inform and train Elevator Contractor's employees on the use of the MSDS requirements. All MSDS documents shall be sent to the HPHA. Failure to furnish all such documentation, within the time schedule, shall be construed as terms by which to immediately terminate this Contract.
5. Elevator Contractor shall protect all building equipment, surfaces, etc. from damage and shall perform repairs/replacement of any damaged items to "as existing" condition at their own expense and to the entire satisfaction of the HPHA. Elevator Contractor agrees to accept responsibility for all damage to equipment due to neglect of their personnel in the maintenance of equipment identified in this Contract.
6. Elevator Contractor agrees that all labor furnished by Elevator Contractor shall be trained journeyman level mechanics and Apprentices, thoroughly skilled in elevator Preventive Maintenance and directly employed and supervised by Elevator Contractor. They will use all reasonable care to maintain the equipment in a proper and safe operating condition at all times. Elevator Contractor shall enforce strict discipline and order among their employees while on the HPHA’s premises, and shall be subject to the rules and regulations established by the HPHA. The HPHA reserves the right to request Elevator Contractor to replace any or all employees assigned to its facilities if it deems they are not performing in a satisfactory manner, or who refuse to comply with the HPHA’s policies and guidelines. The building consists of the residences of its occupants. Therefore, Elevator Contractor, in cooperation with the HPHA’s designated representatives, will make every effort to eliminate damage or disruption of unit occupants, employees, and visitors while performing the work.
7. Elevator Contractor's field personnel shall wear clean, neat, well-maintained uniforms identifying them as employees of Elevator Contractor for ease of identification by the HPHA.
8. Elevator Contractor shall provide the HPHA with the names of Service Technicians that will be assigned to the project within five (5) business days after award of contract. List shall be up-graded and brought current each time Service Technicians change routes or assignments. If there is a change in the service technician assigned

to HPHA, Elevator Contractor's supervisory staff must notify the HPHA prior to the replacement Technician's first visit to the premises.

9. Elevator Contractor shall provide a back-up personnel list within five (5) business days after award of Contract for each of their employees assigned to the HPHA's account in the event of their illness, disability, vacation, leave, or absence for any reason. Said back-up personnel are expected to cover all duties and responsibilities of Elevator Contractor's regular personnel with no disruption in service. The HPHA and Elevator Consultant shall be informed prior to back-up personnel being used.
10. Elevator Contractor shall be required to provide a member of their supervisory personnel, regularly engaged in inspection and supervision, to visit the elevators at least quarterly to observe the quality of maintenance and to make certain that the quality of maintenance meets the specified and intended standards. The Supervisor shall schedule each visit with the HPHA. As deemed necessary by the HPHA, the HPHA shall provide a member of their staff to accompany the Elevator Contractor during the on-site inspection of the elevator machine rooms and elevator cabs. Inspections by the Elevator Contractor shall be at no cost to the HPHA. The Elevator Contractor shall provide a written report of the results of this inspection to the HPHA within 14 calendar days of the onsite inspection
11. Contact shall be made with the HPHA's Building Management upon Elevator Contractor's arrival and upon completion of service or any time Elevator Contractor's personnel leave the site. Elevator Contractor shall maintain a key to machine room and a parts storage area secured in a lock box in an area designated by the HPHA. This key may not be removed from the premises. The HPHA will not check any keys out to Elevator Contractor's personnel.
12. Elevator Contractor shall be solely responsible for:
  - a) All means, methods, techniques, sequences, and procedures of the Work at no extra cost to the HPHA.
  - b) Keeping all "Work Areas" clean and using all available means to recycle or reclaim materials.
13. Elevator Contractor shall provide a written procedure of their "Lock Out-Tag Out" to the HPHA within five (5) days of Contract award and before starting work under this Contract.
14. Contractor shall schedule any repairs so that one out of the two elevators in a building remains in Normal Operation, 24 hours a day, seven (7) days a week.

#### **1.8 MAINTENANCE CONTROL PROGRAM (MCP)**

1. Provide an MCP for the elevator equipment. The MCP shall include, but is not limited to the following:
  - a) Examinations, maintenance, and tests of equipment at scheduled intervals in order to ensure that the installation conforms to the requirements of ASME A17.1/CSA B44 Section 8.6. The maintenance procedures and intervals shall be based on:

- i equipment age, condition, and accumulated wear
  - ii design and inherent quality of the equipment
  - iii usage
  - iv environmental conditions
  - v improved technology
  - vi the manufacturer's recommendations for any SIL rated devices or circuits
- b) Cleaning, lubricating, and adjusting applicable components at regular intervals and repairing or replacing all worn or defective components where necessary to maintain the installation in compliance with the requirements of ASME A17.1/CSA B44 Section 8.6.
  - c) The instructions for locating the Maintenance Control Program shall be provided in or on the controller along with instructions on how to report any corrective action that might be necessary to the HPHA.
  - d) The maintenance records required shall be kept at a central location agreeable and accessible to the HPHA and the Elevator Contractor's elevator personnel.
  - e) The Maintenance Control Program shall be accessible to the elevator personnel and shall document compliance with ASME A17.1/CSA B44 Section 8.6.
    - i Procedures for tests, periodic inspections, maintenance, replacements, adjustments, and repairs for all SIL rated E/E/PES electrical protective devices and circuits shall be incorporated into and made part of the Maintenance Control Program.
    - ii Where unique or product-specific procedures or methods are required to inspect or test equipment, such procedures or methods shall be included in the Maintenance Control Program.

## **1.9 SERVICE REQUIREMENTS**

1. Complete Maintenance: Elevator Contractor agrees to regularly and systematically examine, clean, lubricate, adjust and provide unlimited callback service and repair and replace all components of the elevators included under these specifications in accordance with industry standards in a proper Workmanlike manner to the entire satisfaction of the HPHA.
2. Elevator Contractor shall repair loose cab handrails and maintain fastening bolt tightness, repair and maintain communication equipment installed by Elevator Contractor and communication equipment cabinetry doors and door hinges.
3. Elevator Contractor shall include the following elements in the Preventive Maintenance Procedures for all elevators:

- a) Provide once a month operational checks of all elevator car door safety edges/detectors. Elevator Contractor shall provide documentation of such checking in their machine room check charts.
  - b) Provide once a month check of directional lights, call registered lights and all other elevator lighting fixtures. Furnish and replace all burned out bulbs.
  - c) Maintain pit lighting, car top lighting and hoistway lighting.
4. Elevator Contractor shall notify the HPHA before an elevator is removed from service. Elevator Contractor shall notify the HPHA when such elevator is placed back in normal service. The schedule for provision of service by Elevator Contractor shall vary according to the frequency as stated in this Contract. Elevator Contractor is expected to work closely with the HPHA and/or any firm authorized by the HPHA to arrange specific service times that are most beneficial to the HPHA.
  5. Elevator Contractor shall maintain hoistway, pit, machinery, elevator machine room, and any assigned Elevator Contractor's Work space in a clean, orderly condition, free of dirt, dust, oil and grease spills, trash and debris, at all times.
  6. Elevator Contractor shall be sensitive to the HPHA's needs during their Work activity and create no excessive noise. Work that will generate excessive noise shall be scheduled with the HPHA.
  7. Elevator Contractor shall maintain three (3) complete sets of wiring diagrams showing "as built" conditions with any changes or modifications to circuits resulting from control modifications, parts replacement or equipment up-grade. One set shall remain in the machine room, one set shall be maintained in the Elevator Contractor's office and the third set shall be maintained in the HPHA's offices. When any modifications are made to diagrams, three copies of the modified drawings must be made. One copy shall be furnished to the HPHA to update their copy of the appropriate drawing. A copy shall be used to update the Elevator Contractor's office drawings and the original changes shall be maintained in the equipment machine room. The HPHA retains sole possession of these wiring diagrams. Wiring diagrams shall be kept in a neat and orderly fashion in the machine room.
  8. Elevator Contractor shall be responsible for maintaining exterior of the machinery, and other parts of the elevator equipment, including but not limited to the top of the cab, the car crosshead and car sling, hoistway door headers and strut angles and the non-running surfaces of door tracks properly painted, identified, and presentable at all times.
  9. Elevator Contractor shall provide, at each building, a lockable metal parts cabinet of sufficient size to contain the required spare parts in elevator machine room. Elevator Contractor shall coordinate installation with the HPHA.
  10. Elevator Contractor shall conduct monthly evaluations of equipment performance, including car speed, door operations, riding quality and car leveling. Following such evaluations, the Elevator Contractor shall perform adjustment, repairs and replacements required to maintain manufacturer's operating performance. A copy

