



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
October 1, 2020, between Hawaii Public Housing Authority
State of Hawaii ("STATE"), by its Executive Director
(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 Corporation
under the laws of the State of , whose business address and federal
and state taxpayer identification numbers are as follows:

RECITALS

- A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services, or both.
B. The STATE has issued an invitation for competitive sealed bids, and has received and reviewed bids submitted in response to the invitation.
C. The solicitation for bids and the selection of the CONTRACTOR were made in accordance with section 103D-302, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 5, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").
D. The CONTRACTOR has been identified as the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation.
E. Pursuant to Section 356D-4, HRS, the STATE is authorized to enter into this Contract.
F. Money is available to fund this Contract pursuant to:
(1)
(Identify state sources)
or (2) Federal Low Income Public Housing Operations Fund
(Identify federal sources)
or both, in the following amounts: State \$
Federal \$

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

- 1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the Invitation for Bids number PMB-2020-33 ("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 NA DOLLARS (\$ NA).

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

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

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of Fifty and 00/100 DOLLARS (\$ 50.00) per day, in accordance with the terms of paragraph 9 of the General Conditions.

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

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

**STATE**

(Signature)

Hakim Ouansafi

(Print Name)

Executive Director

(Print Title)

(Date)

**CONTRACTOR**

(Name of Contractor)

(Signature)

(Print Name)

(Print Title)

(Date)

**CORPORATE SEAL**

(If available)

**APPROVED AS TO FORM:**

Deputy Attorney General

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



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )
) SS.
COUNTY OF \_\_\_\_\_ )

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

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of \_\_\_\_\_
My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit

Doc. Description: 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 \_\_\_\_\_



## Attachment - S1

**STATE OF HAWAII**  
**SCOPE OF SERVICES**

CONTRACTOR: \_\_\_\_\_

PROPERTY: Pumehana, 1212 Kinau Street, Honolulu, HI 96814

SERVICES: Security Services  
IFB No. PMB-2020-33

1. It is understood and agreed that the following documents, and any amendments or addenda, comprise the Contract between the parties and govern the work to be performed by the CONTRACTOR for security services: (1) Contract for Goods and Services including the Contractor's Acknowledgement, Contractor's Standard of Conduct Declaration, Attachments S1, S2, S3, S4, and S5; (2) General Conditions, AG-008 103D General Conditions,; (3) General Conditions for Non-Construction Contracts, Form HUD-5370-C; (4) Invitation for Bids number PMB-2019-26 and the all addenda (IFB); (5) CONTRACTOR's accepted bid offer dated \_\_\_\_\_. These documents are collectively referred to as the "Contract Documents".
2. The CONTRACTOR shall provide security services to the Hawaii Public Housing Authority (HPHA) in a satisfactory and proper manner as determined by the STATE and in strict accordance with the Contract Documents.
3. In accordance with the Contract Documents, the CONTRACTOR shall furnish all labor, equipment, supplies, and other means necessary to provide security services as described in IFB PMB-2020-33 and the CONTRACTOR's accepted bid offer. If there is a conflict between the CONTRACTOR's accepted bid offer and this Contract, this Contract shall prevail.
4. The CONTRACTOR shall furnish security services at the property listed below:

Asset Management Project	Property Name	Property Location
AMP 35	Pumehana	1212 Kinau Street Honolulu, Hawaii 96814

5. The CONTRACTOR shall provide security services at Pumehana under AMP 35 as follows:
  - a. Lobby Guard
    - i. Provide coverage at the lobby seven (7) days a week, including State Holidays. The tentative period of coverage shall be as follows:

Sunday thru Saturday [one (1) security officer/shift]

7:00 p.m. – 5:00 a.m.

The HPHA reserves the right to change the period of coverage, including without



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limitation to the number of officers per shift and the number of hours per shift.