- of evaluations will be provided to the HPHA and Elevator Consultant and reviewed with them on request.
11. Elevator Contractor shall provide a qualified management representative to serve as Project Manager. Project Manager shall meet with the HPHA at such times as may be requested to discuss job details and concerns and/or any other matters concerning this Contract, or the Work to be performed herein, to assure amicable and successful execution of this Contract. The Project Manager shall be authorized to render any reasonable decisions to the HPHA without unnecessary delay.
  12. Elevator Contractor shall maintain at all times the original elevator Contract speed in feet per minute. Perform all adjustments required to maintain the proper door opening and closing time, within limits of applicable codes. Check the operating system for each unit to ensure that unit is kept operating continuously and make necessary tests and corrections to ensure all circuits are correct and time settings are properly adjusted.
  13. Elevator Contractor shall maintain the following minimum elevator criteria and performance requirements.
    - a) Speed:
      - 1) +/- 1% in both directions under all loading conditions for Geared equipment, 10% for hydraulic equipment.
    - b) Performance Times:
      - 1) 10.5 seconds-from start of car/hoistway door closing till the elevator is floor level at the next floor (either up or down direction) and the car/hoistway doors are  $\frac{3}{4}$  open.
    - c) Door closing time:
      - 1) Measured from start of door closing until the hoistway doors are fully closed, will be the minimum permitted by Code.
    - d) Door dwell time:
      - 1) As permitted by The Americans with Disability Act, as now or hereafter amended.
    - e) Floor leveling accuracy:
      - 1) +/- 1/16".
  14. In accomplishing the above requirements, Elevator Contractor shall maintain a comfortable elevator ride with smooth acceleration, retardation and a soft stop. Door operation shall be quiet and positive with smooth checking at the extremes of travel.
  15. Any additional work required to be performed pursuant to Federal, State or Local Code amendments subsequent to the date of this Agreement, or tests required to be performed which are not currently within the scope of this Agreement, will be performed by Elevator Contractor only upon receipt of a written change order from the HPHA.

16. Elevator Contractor shall provide to the HPHA, appropriate service manuals, adjusting manuals and technical manuals for all elevator equipment.
17. All records and documents pertaining to the elevators equipment provided to Elevator Contractor by the HPHA shall be kept current and in good condition and shall be returned to the HPHA upon demand or upon termination of this Contract.

#### **1.10 TESTING**

1. Elevator Contractor shall conduct the following tests, and any other tests required by the State of Hawaii, Federal and any other Governing or Code Agency that is in effect at the date of signing this Contract. Services shall include, but not be limited to:
  - a) Elevator Contractor shall provide inspections and testing of the Firefighter's Service-Phase I and Phase II and standby power operation, if installed as required by the AHJ. Any additional cost to complete the above inspections and testing on overtime shall be the responsibility of Elevator Contractor. Elevator Contractor shall maintain an up-to-date log of Firefighter's Service testing in the machine room and submit the results to the HPHA authorized representative on a quarterly basis. Firefighter's Service testing shall be entered and recorded on a form supplied by Elevator Contractor and/or as required by the State of Hawaii, or both.
  - b) Provide all testing as required by the State of Hawaii Elevator Inspector and required by the latest edition of ASME A17.1 Safety Code for Elevators and Escalators during the normal working hours of the elevator industry.
2. Elevator Contractor shall annually check the dispatching systems and make necessary tests and adjustments to insure that all circuits and time settings are properly adjusted, and all systems are performing as designed and installed. Elevator Contractor shall submit an annual written report of these results to the HPHA.
3. Elevator Contractor shall audit the elevator equipment once per year. An annual report from the audit will be provided to the HPHA by the last business day of the first year under contract. The report will include recommendations for improvements and estimates of cost for labor and materials to complete the suggested improvements. The HPHA's equipment will be audited for:
  - a) Code Compliance. Evaluate current Code compliance of all equipment. Monitor industry and Code developments and provide the HPHA with warning of anticipated Code changes to take effect during the fiscal year following the audit report. Recommend corrections, which should be made in the fiscal year following the audit report.
  - b) Equipment Performance. Audit performance of all equipment against its original parameters or specifications. Recommend corrections, which should be made in the fiscal year following the audit report.
  - c) Equipment Aesthetics. Audit the physical condition and appearance of the equipment visible to users and recommend upgrades, which should be

considered to keep the equipment appealing to users and current with Site standards for colors and decoration schemes.

4. Written reports of said tests shall be submitted to the HPHA within five (5) calendar days after receipt from the State of Hawaii Elevator Inspection Department.
5. The HPHA shall receive seven (7) days prior written notification of all tests so that a Representative of the HPHA may witness said tests. Safety precautions are understood to be of highest priority. Care will be taken to safeguard all surrounding building property during the testing. If during the testing, the actual testing fails the prescribed testing procedures in the latest edition of ASME A17.1 and re-testing is required, the Elevator Contractor shall pay all costs of the HPHA's Representative to witness such testing.

#### **1.11 CHARTS-LOGS-INSPECTIONS**

1. Elevator Contractor shall post the Elevator Contractor's standard Preventive Maintenance Schedule/Chart and a Work Log in the elevator machine room and designated area. The Work Log shall include all entries for routine and non-routine maintenance and repairs, including supervisor's surveys. Entries shall include date Work is complete, mechanic or supervisor's name, brief description of Work completed and the approximate time required for the Work. The Work Log and Preventive Maintenance Schedule/Chart shall be maintained for the HPHA's inspection at any time. The HPHA may copy the Work Log and Preventive Maintenance Schedule/Chart at any time.
2. Elevator Contractor shall provide the HPHA with a schedule, in either written or electronic form, (as preferred by the HPHA) of when elevator will be taken out of service for Preventive Maintenance. The HPHA must approve any changes to this schedule in writing.
3. Elevator Contractor shall offer inspections of hoistway, pit equipment, car top, machine room and interiors to the HPHA upon completing scheduled Preventive Maintenance at no expense to the HPHA.

#### **1.12 DISPOSAL OF OILS/MATERIALS, ETC**

1. Elevator Contractor shall be fully responsible for removal and disposal of all oils, greases, solvents and soiled cleaning cloths/rags that are used in the repair, service and adjusting of all elevator equipment. All material will be disposed of in accordance with all present or future City, State and Federal Laws and Regulations, which may be applicable.
2. When work is performed, the Elevator Contractor shall insure that all areas are clean and salvaged materials or scraps are removed before leaving jobsite. If Elevator Contractor fails to do so, the HPHA may perform necessary clean up actions and shall invoice the Elevator Contractor for all costs.

#### **1.13 EXTENT OF COVERAGE**

1. Elevator Contractor shall prepare and submit to the HPHA a detailed preventive maintenance schedule for all elevator equipment to be serviced within five (5) calendar days after execution of the Contract. As a minimum, the elevator shall be examined and maintained in accordance with the following frequency:

Minimum Service Frequency

Refer to Section Two, "Equipment to be Maintained" for maintenance frequency.