- ii. Allow police/fire fighter/paramedics to enter the premises
- iii. Allow entry to vendors or individuals having official business with the HPHA.
- iv. Allow household movers or deliveries to tenants entry after providing required information as specified by the Officer-In-Charge.
- v. Stop and check all incoming guests for government issued identification unless otherwise instructed by the STATE.
- vi. Obtain consent from tenant to authorize guest entry onto premises, unless otherwise instructed by the State.
- vii. Prohibit all guests with unapproved live animals to enter the property, unless otherwise instructed by the STATE.
- viii. Provide uninterrupted lobby coverage throughout each day for the duration of the Contract. Maintain daily log of visitors in and out of the building as prescribed by the Officer-in-Charge.

Any incidents of trespassing and any criminal activity shall be reported to the Officer-in-Charge.

6. The CONTRACTOR shall provide the following services at the property as follows:

- a. Investigate all disturbances and incidents that were observed or reported in the lobby. Endeavor to abate nuisances and disturbances when possible, using tact and judgment to prevent or minimize disorder, quell disturbances and maintain law and order. Investigation and follow up shall include, without limitation:
  - i. Be alert for suspicious persons entering and exiting the property.
  - ii. Report all fires to the Honolulu Fire Department and to the Property Management Office.
  - iii. Enforce project rules and lease provisions pursuant to governing Federal public housing under Chapter 356D, Hawaii Revised Statutes (HRS), Chapter 17-2028 Hawaii Administrative Rules (HAR), and all other applicable HAR rules. See Attachments 16 and 17. Tenants shall be advised to summon the Honolulu Police Department (HPD) for disturbances and incidents that occur outside of the lobby area.
  - iv. Appropriately respond to HRS criminal violations, including without limitation, possessing or drinking alcoholic beverages in HPHA common area (see HRS



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section 281-78), engaging in disorderly conduct such as unreasonable noise or fighting/threatening behavior (see HRS section 711-1101), criminal trespass, assault, harassment, and criminal property damage.

- b. Determine the need for and to summon the Honolulu Police Department (HPD) when intervention or arrest is necessary. Cooperate with and assist the police, if necessary, and testify in court or administrative hearings when required.
- c. Monitor parked vehicles on the property premises and initiate action to tow vehicles from the property that do not have a valid parking decal. Notify the Officer-in-Charge of tow via incident report. Conduct visual inspection of parking areas for applicable current parking decals and suspicious activities. Tow vehicles parked in unauthorized areas.
- d. The Successful Bidder may act on behalf of the Officer-in-Charge to issue a trespass warning, either verbally or in writing as instructed by the Officer-in-Charge. The Successful bidder shall cooperate with the HPD pertaining to issuance and/or enforcement of trespass notices. The Officer-in-Charge shall provide guidelines to the Successful Bidder on issuance of trespass warnings.
- e. Maintain confidentiality of all documents viewed or information gathered during the performance of his/her duties, including discussing with the residents the details of incidents on property without the express consent of the Officer-in-Charge.
- f. Cooperate with local law enforcement on crime and drug prevention issues in and around the property.
- g. During an extraordinary event, enforce HPHA's rules with jurisdiction over the event (e.g., during a pandemic enforce the social distancing recommendation and do not allow tenants to gather in groups larger than 10).

f. Special Events:

The CONTRACTOR shall agree to change the security schedules for special events requiring increased security services as requested by the Officer-in-Charge. Changes to the security schedule may include increased number of hours per day or number of security personnel on a special event basis. Special events include, without limitation, an increase in criminal activity and increase in gang activity.

The HPHA provided a projected number of special event hours for each applicable Contract period as follows:



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AMP No.	Property	Projected Quantity of Special Event Hours		
		Initial Term	Option Year 1	Option Year 2
35	Pumehana	416	416	416

The Officer-in-Charge may request special event services for up to 24 hours a day as deemed necessary by the HPHA. The projected number of special event hours is estimated. The HPHA shall determine the definite amounts. The HPHA reserves the right to request/require additional hours at the accepted bid price for the applicable Contract performance period.