2. Extent of Coverage - Geared: Elevator Contractor shall:
  - a) Regularly and systematically examine, clean, lubricate, adjust, and, when conditions warrant, repair or replace the following items including all other items or components pertaining to the operation, maintenance, adjusting, repair, testing and cleaning of the total elevator equipment:
    - Geared hoist machine including brake-armature, fields-all bearings-hoist motor sheave/deflector sheave.
    - Hoist and governor ropes.
    - Governor.
    - Governor pit sheave.
    - Controllers, Selector, Starters, Dispatcher and Relay Panels.
    - All Bearings.
    - All Rotating Elements.
    - Contacts, Relays and Timers.
    - Resistors and Transformers.
    - Solid-State Devices.
    - In-Car Emergency Lighting.
    - Traveling Cables.
    - Firefighter's Service equipment.
    - Automatic Power Door Operators, Landing and Car Door Hangers, Landing and Car Door Contacts, Door Protective Devices, Hoistway Door Interlocks, Bottom Door Guides.
    - Interlocks and Door Closures.
    - Car Buffers.
    - Car Exhaust Fan.
    - Car-Top Inspection Station.
    - Limit and Slowdown Switches.
    - Door Protective Devices and Alarm Bells.
    - Car and Corridor Operating Pushbuttons.
    - Load Weighing equipment.
    - All Hall Lanterns, Car Position and Hall Position Indicators, Lobby Control Panels, Car Operating Panels, and all other signal and Accessory Facilities furnished and installed as a part of the whole equipment.

- Car and counterweight roller guides.
- b) Furnish lubricants and all cleaning supplies.
- 3. Extent of Coverage-Hydraulic Elevators: Elevator Contractor shall:
  - a) Regularly and systematically examine, clean, lubricate, adjust, and, when conditions warrant, repair or replace the following items including all other items or components pertaining to the operation/maintenance/adjusting/repair/testing/cleaning of the total elevator equipment:
    - Hydraulic pumps and associated plumbing.
    - Hydraulic cylinder (part that is not in the ground), plunger, packing and packing head.
    - Hydraulic fluid and piping, unless the piping is underground.
    - Seismic Valve and pit shut off valve.
    - Hydraulic oil line couplings.
    - All exposed hydraulic oil lines, brackets and stands.
    - Controllers, Starters, Selector and Relay Panels.
    - Pump Motors.
    - All Bearings.
    - All Rotating Elements.
    - Contacts, Relays and Timers.
    - Resistors and Transformers.
    - Solid-State Devices.
    - In-Car Emergency Lighting.
    - Firefighter's Service Equipment.
    - Automatic Power Door Operators, Landing and Car Door Hangers, Landing and Car Door Contacts, Door Protective Devices, Hoistway Door Interlocks, Bottom Door Guides, Door Closures.
    - Interlocks.
    - Car Buffers.
    - Limit and Slowdown Switches.
    - Door Protective Devices and Alarm Bells.
    - Car and Corridor Operating Pushbuttons.
    - Load Weighing Equipment.
    - All Hall Lanterns, Car Position and Hall Position Indicators, Lobby Control Panels, Car Operating Panels, and all other signal and Accessory Facilities furnished and installed as a part of the whole equipment.

- Electrical Traveling Cables.
- b) Furnish lubricants and all cleaning supplies.

#### **1.14 EXCLUSIONS**

The following items of equipment, hoistway and machine room enclosure are not included in Preventive Maintenance unless damaged by the Elevator Contractor.

1. Elevator Contractor shall not be responsible for the following items and shall receive compensation for repairing such items. Rates as specified in the Contract:
  - a) Door knocked off the tracks/broken gibs.
  - b) Elevators left on independent, fire, attendant or emergency service.
  - c) Elevator call buttons broken, burned or jammed.
  - d) Car door detector out of adjustment from doors being hit.
  - e) Elevator turned off inside the car and the door pulled shut, unless there is an actual elevator problem that is included in their Contract.
2. Elevator Contractor shall not be responsible for repairs and replacement pertaining to the car enclosure, including removable panels, door panels, car doors, suspended ceilings, handrails, car finish and flooring coverings, hoistway enclosures, hoistway entrance frames, sills and emergency telephone instruments, signal fixture faceplates, Smoke Detectors, machine room HVAC units, building electrical emergency power units, electrical power feeders and fuses to machine room electrical disconnects, underground hydraulic piping and the underground part of the hydraulic cylinder and cleaning of car interiors. At all times the cab handrails shall be kept tight and correctly fastened. This is part of the Elevator Contractor's responsibility under this contract. The above stated excluded items shall be repaired /replaced by the contractor if damaged by the contractor's personnel. The contractor shall notify the HPHA of any malfunctions noted of the excluded items.
3. Elevator Contractor shall not be responsible for replacement of mainline and auxiliary disconnect switches, fuses and feeders to control panels. All above-ground elevator related electrical conduit and wiring are included in the Contract.
4. Elevator Contractor shall not be responsible for repairs required because of acts of God or negligence or misuse of the equipment by anyone other than Elevator Contractor, its employees and subcontractors.
5. The HPHA agrees to maintain the elevator pit(s) and machine room(s) free from water and from unauthorized use.
6. Elevator Contractor shall not be obligated to make other safety tests or install new attachments, whether or not recommended or directed by insurance companies, or by federal, state, municipal, or other governmental or non-governmental authorities unless requested to do so by the HPHA. In that event, Elevator Contractor shall proceed to perform the tests or work, and shall be reimbursed at the rates as stated in 1.18-4. Elevator Contractor shall advise the HPHA, however, whenever such tests or attachments are recommended or required. Elevator Contractor shall not be required to make renewals or repairs necessitated by the negligence, misuse or

obsolescence of the equipment or any other cause beyond its control except ordinary wear and tear unless such renewals or repairs are caused by Elevator Contractor's negligence or misuse in performing or failure to perform pursuant to this Agreement.

#### **1.15 INSPECTION OF EQUIPMENT AND FEES**

1. The HPHA reserves the right to make such inspections and tests whenever necessary, at the Elevator Contractor's expense, or at the expense of the Elevator Contractor if any provisions of this Contract have not been adhered to by Elevator Contractor, when deemed necessary to ascertain that the requirements of these specifications are being fulfilled. The HPHA will promptly notify Elevator Contractor in writing of the deficiencies identified. Elevator Contractor shall resolve all deficiencies at Elevator Contractor's total expense within 10 calendar days of written notification.
2. The State of Hawaii Elevator Inspection fees shall be paid by the HPHA. The HPHA shall notify Elevator Contractor, in writing, of items required to be completed, which are the responsibility of Elevator Contractor. Elevator Contractor shall correct all deficiencies immediately. Fees for re-inspection due to failure to eliminate deficiencies included in this Contract and the responsibility of Elevator Contractor shall be paid by Elevator Contractor. Elevator Contractor shall submit, in writing, a Work schedule of items to be completed by Elevator Contractor within seven (7) calendar days of notification of the HPHA. Elevator Contractor shall notify the HPHA, in writing of all items corrected. The HPHA shall notify the State of Hawaii Elevator Inspector, in writing, of items completed with copy of report to Elevator Contractor.

#### **1.16 REQUESTS FOR SERVICE**

1. Elevator Contractor shall provide 24-hour/7-days a week answering service. Elevator Contractor shall provide a list of Elevator Contractor's Branch Manager, Service and Repair Superintendent's home and cellular phone numbers for emergency contact in the event the answering service is ineffective. Management list shall be submitted to the HPHA within five (5) working days of the Preventive Maintenance start date.
2. Elevator Contractor shall respond to all phone messages from the HPHA within 15 minutes of receipt.
3. Emphasis shall be placed on keeping the elevator operating during the day. Removal of equipment from service for scheduled maintenance shall be scheduled with the HPHA.
4. No repair shall be performed outside the scope of this Contract without prior written approval from the HPHA.
5. Overtime work required or when requested shall be scheduled with the HPHA beforehand. The hourly rates for this HPHA authorized overtime work shall be the difference between the normal and overtime hourly rates stipulate in section 1.20 Hours of Work.