The Officer-in-Charge shall coordinate the special event dates and times and provide no less than 48 hours advanced notice to the CONTRACTOR.

g. Administrative and/or Judicial Hearings:

The CONTRACTOR agrees that security personnel shall appear at administrative and/or judicial proceedings to provide testimony when requested by the Officer-in-Charge. The bid price per hour for appearing at administrative and judicial hearings shall not exceed the bid price per hour for regular scheduled security services.

The HPHA provided a projected number of administrative and/or judicial hearing hours for each applicable Contract period as follows:

AMP No.	Property	Projected Quantity of Administrative and/or Judicial Hearing Hours		
		Initial Term	Option Year 1	Option Year 2
35	Pumehana	100	100	100

The projected number of administrative or judicial hearing hours is estimated. This does not imply that the HPHA will utilize these definite amounts. The HPHA reserves the right to request/require additional hours at the accepted bid price for the applicable Contract performance period.

The Officer-in-Charge shall coordinate the administrative and/or judicial hearing dates and times with the CONTRACTOR on an as needed basis.

h. Emergency Services:

The CONTRACTOR shall agree to change the security schedules in emergency situations and accommodate anticipated needs for increased security due to unforeseen circumstances as requested by the Officer-in-Charge. Changes to the security schedule may include increased number of hours per day or number of security personnel on an as needed basis. The HPHA shall



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provide not less than two (2) hours advance notice to the CONTRACTOR.

The HPHA is unable to provide a projected number of emergency hours for emergency services at the issuance of this solicitation. The HPHA reserves the right to request/require any quantity of emergency service hours at the accepted bid price for the applicable Contract performance period.

7. Community Support

On a monthly basis, unless waived by the Officer-in-Charge, the CONTRACTOR shall provide a supervisor to participate in a community walk with the HPHA Officer-in-Charge or designee and/or a tenant community group. The community walk may be up to two (2) hours or at a length of time as determined necessary by the HPHA. If a community walk is not scheduled, the supervisor shall schedule and conduct his/her own walk. At the discretion of the HPHA, the HPHA may require the walk to take place in the presence of personnel authorized by the HPHA. The purpose of the walk is to receive input from the HPHA management staff, tenants, and/or community volunteers of community concerns.

8. Reporting Requirements

The CONTRACTOR shall:

- a. Prepare and submit Incident Reports to the HPHA, covering in detail all disturbances, incidents and violations of the HPHA or site rules and regulations that were observed or reported during each daily tour of duty or other appropriate reports as requested. Such reports shall contain all pertinent facts available and the names of all persons involved and unit numbers and shall be in a format to be specified by the HPHA.

Incident Reports are due to the Officer-in-Charge not later than 8:00 a.m., the next business day of an incident or as instructed otherwise by the HPHA.

- b. For incidents requiring the CONTRACTOR's action, the CONTRACTOR shall prepare and submit follow-up Incident Reports to the HPHA indicating corrective actions taken by the CONTRACTOR to prevent similar incidents from recurring.

Follow-up Incident Reports shall be due to the Contract Administrator within five (5) business days of an incident or as instructed otherwise by the HPHA.

- c. Prepare and submit an Incident Report of Schedule Deviations to the HPHA indicating all work hours deviated from the security schedule as applicable. The Incident Report shall include security services not performed due to security officers' failure to report for duty, reporting late for duty, or all other circumstances that prevented the normal course of security coverage as scheduled.

The Incident Report of Schedule Deviations shall be due to the HPHA not later than 8:00 a.m., the next business day or as instructed otherwise by the HPHA.



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- d. On a monthly basis, prepare and submit a monthly report of the community walk, if applicable, incident reports and daily log sheets.

9. Equipment Requirements

- a. The CONTRACTOR shall provide each lobby officer with all applicable equipment and be responsible for the maintenance of all applicable equipment.
- b. All security officers shall be uniformed bearing the company name and/or logo with their name tags easily visible, without sidearms.
- c. The CONTRACTOR may provide each security officer with a cellular phone or other appropriate means of communication, flashlight, and appropriate gear for inclement weather.
- d. The CONTRACTOR shall provide the security supervisor/dispatcher with a cellular phone or other appropriate means of communication. The Successful Bidder may provide tenants access to a direct line or other appropriate means to the security officers for emergencies. The Successful Bidder may post a central dispatch number for tenants to contact.
- e. The CONTRACTOR shall be responsible for all equipment costs and maintenance of the cellular phone and/or other appropriate means of communication.