6. If any equipment is shut down for more than 24 continuous hours after notification of a failure (except for pre-scheduled or major equipment repairs) the monthly unit billing shall be suspended until the individual elevator equipment is restored to service.
7. In the event an elevator fails to operate properly, the HPHA will notify Elevator Contractor by telephone and request immediate repair. For this purpose, Elevator Contractor shall maintain, at all times, office facilities, a 24 hour telephone service and personnel to promptly dispatch competent mechanics to repair any reported elevator failure.
8. If a safety or potential safety problem exists, Elevator Contractor shall immediately correct the problem. Written notification of corrective measures undertaken shall be provided to the HPHA, in writing, within one (1) business day.
9. In case of an elevator accident, Elevator Contractor shall be notified immediately by the HPHA. The elevator shall not be placed in operation until an investigation is performed by the HPHA's representative and the State of Hawaii Elevator Inspector. Elevator Contractor shall provide a written report to the HPHA stating the condition of the elevator before the Elevator Contractor leaves the HPHA's facility. The elevator shall not be placed in operation until an investigation is performed by the HPHA's representative and/or the State of Hawaii Elevator Inspector if the following conditions occur:
  - a) A person has been injured and requires first aid treatment.
  - b) The elevator is not safe to place in normal operating service because of obvious mechanical and/or electrical condition.
  - c) There is a concern by the Elevator Contractor or the HPHA as to the possible continued elevator malfunction if placed in service.
10. When corrective action is found to be the responsibility of the Elevator Contractor, the Elevator Contractor shall proceed immediately to make replacements, repairs, and corrections. If Elevator Contractor fails to perform the Work required by the terms of the Contract in a diligent and satisfactory manner, the HPHA may, after five (5) calendar days written notice to Elevator Contractor, perform or cause to be performed all or part of the Work required thereunder. Elevator Contractor shall reimburse the HPHA for any expense incurred therefore or the HPHA, at its election, may deduct the amount from any sum owed or to be owed Elevator Contractor. When such Work is determined not to be the Elevator Contractor's responsibility, a written report, including a cost estimate to remedy the deficiency, signed by the Elevator Contractor, shall be delivered to the HPHA by 3:00 p.m., HST, the next business day for further action by the HPHA. If the HPHA elects to have the Elevator Contractor perform these services, they will issue a separate Purchase Order Request beforehand. If a safety problem is noted, which is not within the Elevator Contractor's area of responsibility or expertise, written notice of such problem shall immediately be furnished to the HPHA by Elevator Contractor.

11. No allowances shall be made to Elevator Contractor for extra costs as a result of difficulties encountered during any Work. All materials incorporated in the Work shall become the property of the HPHA upon material/parts installation.
12. Elevator Contractor will, upon request, assist the HPHA with written recommendations to improve service and reduce call backs. Elevator Contractor shall provide the "Callback Log Form" to the HPHA within seven (7) calendar days after the end of the previous month. Preventive Maintenance tickets will be separated for Work completed. The intent of this summary is to minimize callbacks by keeping the Elevator Contractor and the HPHA aware of callback trends. Elevator Contractor shall review Preventive Maintenance duties and Callback Trends with the HPHA on a monthly basis. Elevator Contractor shall provide the HPHA, on a monthly basis, copies of all time tickets for "all" work performed during the preceding month.
13. Downtime notification is required according to the following schedule:
  - a) Emergency Shut Down. The HPHA is to be notified immediately by phone, cell phone, pager or radio of emergency repairs or safety issues at time of detection. At minimum, a voice-mail message is required.
  - b) Short Shut Down. The HPHA is to be informed in writing (e-mail acceptable) three (3) days in advance when an elevator will be taken down for two (2) hours to eight (8) hours for non-emergency service/repair/upgrade.
  - c) Major Shut Down. The HPHA is to be informed in writing (fax or e-mail acceptable) one (1) week in advance when an elevator will be taken down for more than one (1) day for non-emergency service/repair/upgrade.
14. Elevator Contractor shall immediately shut down and remove the elevator equipment from service when it appears to Elevator Contractor to be unsafe or operating in a manner which might cause injury to anyone using said elevator equipment. Elevator Contractor shall provide the HPHA written notice of such action immediately, stating the reason the elevator was placed out of service and corrective measures required to place the elevator in service. Written notice shall be provided by Elevator Contractor before Elevator Contractor's personnel leave the jobsite.
15. "Emergency Service Requests" Response Time is counted from the end of the phone call requesting repair to when the technician arrives at the premises. Elevator Contractor shall respond to all "Emergency Service Requests" in accordance with the following standards:
  - a) Weekdays between 7:30 am to 4:30 pm, HST: = 60 minutes.
  - b) All other days/hours: = 90 minutes.
  - c) "Emergency Service Requests" shall be resolved as quickly and effectively as possible and in such a manner that the disruption of equipment service and inconvenience to users is absolutely minimized.

- d) Elevator Contractor shall mobilize all necessary resources, including labor, equipment, tools, parts and materials as required to complete work required under these requirements.
16. Elevator Contractor shall provide unlimited "Routine Service Request" for elevator at no additional cost to the HPHA. "Routine Service Requests" Response Time is counted from the end of the phone call requesting repair to when the technician arrives on HPHA's premises. A "Routine Service Request" is any request not deemed by the HPHA to require immediate response and resolution by Elevator Contractor. "Routine Service Requests" shall include the following:
    - a) Weekdays between 7:30 am to 4:30 pm, HST: = 60 minutes.
    - b) All other days/hours: = 90 minutes.
    - c) "Routine Service Requests" shall be resolved as quickly and effectively as possible and in such a manner that the disruption of equipment service and inconvenience to users is absolutely minimized.
    - d) Elevator Contractor shall mobilize all necessary resources, including labor, equipment, tools, parts and materials as required to complete the work required under these requirements.
  17. Remote Monitoring: Any and all remote monitoring equipment and on-going monthly service shall be at the Elevator Contractor's total expense.
  18. Elevator Contractor shall assign an elevator mechanic to assist with generator tests, at the premises, at no additional cost to the HPHA.

### **1.17 WORK TICKETS**

1. After each service/trouble call and regularly scheduled maintenance, a legible Work ticket will be completed indicating the date of work, work performed, parts replaced, total hours on the job and the Service Technician performing the Work. In the case of an elevator shutdown or repair, the Work ticket will describe the cause of the elevator failure and the action taken to correct the failure. Each month, Elevator Contractor shall provide a written callback report showing cause and correction of each month's callback(s).
2. Each month a Report shall be sent to the HPHA and/or their representative, a copy of all Time Tickets, Callback Logs, Extra Billing, Test Reports, and Repairs required, that includes all items as described in 1.18.1. Reports shall be received no later than the first Tuesday following the end of the month.
3. All Work Tickets shall be left with the HPHA after all visits. Preventive Maintenance tickets shall be separated for work completed. Copies of Work Tickets shall be included in any invoice other than the monthly Preventive Maintenance Contract Amount Invoice.
4. Elevator Contractor shall provide, quarterly, by the 10th day of the month following the quarter, copies of the three previous monthly "Check Charts". Report shall contain, but shall not be limited to, the following information:
  - a) Dates and times of inspection and/or service.

- b) Names of persons performing inspection and/or service.
- c) Location and description of equipment being inspected and/or service.
- d) Condition of equipment.
- e) Inspection/service performed.

**1.18 HOURS OF WORK**

1. All Work to be performed that is not included in this Contract, will be authorized by the HPHA by written notification to Elevator Contractor prior to commencement of the Work. All vandalism work required shall not be completed/provided by the normal Elevator Contractor’s Service person(s) on-site for performing Preventive Maintenance unless authorized by the HPHA. Elevator Contractor may be required to provide additional Mechanics and Apprentices for extra work required.
2. All normal Work under the Contract is to be performed during regular working days of the elevator trade (8:00 a.m. to 4:00 p.m., HST) Monday thru Friday.
3. 24 hours a day, seven (7) days a week callbacks are included in the Elevator Preventive Maintenance Period, at no additional cost to the HPHA.
4. All Work to be performed that is not included in this Contract, will be authorized by the HPHA by written notification to Elevator Contractor prior to commencement of the Work. The maximum hourly rates, and material markup from cost, will be as follows:

**MECHANIC APPRENTICE CREW**

Straight Time (During the hours of 8:00 a.m. to 4:00 p.m, HST, Monday – Friday).

\$225.00	\$195.00	\$420.00
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Straight Time + 70% (Outside the hours of 8:00 a.m. to 4:00 p.m., HST, Monday - Friday).

\$275.00	\$230.00	\$505.00
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Straight Time + 100% (Weekends and Holidays)

\$295.00	\$245.00	\$540.00
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**MATERIAL MARKUP     % 15**

5. Maximum travel cost, for work not included in this contract, shall not exceed one (1) Mechanic hour rate.
6. Preventive Maintenance Hours:
  - a) Refer to Section Two – “Equipment to be Maintained” for monthly minimum of required hours and frequency of preventive maintenance.
  - b) The above-stated hours shall be the minimum actual "On Site" hours performing the Preventive Maintenance duties. These minimum hours do not include Callbacks, Repairs, Travel Time, Adjustments or Testing.

Documentation of Preventive Maintenance hours is required for monthly payment due Elevator Contractor. For any hours less than the stated not spent, per month, on site, on Preventive Maintenance, the dollar value (per hour) will be deducted from that month's invoice. The hourly dollar value for the Preventive Maintenance Work is \$300.00. The hourly rate will be increased or decreased by the same percentage as the Contract amount price adjustment for labor.

7. Elevator Contractor shall pay for all costs, including travel time and mileage, of any regular time and overtime callback if the following conditions occur:
  - a) If the elevator is running on arrival (ROA) when Elevator Contractor arrives on-site, and it was verified by the HPHA that the elevator was either not in operation or in a state of not operating correctly when the trouble call was placed to the Elevator Contractor.

### **1.19 CONFIDENTIAL INFORMATION**

1. Neither Elevator Contractor, nor Elevator Contractor's agents, employees, or subcontractors, shall disclose to any person or entity any of the HPHA's confidential information, whether written or oral, which Elevator Contractor or Elevator Contractor's agents, employees, or subcontractors may obtain from the HPHA, or otherwise discover in the performance of this Contract. The term "Confidential Information" shall include, without limitation;
  - a) All information or data concerning or related to the HPHA, including the improvement, development or general business operations.
  - b) Elevator Contractor shall not copy, disperse, or in any way disclose, any of the HPHA's information to any person(s) or company, unless such information has been given, either verbal or written to such person by the HPHA and the HPHA does not consider such information as confidential.
  - c) All printed information that is the property of the HPHA.
  - d) All the HPHA's property.
2. Elevator Contractor shall maintain all confidential information in strict confidence. Elevator Contractor shall take all reasonable steps to ensure that no unauthorized person or entity has access to confidential information, and that all authorized persons having access to confidential information refrain from any unauthorized disclosure. Without limiting or otherwise affecting the relationship of the Parties to this Contract, the HPHA may require each of Elevator Contractor's employees performing Work to sign a Nondisclosure Agreement.
3. The provision of this shall not apply to any information that:
  - a) Is rightfully known to Elevator Contractor prior to disclosure by the HPHA.
  - b) Is rightfully obtained by Elevator Contractor from any third party.
  - c) Is made available by the HPHA to the public without restriction.
  - d) Is disclosed by Elevator Contractor with the prior written permission of the HPHA.

- e) Is independently developed by Elevator Contractor without the use or benefit of the confidential information provided by the HPHA.

**1.20 EXAMINATION OF RECORDS**

1. The HPHA shall have the right to examine or audit any directly pertinent books, documents, papers and records of Elevator Contractor involving transactions related to Preventive Maintenance for one (1) year after expiration of this Contract.

**1.21 ELEVATOR CONTRACTORS EMPLOYEES' SAFETY AND ACCIDENT PREVENTION PROGRAM**

1. Elevator Contractor shall submit, for review, to the HPHA, the Elevator Contractors Employees' Safety and Accident Prevention Program. Document shall be up-dated when any changes in the Program are adopted by Elevator Contractor.
2. Elevator Contractor shall verify, in writing, that all Elevator Contractors personnel that perform any work under this Contract have completed the Elevator Contractors required training under this Safety and Accident Prevention Program and that the Employee shall receive additional on-going and future training under the Elevator Contractor's Safety and Accident Prevention Program.

**PART TWO - EQUIPMENT TO BE MAINTAINED**

**2.1. Sixteen (16) Existing Elevators**

<b>Building</b>	<b>Make</b>	<b>Type of Conveyance</b>	<b>Minimum Monthly PM Hours</b>	<b>Frequency</b>
Kalakaua Homes	MCE Mod	Geared	1.5	Once- monthly
Kalakaua Homes	MCE Mod	Geared	1.5	Once-monthly
Makua Alii	MCE Mod	Geared	2.0	Once-monthly
Makua Alii	MCE Mod	Geared	2.0	Once-monthly
Paoakalani	MCE Mod	Geared	1.5	Once-monthly
Paoakalani	MCE Mod	Geared	1.5	Once-monthly
Kalanihuia	MCE Mod	Geared	1.5	Once-monthly
Kalanihuia	MCE Mod	Geared	1.5	Once-monthly
Punchbowl Home	MCE Mod	Geared	1.0	Once-monthly

Punchbowl	MCE Mod	Geared	1.0	Once-monthly
Pumehana	MCE Mod	Geared	2.0	Once-monthly
Pumehana	MCE Mod	Geared	2.0	Once-monthly
Makamae	MCE Mod	Hydraulic	1.0	Once-monthly
Makamae	MCE Mod	Hydraulic	1.0	Once-monthly
Salt Lake Apartments	MCE Mod	Geared	1.5	Once Monthly
Salt Lake Apartments	Thyssen	MRL	1.5	Once Monthly
<b>Total Required Hours Per Month</b>			24	

**PART THREE - REPLACEMENT PARTS INVENTORY**

**3.1. MATERIALS**

1. Elevator Contractor, at Elevator Contractor’s expense, shall maintain an inventory level of spare elevator parts at their local/Hawaii Branch Office which will permit prompt repair or replacement of components that fail or become worn. The elevator shall not be left shut down more than four (4) hours because of spare (replacement) parts not available from their local/Hawaii Branch Office.
2. Elevator Contractor shall mark and identify all lubricating oils and cleaning solvents that are stored on-site. All storage cans shall be Code approved. All unmarked cans shall be removed from the HPHA’s premises. Elevator machine room shall not be used for storage of materials or items that do not pertain to the elevator maintenance of the HPHA’s elevators.
3. In performing the Work indicated in these specifications, Elevator Contractor agrees to provide only manufacturer approved parts used by the manufacturers of the equipment for replacement or repair, and to use only those lubricants obtained from and/or recommended by the manufacturer of the equipment. If Elevator Contractor wishes to provide replacement parts or lubricants other than recommended by the Elevator Manufacturer, Elevator Contractor shall, in writing, state the type proposed and the lubrication specifications to the HPHA for review and written approval. These replacement parts shall not be considered an upgrade of elevator equipment and shall be provided by Contractor at no additional cost to the HPHA.
4. Elevator Contractor shall procure replacements parts in the most expeditious manner available at no additional cost to HPHA. This includes “next day air”, if required.