10. Facilities

The HPHA shall provide restroom facilities, where possible, within the property and may provide space which may include electricity and telephone. The CONTRACTOR shall be responsible for the daily upkeep of all assigned facilities. The CONTRACTOR shall also be responsible for any damages to the facilities caused by the CONTRACTOR's personnel.

11. Suspension of Security Services

Security service activities may be suspended at the discretion of the HPHA in the event of a natural disaster, including without limitation, hurricane, tsunami, and earthquake.

12. Managing Requirements and Qualifications (Minimum Requirements)

- a. Personnel
  - i. The CONTRACTOR shall ensure that all personnel meet minimum qualifications to include: 1) licensing requirements pursuant to section 463-10.5, HRS; and 2) at least two (2) years relevant experience in law enforcement and/or security.
  - ii. The CONTRACTOR's security officers shall be required to attend an orientation conducted by the HPHA prior to the start of services.



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- iii. The CONTRACTOR's supervisor shall have a minimum of one (1) year experience with law enforcement.
- iv. The CONTRACTOR shall not assign a security officer to the property where he/she currently resides or where his/her immediate family currently resides.
- v. The CONTRACTOR shall employ sufficient personnel at all times for performing the work in the manner and time required by these specifications and any subsequent post orders. The CONTRACTOR shall maintain and implement a plan to ensure minimal disruption of services due to staff vacancies or changes.
- vi. The CONTRACTOR shall be solely responsible for the behavior and conduct of their employees or agents on STATE property and shall instruct security personnel to fully cooperate with the Officer-in-Charge. Security personnel shall refrain from socializing or fraternizing with the residents of the property while on duty.
- vii. The CONTRACTOR agrees that security personnel shall not enter any occupied dwelling unit, except in the case of emergency or with the consent of the HPHA, the Officer-in-Charge or his/her designated representative.
- viii. The CONTRACTOR shall remove any of its employees from servicing or providing services to the HPHA upon request in writing by the Officer-in-Charge. At the request of the HPHA, the CONTRACTOR shall remove immediately and shall not employ any person who in the opinion of the HPHA does not perform his/her duties and responsibilities in a proper and skillful manner, intoxicated, disorderly, abusive, unable to demonstrate tact and diplomacy in dealing with the public, or is subject to an administrative investigation by the STATE for alleged misconduct while performing his/he duties.
- ix. The CONTRACTOR shall remove any security officer who is arrested for any major crime activity or felony, pending final resolution of the investigation. The HPHA has final authority to allow the individual to perform security duties pending investigation, resolution or conviction. A resulting conviction will disqualify the individual from performing work in any capacity under the resulting Contract.
- x. The CONTRACTOR shall ensure that no security officer employed under the resulting Contract has been convicted of selling, dealing, or using controlled substances, including without limitation, crystal methamphetamine, in or around any State or Federal public housing under the jurisdiction of the HPHA.
- xi. The CONTRACTOR shall inform the Officer-in-Charge of all security officers employed under the resulting Contract who is a registered sex offender.
- xii. The CONTRACTOR shall have a properly licensed supervisor to oversee the entire operation and to ensure that the services required are satisfactorily performed. All



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security officers shall be under the supervision of the CONTRACTOR.