5. Parts requiring repair shall be rebuilt to an "as new" condition, at no additional cost to HPHA.
6. Elevator Contractor, at Elevator Contractor's expense, shall maintain at their Local/Hawaii Branch Office, at all times, a sufficient amount of replacement parts, by the original manufacturer, to maintain the equipment in first-class and safe operating condition, at all times. The minimum inventory shall include, without limitation, the following:

The Minimum "Total" Inventory shall be:

- 1 Door Operator, Motor and Belts
- 1 Car Door Detector
- 4 Car Door Rollers
- 4 Hoistway Door Hanger Rollers
- 2 Hoistway Door Closures
- 1 Car and Counterweight Roller Guides
- 1 Electrical Mechanical Hoistway Door Interlocks
- 4 Hoistway and Car Door Gibs
- 4 Hall and Car Push Button Replacement Parts
- 2 Hoistway Limit Switches
- 2 Hoistway Slowdown Switches
- 1 of Each Type of Electrical Relays
- Ample Supply of Lubricants and Cleaning Material.

### 3.2. **MICROPROCESSORS:**

1. Elevator Contractor, at Elevator Contractor's expense, shall maintain in stock, at their Local/Hawaii Branch Office, available for immediate usage, an inventory of replacement parts for any microprocessor/solid state equipment used for each elevator system. This includes all solid-state boards located in the machine room, fixture stations, car tops or any other location.
2. Elevator Contractor's service technicians shall carry diagnostic equipment designed to analyze programming and microprocessor functions and malfunctions on all elevator equipment.
3. Elevator Contractor shall pay for all costs if the original elevator manufacturer must be brought on-site to re-program the elevator system or be required to place the elevator in service.

END OF SECTION



**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 \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_ Hawaii Public Housing Authority (HPHA) \_\_\_\_\_,  
*(Insert name of state department, agency, board or commission)*  
 State of Hawaii ("STATE"), by its \_\_\_\_\_ Executive Director \_\_\_\_\_,  
*(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 \_\_\_\_\_ Hawaii \_\_\_\_\_, whose business address and federal  
 and state taxpayer identification numbers are as follows: \_\_\_\_\_  
 \_\_\_\_\_

**RECITALS**

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

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

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

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

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

F. Money is available to fund this Contract pursuant to:  
 (1) N/A  
*(Identify state sources)*

or (2) FLIPH Funds  
*(Identify federal sources)*

or both, in the following amounts: State \$ \_\_\_\_\_ N/A \_\_\_\_\_  
 Federal \$ \_\_\_\_\_ 0.00 \_\_\_\_\_

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

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the Invitation for Bids number CMB-2019-27 ("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 \_\_\_\_\_ N/A \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_ N/A \_\_\_\_\_).

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

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

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of \_\_\_\_\_ N/A \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_ N/A \_\_\_\_\_) 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)  
**Hakim Ouansafi**  
\_\_\_\_\_  
(Print Name)  
**Executive Director**  
\_\_\_\_\_  
(Print Title)  
\_\_\_\_\_  
(Date)

**CONTRACTOR**

**CORPORATE SEAL**  
(If available)

\_\_\_\_\_  
(Name of Contractor)  
\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name)  
\_\_\_\_\_  
(Print Title) \*  
\_\_\_\_\_  
(Date)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Deputy Attorney General

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



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ Hawaii \_\_\_\_\_ )
) SS.
\_\_\_\_\_ City and \_\_\_\_\_ COUNTY OF \_\_\_\_\_ Honolulu \_\_\_\_\_ )

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: \_\_\_\_\_ Contract for Goods or Services Based

\_\_\_\_\_ Upon Competitive Sealed Bids

(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

**Project:** Operational and Preventive Maintenance Services to 16 Elevators at Various HPHA Properties  
**HPHA Job No.:** 19-009-000  
**Location:** Honolulu, Oahu, Hawaii

The CONTRACTOR shall provide the following Scope of Services:

1. Provide all services as set forth in the Specifications, IFB-CMS-2019-27, **Operational and Preventive Maintenance Services to 16 Elevators at Various HPHA Properties**, HPHA Job No. 19-009-000, and set forth in the CONTRACTOR's bid offer submitted by the CONTRACTOR on xxxxxxxx, 2019.
2. Provide 24-hour service capabilities to handle emergency service, repair or replacement. Coordinate maintenance services with the Contract Administrator and the Officer in Charge. The CONTRACTOR shall provide a minimum of five (5) business days notice to the HPHA Contract Administrator and Officer in Charge of any changes to the scheduled dates of service.
3. Provide working hours for this project from 8:00 a.m. to 4:00 p.m., Hawaii Standard Time (HST), Monday through Friday, excluding State Holidays.
4. Maintain a running check list log for the purpose of recording the date of each operational and maintenance service work performed and who performed the work. Provide a copy of the monthly service report together with the monthly payment request to the HPHA.

The following Contract documents are attached and incorporated:

- Attachment S1, S2, S3, S4 and S5;
- Contractor Standard of Conduct Declaration and Contractor's Acknowledgment;
- CONTRACTOR's accepted bid offer submitted on -----;
- 103D General Conditions; and
- HUD General Conditions for Non-Construction Contracts (Form HUD-5370-C)
- Other documents not attached, but referred to within this Contract, are incorporated by reference and shall be part of this Contract.



STATE OF HAWAII

**COMPENSATION AND PAYMENT SCHEDULE**

**Project:** Operational and Preventive Maintenance Services to 16 Elevators at Various HPHA Properties  
**HPHA Job No.:** 19-009-000  
**Location:** Honolulu, Oahu, Hawaii

1. Subject to the availability, allocation, and receipt of funds and the CONTRACTOR’s full and timely performance of all contractual obligations, the CONTRACTOR shall be compensated for the Scope of Services performed under this Contract in a total amount not to exceed -----  
-----/100 Dollars (\$-----.-).
2. The CONTRACTOR shall submit written payment requests that consist of an original invoice specifying the amount due. The CONTRACTOR will be allowed progress payments on a monthly basis by submitting one (1) original and two (2) copies of the approved payment request forms and invoice to the HPHA.
3. Section 103-10, HRS, provides that the HPHA shall have 30 calendar days after receipt of a completed invoice and satisfactory delivery of goods or performance of the services to make payment. Upon receipt of the invoice, the HPHA shall date stamp the invoice, and use this receipt date to calculate the 30 day payment period. For the purposes of this paragraph, the CONTRACTOR’s invoice date shall not be considered.
4. The CONTRACTOR shall submit its monthly invoice(s) for services rendered to the HPHA at Post Office Box 17907, Honolulu, HI, 96817. All invoices shall reference the HPHA Contract number. Payment shall be made in accordance with section 103-10, HRS, upon HPHA's receipt of a written invoice from the CONTRACTOR and the HPHA's determination that the CONTRACTOR has satisfactorily performed the services specified.
5. Billable emergency services shall be paid for by the HPHA to the CONTRACTOR on an actual time and material basis. The CONTRACTOR will be paid via a purchase order.



STATE OF HAWAII

**TIME OF PERFORMANCE**

**Project:** Operational and Preventive Maintenance Services to 16 Elevators at Various HPHA Properties  
**HPHA Job No.:** 19-009-000  
**Location:** Honolulu, Oahu, Hawaii

1. The work shall commence on the date stipulated in the Notice to Proceed to the CONTRACTOR for a period of 12 months.
2. No goods or services shall be issued, delivered, or installed on this Contract before a Notice to Proceed is issued. Any goods or services provided before issuance of the Notice to Proceed shall be at the CONTRACTOR's sole risk and expenses.
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 CMB-2019-27 or this Contract:

Initial term of Contract:	12 months
Length of each extension:	Up to 12 months
Maximum length of Contract:	60 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 of up to 48-months. No extension period shall exceed 12-months. The Contract extension(s) 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 CONTRACTOR must obtain written approval and a Notice to Proceed by the STATE with the extension; and
  - e. The STATE has determined that the CONTRACTOR has satisfactorily provided services over the current Contract term; and
  - f. Necessary State funds are appropriated, allotted and received for an extension.



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)
Hakim Ouansafi
(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

**Project:** Operational and Preventive Maintenance Services to 16 Elevators at Various HPHA Properties  
**HPHA Job No.:** 19-009-000  
**Location:** Honolulu, Oahu, Hawaii

1. **INSURANCE REQUIREMENTS**

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 minimum coverage:

<u>Coverage</u>	<u>Limit</u>
<b>General Liability Insurance</b> (occurrence form)	Bodily Injury and Property Damage (combined single limit): <u>\$1,000,000.00</u> per occurrence and <u>\$2,000,000.00</u> aggregate Personal Injury: <u>\$1,000,000.00</u> per occurrence and <u>\$2,000,000.00</u> aggregate
<b>Automobile Insurance</b> covering all owned, non-owned and hired automobiles.	Bodily Injury: <u>\$1,000,000.00</u> per person and <u>\$1,000,000.00</u> per occurrence Property Damage: <u>\$1,000,000.00</u> per accident. OR Combined single Limit of <u>\$2,000,000.00</u>
<b>Workers Compensation</b> (statutory limit as required by laws of the State of Hawaii)	Insurance to include Employer’s Liability. Such coverage shall apply to all employees of the CONTRACTOR and, in case any sub-Contractor fails to provide adequate similar protection for all his employees, to all employees of sub-Contractors.

- a. The State of Hawaii, the Hawaii Public Housing Authority, its elected and appointed officials, officers and employees shall be named as additional insured, except for Professional Liability Insurance and Worker’s Compensation Insurance, as respects to operations performed for the State of Hawaii under this Contract. The CONTRACTOR agrees to provide the HPHA before the effective date of the Contract, certificate(s) of insurance necessary to satisfy the State that the Contractor is in compliance with the insurance provisions of this Contract and to keep such insurance in effect and the certificate(s) 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.
- b. Failure of the CONTRACTOR to provide and keep in force such insurance shall be regarded as material default under this Contract. The STATE shall be entitled to exercise any or all of the remedies provided in this Contract for default of the Contractor.
- c. The procuring of such required policy or policies of insurance shall not be construed to limit the CONTRACTOR’s liability or to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, the CONTRACTOR shall be liable for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Contract.



**STATE OF HAWAII**  
**SPECIAL CONDITIONS**

- d. The CONTRACTOR shall immediately provide written notice to the HPHA or its contracting department should any of the insurance policies identified on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.
- e. The Hawaii Public Housing Authority is a self insured State agency. The CONTRACTOR's insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute with insurance provided by the CONTRACTOR.
- f. To satisfy the minimum coverage limits required by this Contract, the CONTRACTOR may use an umbrella policy in addition to the mandatory insurance policies (i.e., General Liability Insurance, Automobile Insurance, and Workers' Compensation) provided that the HPHA approves, and the umbrella policy follows the underlying coverage forms.

**2. SPECIALTY CONTRACTOR'S AND SUBCONTRACTOR'S LICENSE**

The CONTRACTOR shall be solely responsible to ensure that all the specialty licenses required to perform the subject work are provided by the CONTRACTOR or its Subcontractor(s) or joint Contractors. All required specialty licenses shall be current and valid.

**3. ORDER OF PRECEDENCE**

The HUD-5370-C, General Conditions for Non-Construction Contracts shall be supplemental general conditions to the 103D General Conditions. In the event of a conflict between the 103D General Conditions and the HUD-5370-C General Conditions, the HUD-5370-C General Conditions shall prevail. In the event of a conflict between the 103D General Conditions and the Special Conditions, the Special Conditions shall prevail. If 103D General Conditions or Special Conditions conflict or are less restrictive than any applicable federal law, regulations, or Executive Order, said applicable federal law, regulation, and Executive Order shall prevail.

**4. MODIFICATIONS TO FORM AG-008 103D GENERAL CONDITIONS**

- A. Paragraph 7 in form AG-008 103D General Conditions, shall be modified as follows:

7. Indemnification and Defense. In accordance with section 103D-713, HRS, the CONTRACTOR shall 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 reasonable attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the negligent, reckless, or wrongful acts, errors 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. In the event this Contract exceeds \$1,000,000 at any time during the Contract period, the original language in paragraph 7 of the AG-008 103D General Conditions shall apply.

- B. Delete paragraph 9: Liquidated damages of the AG-008 103D General Conditions. Liquidated damages shall not be applicable to this Contract.



**STATE OF HAWAII**  
**SPECIAL CONDITIONS**

5. **CONTRACT ADMINISTRATION PURSUANT TO SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968, AS AMENDED, 12 U.S.C. 1701u (Section 3)**

- a. The CONTRACTOR shall provide a list of all employees as of the date of the Notice of Award. List shall include all staff, including clerical and custodial, within the company .
- b. The CONTRACTOR shall submit prior to the Notice to Proceed, a Section 3 Contract Clause form certifying that they will comply with all Section 3 requirements.
- c. Beginning with the Notice of Award and for the duration of a Contract, the CONTRACTOR shall certify quarterly or as requested by HPHA any vacant employment positions by submitting a Section 3 Compliance Report form, which must be signed by the CONTRACTOR.
- d. Upon each vacant employment position, the CONTRACTOR shall create and fax the Section 3 Job Opportunity Flier to the HPHA and to the complete list of Section 3 Fax Numbers provided by HPHA.
- e. Should the CONTRACTOR fail or refuse to submit its required Section 3 forms, the CONTRACTOR shall be subject to the following sanctions:
  - (1) Withholding of the progress payment until the required form(s) are submitted;
  - (2) Temporary or permanent cessation of work on the project, without recourse to breach of contract claims by the CONTRACTOR. The HPHA shall be entitled to restitution for nonperformance or liquidated damages claims; or
  - (3) Proceed to debar or suspend, pursuant to section 103D-702, HRS.
- f. If events such as "acts of God", acts of a public enemy, acts of the State or any other governmental body acting in its sovereign or contractual capacity, fires, floods, epidemics, freight embargoes, unusually severe weather, or strikes or other labor disputes prevent the CONTRACTOR from submitting the certification forms, the CONTRACTOR shall not be penalized provided the CONTRACTOR completely and expeditiously complies with the certification process when the event is over.

6. **CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS**

The CONTRACTOR acknowledges and shall follow section 11-355, HRS, which prohibits campaign contributions from contractors who enter into any public funded contract with the State or County during the term of this Contract.

7. **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 of data elements are not encrypted:

- (1) Social security number;



STATE OF HAWAII  
**SPECIAL CONDITIONS**

- (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) The CONTRACTOR shall not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) The CONTRACTOR shall implement appropriate “technological safeguards” that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) The CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) The CONTRACTOR shall mitigate any harmful effect that is known to the CONTRACTOR because of a use or disclosure of personal information by the CONTRACTOR in violation of the requirements of this paragraph.
- (6) The 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 the CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements

- (1) The CONTRACTOR shall certify 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) The CONTRACTOR shall certify 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;



STATE OF HAWAII  
**SPECIAL CONDITIONS**

- (B) Access to the personal information shall be allowed only as necessary to perform the Contract: and
- (C) Use of the personal information shall be restricted to uses consistent with the services subject to the Contract.