- xiii. Security personnel will refrain from having personal visitors and from socializing while on duty. Telephone calls shall be limited to emergencies.
- xiv. The CONTRACTOR shall ensure that all information, documents, or materials viewed, discussed or provided to the security personnel in the line of duty shall be treated as confidential. Security personnel shall refrain from providing confidential information to the tenants and the general public without express consent of the HPHA.
- xv. The CONTRACTOR shall select only those individuals capable of demonstrating the following:
  - (1) Ability to exercise good judgement.
  - (2) Maturity in conduct and attitude.
  - (3) Ability to communicate in English both verbally and in writing and read simple instructions.
  - (4) Courteous to members of the public and HPHA employees, tolerant in their interactions with others, as well as neat and groomed in appearance.
- xvi. Each security officer shall maintain a satisfactory level of drug-free general health at all times to work under the resulting Contract. The following are the minimum physical requirements:
  - (1) Able to hear at a normal conversational level.
  - (2) Able to serve a normal shift walking, riding, standing, manning posts, using stairs or elevators, and operating motor vehicles if required.
  - (3) Correctable vision to 20/20 in each eye.
- xvii. During the performance of the resulting Contract period(s), the CONTRACTOR shall not discriminate against any employee or applicant for employment because of gender, race, religion, color, disability, or national origin. The CONTRACTOR shall comply with all relevant Federal and State laws and rules. Please note that businesses are responsible for knowing and complying with the most current laws.
- xvii. Each security officer shall comply with section 463-10.5, HRS, Guards; registration, instruction, training testing, and required continuing education; renewal of registration. Section 463-10.5, HRS, requires that all guards shall apply to register with the board, and shall meet the following registration, instruction, and training requirements prior to performing services as a guard:



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- (1) Be not less than 18 years of age.
  - (2) Possess a high school education or equivalent.
  - (3) Not presently suffering from any psychiatric or psychological disorder directly related and detrimental to a person's performance in the profession.
  - (4) Not convicted in any jurisdiction of a crime reflecting unfavorably on the fitness of the individual to perform services as a guard, unless the conviction was annulled or expunged by court order. The individual shall submit to a national criminal history record check as authorized by federal law, including, without limitation, to the Private Security Officer Employment Authorization Act of 2004, and specified in the rules of the board; and
  - (5) Successfully complete eight (8) hours classroom instruction before the first day of services and four (4) hours of classroom instruction annually. Classroom instruction must be provided by an instructor who is approved by the board.
- xix. The CONTRACTOR understands and agrees that the HPHA may require reduction or replacement of any number of contracted security personnel in conjunction with the use of law enforcement personnel.
- xx. 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 CONTRACTOR agrees and shall adhere to the no smoking laws while on HPHA properties. Such violation will be considered a breach of the resulting Contract and may result in suspension or termination of the Contract.
- b. Administrative
- i. The CONTRACTOR shall be required to attend quarterly meetings or upon request by the Officer-in-Charge and/or Contract Administrator. The day and time will be specified by the Contract Administrator. Necessary field visits shall be made as required.
  - ii. Every four (4) weeks, the Officer-in-Charge and/or Contractor Administrator shall submit a report to the Successful Bidder listing any discrepancies or Contract violation(s) requiring correction. The CONTRACTOR shall notify the Officer-in-Charge within five (5) calendar days of the action(s) to be taken to correct the deficiencies. These discrepancies or Contract violation(s) shall be corrected or implemented within five (5) business days to avoid delays in payment issuance or for payment adjustment purposes.
  - iii. The CONTRACTOR shall maintain its own written administrative policies, at a minimum, addressing the following:



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- (1) Drug Free Workplace Policy;
- (2) Sexual Harassment Awareness in the Workplace Policy;
- (3) Non-Violence in the Workplace Policy;
- (4) Standards of Conduct; and
- (5) Americans with Disabilities Act.

The CONTRACTOR shall maintain evidence that all staff are adequately informed of their requirements and obtain their agreement to comply with the said policies. The CONTRACTOR shall be solely responsible for the conduct of their employees and for their compliance with its administrative policies.

The CONTRACTOR further agrees and shall include in its administrative policy that it does not and shall not discriminate against any employee or applicant for employment.

Such action shall include, without limitation, no discrimination in the following:

- (1) Employment, upgrading, demotion, or transfer;
- (2) Recruitment or recruitment advertising;
- (3) Layoff or termination;
- (4) Rates of pay or other forms of compensation; and
- (5) Selection for training, including apprenticeship.

The CONTRACTOR shall insert provisions similar to the foregoing in all subcontracts.

The CONTRACTOR shall comply with requirements of the Department of Housing and Urban Development, pursuant to its regulations issued under Title VI of the Civil Rights Act of 1964; said regulations set forth in 24, CFR, Subtitle A, Part I.I et seq.

- iv. If 15 or more persons are employed, the CONTRACTOR agrees 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 basis of handicap, pursuant to 24 CFR Part 8, section 8.54(a) – Notice.

13. Performance Monitoring

- a. 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).
- b. Should the CONTRACTOR 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 CONTRACTOR 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



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- c. In the event the CONTRACTOR 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 CONTRACTOR the costs from monies due or that may thereafter become due to the CONTRACTOR. Such costs may include the HPHA's cost of procuring such services. In the event that monies due to the CONTRACTOR are insufficient for this purpose, the CONTRACTOR shall pay the difference upon demand by the HPHA. The HPHA may also utilize all other remedies provided under the Contract and by law and rules.
  
- d. Failure or refusal of the CONTRACTOR to perform services as required may be grounds to suspend or terminate the Contract as detailed in the General Conditions.



## STATE OF HAWAII

## COMPENSATION AND PAYMENT SCHEDULE

CONTRACTOR: \_\_\_\_\_

PROPERTIES: Pumehana, 1212 Kinau Street, Honolulu, HI 96814

SERVICES: Security Services  
IFB No. PMB-2020-33

1. Subject to the availability, allocation and receipt of Federal funds, and the CONTRACTOR's full and timely performance of all contractual obligations, the STATE agrees to pay the CONTRACTOR, for services satisfactorily performed under this Contract, a sum of money not to exceed \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) for the initial Contract period.

See attached and incorporated Exhibit A.

2. Federal funds are subject to appropriation by the U.S. Congress and allocation by the U.S. Department of Housing and Urban Development (HUD). Funding and period of availability may change upon notice by HUD to STATE. If there should be insufficient funds for any portion of the remaining Contract period(s) beyond the initial Contract period ending April 30, 2021, the STATE may terminate the Contract or revise the amount/quantity of services required without penalty.
3. Upon execution of this Contract, payments shall be paid in accordance with and subject to the following:
  - a. Pursuant to section 103-10, HRS, the STATE shall have 30 calendar days after receipt of invoice or 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 purposes of this paragraph, the CONTRACTOR's invoice date shall not be considered.
  - b. The CONTRACTOR, as agreed upon by the HPHA, shall submit monthly or bi-monthly itemized invoices for payment, listing services dates, security officer names, and man-hours of security services rendered for the billing cycle;

Invoices shall be submitted to the HPHA not earlier than the first of the subsequent month for monthly invoices and not earlier than the 16<sup>th</sup> of the month and the 1<sup>st</sup> of the subsequent month for bi-monthly invoices, A copy of the Schedule Deviation Incident Report shall be attached to each invoice as applicable.

- c. The CONTRACTOR shall submit one (1) original itemized invoice for each billing cycle for services rendered to:



STATE OF HAWAII

**COMPENSATION AND PAYMENT SCHEDULE**

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

- d. All invoices shall reference the Contract number assigned to this Contract. Payment shall be in accordance with section 103-10, HRS, upon certification by the Officer-in-Charge or designee that the CONTRACTOR has satisfactorily performed the services specified. Payment shall be made on the basis of actual man-hours of security services rendered by the CONTRACTOR.
  - e. Separate invoices shall be submitted for each of the following services:
    - i. Lobby Guard;
    - ii. Special Events, administrative and/or judicial hearings; and
    - iii. Emergency services.
  - f. 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> or payment processing.
  - g. Every four (4) weeks, the HPHA will submit a report to the CONTRACTOR listing any discrepancies or Contract violation(s) requiring correction. These discrepancies or Contract violation(s) must be corrected or implemented to avoid delays in payment issuance or payment adjustment purposes.
  - h. For final payment, the CONTRACTOR 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.
5. The CONTRACTOR shall be compensated at the accepted bid price per hour, which is the all-inclusive cost to the STATE, including all applicable taxes for providing the services specified.
6. The STATE is not responsible for overtime and shall not pay any overtime resulting from the CONTRACTOR's scheduling of employees.