- d. Termination for Cause. In addition to any other remedies under this Contract, if the STATE learns of a material breach by the CONTRACTOR of this paragraph by the 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, the CONTRACTOR shall destroy all paper or electronic copies of personal information received from the STATE, pursuant to chapter 487R, HRS.
  - (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 three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall not be disclosed without the prior written approval of the STATE. After the three (3) year retention period has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS.

8. **INTERCHANGEABLE TERMS**

The following terms shall be one and the same.

- a. “Contract” and “Agreement”.
- b. “HPHA” and “State”.
- c. “HPHA Project Engineer”, “Project Engineer” and “Engineer”.
- d. “CONTRACTOR” and “name of the contractor”.

9. **SMOKING PROHIBITION**

Subject to section 356D-6.5, HRS, smoking of tobacco or any other plant material is strictly prohibited on HPHA properties. Furthermore, pursuant to section 328J-1 and 328J-2, HRS “smoking” includes the use of an electronic smoking device and shall be prohibited in all enclosed or partially enclosed areas. The Successful Contractor agrees and shall adhere to these no-smoking laws while on HPHA properties. Such violation may be considered a breach of the resulting Contract and result in suspension or termination of the Contract. Smoking while on HPHA properties shall be considered a violation of State law and subject to prosecution to the fullest extent under the law.



**STATE OF HAWAII**  
**SPECIAL CONDITIONS**

**10. JUNE 30 FISCAL YEAR CLOSING REQUIREMENTS**

- a. During the month of June, due to the fiscal year end, all work earned must be invoiced and paid by June 30. All documents required to be submitted with the progress billing must be submitted and be current so that the payment may be authorized for release.

# GENERAL CONDITIONS

## Table of Contents

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

## GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 13. Termination for Default.

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

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

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

#### 14. Termination for Convenience.

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

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

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

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

- d. Compensation.

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

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
    - (A) Changes in the work within the scope of the Contract; and
    - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
  - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
  - (5) Method of shipment or packing of supplies; or
  - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
  - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
  - b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
  - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

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

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

# 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. 3/31/2020)

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 \$105,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$150,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$150,000 – use Sections I and II.**

### Section I - Clauses for All Non-Construction Contracts greater than \$150,000

#### 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

- 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.

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- (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.

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## 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

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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. 3/31/2020)

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- 1) Non-construction contracts (*without* maintenance) greater than \$100,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) 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 II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

#### 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; A

- (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). 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. 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

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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

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.

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Signature & Date:

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Typed or Printed Name:

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Title:

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Years 2019 and 2020  
Holidays to be observed by the  
HAWAII STATE GOVERNMENT

[www.dhrd.hawaii.gov](http://www.dhrd.hawaii.gov)  
Website where State Holiday Schedule posted

Year 2019 HAWAII STATE HOLIDAYS

<u>(Hawaii Rev. Statutes, Sec. 8-1)</u>	<u>Day Observed in 2019</u>	<u>Official Date Designated in Statute/Constitution</u>
New Year's Day.....	Jan. 1 Tuesday .....	The first day in January
Dr. Martin Luther King, Jr. Day.....	Jan. 21 Monday.....	The third Monday in January
Presidents' Day.....	Feb. 18 Monday.....	The third Monday in February
Prince Jonah Kuhio Kalaniana'ole Day.....	Mar. 26 Tuesday .....	The twenty-sixth day in March
Good Friday.....	April 19 Friday.....	The Friday preceding Easter Sunday
Memorial Day.....	May 27 Monday.....	The last Monday in May
King Kamehameha I Day.....	June 11 Tuesday.....	The eleventh day in June
Independence Day.....	July 4 Thursday.....	The fourth day in July
Statehood Day.....	Aug. 16 Friday.....	The third Friday in August
Labor Day.....	Sept. 2 Monday.....	The first Monday in September
Veterans' Day.....	Nov. 11 Monday.....	The eleventh day in November
Thanksgiving.....	Nov. 28 Thursday.....	The fourth Thursday in November
Christmas.....	Dec. 25 Wednesday.....	The twenty-fifth day in December

Year 2020 HAWAII STATE HOLIDAYS

<u>(Hawaii Rev. Statutes, Sec. 8-1)</u>	<u>Day Observed in 2020</u>	<u>Official Date Designated in Statute/Constitution</u>
New Year's Day.....	Jan. 1 Wednesday.....	The first day in January
Dr. Martin Luther King, Jr. Day.....	Jan. 20 Monday.....	The third Monday in January
Presidents' Day.....	Feb. 17 Monday.....	The third Monday in February
Prince Jonah Kuhio Kalaniana'ole Day.....	Mar. 26 Thursday .....	The twenty-sixth day in March
Good Friday.....	April 10 Friday.....	The Friday preceding Easter Sunday
Memorial Day.....	May 25 Monday.....	The last Monday in May
King Kamehameha I Day.....	June 11 Thursday.....	The eleventh day in June
Independence Day.....	July 3 Friday.....	The fourth day in July
Statehood Day.....	Aug. 21 Friday.....	The third Friday in August
Labor Day.....	Sept. 7 Monday.....	The first Monday in September
General Election Day .....	Nov. 3 Tuesday.....	The first Tuesday in Nov. following the first Monday of even numbered years. <i>(Hawaii State Constitution, Article 2 – Section)</i>
Veterans' Day.....	Nov. 11 Wednesday.....	The eleventh day in November
Thanksgiving.....	Nov. 26 Thursday.....	The fourth Thursday in November
Christmas.....	Dec. 25 Friday.....	The twenty-fifth day in December

**FOOTNOTES:** For use solely by State government agencies. Federal government and local banking holidays may differ. For State agencies that operate on other than Monday-Friday 7:45 AM to 4:30 PM schedules, also refer to appropriate collective bargaining agreements. Created by the Department of Human Resources Development 2/28/2018 subject to change.

<b>Agency:</b> Hawaii Public Housing Authority 1002 North School Street Honolulu, HI 96817	<b>Agency Contact:</b> (Person most familiar with the recommendation and its bases.) <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:20%;"><b>Name:</b></td> <td>Becky Choi</td> </tr> <tr> <td><b>Title:</b></td> <td>State Housing Development Administrator</td> </tr> <tr> <td><b>Telephone:</b></td> <td>(808) 832-6020</td> </tr> <tr> <td><b>Email:</b></td> <td>Becky.L.Choi@hawaii.gov</td> </tr> </table>	<b>Name:</b>	Becky Choi	<b>Title:</b>	State Housing Development Administrator	<b>Telephone:</b>	(808) 832-6020	<b>Email:</b>	Becky.L.Choi@hawaii.gov
<b>Name:</b>	Becky Choi								
<b>Title:</b>	State Housing Development Administrator								
<b>Telephone:</b>	(808) 832-6020								
<b>Email:</b>	Becky.L.Choi@hawaii.gov								

The following wage rates are recommended for maintenance laborers and mechanics engaged in the operation of the low-income or affordable housing developments of the above agency. I certify that this recommendation reflects the wage rates that prevail for maintenance work performed within the operating jurisdiction of this agency. Accordingly, I request that HUD issue the following wage rates for maintenance work performed beginning on: \_\_\_\_\_ (insert agency fiscal year beginning date mm/dd/yyyy).

<b>Executive Director/Designee</b> (Type or print)	<b>Signature</b>	
<b>Name:</b> Hakim Ouansafi		
<b>Title:</b> Executive Director	<b>Date:</b>	
<b>Work Classification(s) / Job Title(s)</b>	<b>Hourly Wage Rates</b>	
	<b>Basic Wage</b>	<b>Fringe Benefits</b>
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$

(Use additional sheets, if necessary.)

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. This information collection facilitates the determination of prevailing maintenance wage rates pursuant to the U.S. Housing Act of 1937 and the Native American Housing Assistance and Self-Determination Act of 1996.