**STATE OF HAWAII**  
**TIME OF PERFORMANCE**

CONTRACTOR: \_\_\_\_\_

PROPERTIES: Pumehana, 1212 Kinau Street, Honolulu, HI 96814

SERVICES: Security Services  
IFB No. PMB-2019-33

1. The term of this Contract shall be effective October 1, 2020 and ends on April 30, 2021.
2. No services shall be rendered on this Contract before a Notice to Proceed is issued. Any services rendered preformed prior to receipt of the Notice to Proceed shall be at the CONTRACTOR's sole risk and expense.
3. The option to extend the Contract shall be at the sole discretion of the STATE. The Contract may be extended, without the necessity of rebidding, at the same rates as proposed in the original bid unless price adjustments are made and approved as provided in IFB-PMB-2020-33 or this Contract:

Initial term of Contract:	7 months
Length of each extension:	Up to 12 months
Maximum length of Contract:	19 months

4. The initial Contract period shall commence on the STATE's issuance of a Notice to Proceed. 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 24 months with no extension to exceed a 12-month period. Contract extension(s) shall be awarded at the same or comparable rates as the current 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 current Contract period; and
  - d. The STATE may be required to obtain the U.S. Department of Housing and Urban Development's (HUD) approval in writing of the extension prior to execution of a Supplemental Contract if federal HUD funds are to be used as a funding source; and
  - e. The CONTRACTOR must obtain written approval and a Notice to Proceed by the STATE with the extension; and



STATE OF HAWAII

**TIME OF PERFORMANCE**

- f. The STATE has determined that the CONTRACTOR has satisfactorily provided services during the current Contract term; and
- g. Necessary State and/or Federal 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**

CONTRACTOR: \_\_\_\_\_

PROPERTIES: Pumehana, 1212 Kinau Street, Honolulu, HI 96814

SERVICES: Security Services  
IFB No. PMB-2020-33

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

<u>Coverage</u>	<u>Limit</u>
<b>General Liability Insurance</b> (occurrence form)	<u>\$2,000,000.00</u> combined single limit per occurrence for bodily injury and property damage.
<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 CONTRACTOR and to all employees of sub-CONTRACTORS (in case any sub-CONTRACTOR fails to provide adequate similar protection for all his employees).

- a. The State of Hawaii, the Hawaii Public Housing Authority, its elected and appointed officials, officers and employees shall be named as additional insured, except for Professional Liability Insurance and Workers Compensation Insurance, as respect to operations performed for the State of Hawaii under this Contract. Before the effective date of the Contract, the CONTRACTOR agrees to provide the STATE certificate(s) of insurance necessary to satisfy the STATE that the CONTRACTOR is in compliance with insurance provisions of this Contract and will keep such insurance in effect and the certificate(s) therefore on deposit with the STATE during the entire term of this Contract. Upon request by the State, the CONTRACTOR shall furnish a copy of the policy or policies.
- b. Failure of the CONTRACTOR to provide and keep in force such insurance shall be a material default under this Contract. The STATE shall be entitled to exercise any or all of the remedies provided in this Contract and by law for default by the CONTRACTOR.
- c. The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability hereunder or to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, CONTRACTOR shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Contract.



STATE OF HAWAII  
SPECIAL CONDITIONS

- d. The CONTRACTOR shall immediately provide written notice to the contracting department or HPHA should any of the insurance policies evidenced 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. The CONTRACTOR shall have a permanent office in the State where he/she conducts business and where it will be accessible in person or via telephone calls during normal State of Hawaii government business hours to address requests that need immediate attention. A telephone answering service is not acceptable.
  3. 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'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 it has a collective bargaining agreement or any other understanding a notice advising the labor organization or workers' representative of the CONTRACTOR's commitments under this section 3 clause. CONTRACTOR shall 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, the availability of apprenticeship/training positions and the qualifications for each. The notice shall also provide the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.



STATE OF HAWAII

**SPECIAL CONDITIONS**

- d. The CONTRACTOR shall include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135. It shall 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 shall 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 shall certify that any vacant employment positions, were not filled to circumvent the CONTRACTOR's obligations under 24 CFR part 135. This includes any 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 whole the regulations of 24 CFR part 135 require employment opportunities to be directed.
  - 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.
4. The STATE shall monitor the performance of work on an ongoing basis through personnel observation, site inspection and/or other appropriate methods deemed as appropriate by the Contract Administrator and his/her designated representative(s).
  5. In the event the CONTRACTOR fails, refuses, or neglects to perform the services in accordance with the requirements of the IFB PMB-2019-26 or this Contract, the STATE reserves the right to purchase in the open market a corresponding quantity of services, and to deduct the cost of such services from any monies due or may thereafter become due the CONTRACTOR. In case monies due to the CONTRACTOR is insufficient for the purpose, the CONTRACTOR shall pay the difference upon demand by the STATE. The STATE may also utilize all other remedies provided under the Contract and by law and rules.
  6. Failure or refusal of the CONTRACTOR to perform services as required may be grounds to suspend or terminate the Contract as detailed in the General Conditions.
  7. In the event of a conflict between the Federal General Conditions, HUD 5370-C (01/2014) and the State General Conditions, AG-008 103D General Conditions, the more restrictive shall apply.
  8. In the event of a conflict between the Special Conditions and the General Conditions, the Special Conditions apply.
  9. Liquidated damages are fixed at the sum of FIFTY DOLLARS (\$50.00) for each calendar day that the CONTRACTOR fails to perform in whole or in part any of its obligations under the Contract in accordance with the terms of paragraph 9 of the General Conditions. Liquidated damages may be deducted from any payments due or may become due to the CONTRACTOR.
  10. The CONTRACTOR shall repair all damages caused by the CONTRACTOR's equipment or employees to existing utilities and structures, such as water lines, electric conduits, sewer lines,



STATE OF HAWAII  
**SPECIAL CONDITIONS**

and buildings. If such repairs are not completed within an agreed upon timeline, the STATE reserves the right to purchase services for the necessary repairs from the open market and to deduct all repair costs from moneys due or may thereafter become due to the CONTRACTOR. In the event money due to the CONTRACTOR is insufficient for the purpose, the CONTRACTOR shall pay the difference upon demand by the STATE.

11. Interchangeable Terms. The following terms shall be one and same:
  - a. “STATE” and “HPHA”.
  - b. “Contract” and “Agreement”.
  - c. “CONTRACTOR” and “Successful Bidder.”.
12. This CONTRACT may be executed in counterparts, each of which shall be deemed original, but all of which, together, shall constitute one instrument. This CONTRACT may also be executed by electronic signature.
13. Due to the COVID-19 pandemic, the Contractor shall have their employees adhere to the following protocols while doing work at all HPHA jobsites.
  - i. Contact with tenants shall be avoided with social distancing of a minimum of six (6) feet maintained,
  - ii. Non-essential work that requires close contact shall be avoided,
  - iii. Wash or clean hands before entering or leaving the site with soap and water or hand sanitizer with at least 60% alcohol content,
  - iv. Wear a face mask covering mouth and nose at all times while on HPHA properties,
  - v. Personnel with a fever, cough or other flu-like symptoms shall not be permitted on the jobsite.

Protocols for the COVID-19 pandemic will remain in effect until the Governor of the State of Hawaii withdraws the COVID-19 Emergency proclamation.

## GENERAL CONDITIONS

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## GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 13. Termination for Default.

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

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

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

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

#### 14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

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

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

21. Price Adjustment.

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

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

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

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

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

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

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

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

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

31. Records Retention.

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

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

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

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

d. Termination for Cause. In addition to any other remedies provided 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.