STATE OF HAWAI'I

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
INFORMATION AND COMMUNICATION SERVICES DIVISION

HONOLULU, HAWAI'I

LEGAL AD DATE: JULY 15, 2015

INVITATION FOR BIDS
No. IFB-16-001

SEALED BIDS
FOR
LANDSCAPING AND
BUILDING MAINTENANCE, BRUSH CLEARING, AND FIRE BREAK MAINTENANCE AT
REMOTE TELECOMMUNICATIONS FACILITIES

will be received up to and opened at 2:00 P.M. (HST)
on
Wednesday August 12, 2015

at the Information and Communication Services Division (ICSD) Kalanimoku Building,
1151 Punchbowl Street, Room B-10, Honolulu, HI 96813

Notify ICSD if you intend to attend the inspection visits no later than 4:00 PM Wednesday July 22, 2015. If not notified by any vendor, ICSD staff are not required to attend a site inspection visit and no access will be possible.

Technical questions relating to this bid solicitation shall be directed to Mr. Vincent E. Krog, telephone (808) 586-1930 ext. 625, facsimile (808) 586-1962 or e-mail: vincent.e.krog@hawaii.gov.

Procurement questions relating to this bid solicitation shall be directed to the designated the Contract Administrator (CA), Ms. Sharon N.H. Wong, ICSD Acting Administrator, or her duly appointed representative. Ms. Wong may be contacted at telephone: (808) 586-1910, by facsimile: (808) 586-1922, or email: sharon.n.wong@hawaii.gov

Todd Nacapuy, Chief Information Officer

1.0 Significant Dates

Legal Ad Date:_____Wednesday July 15, 2015

Notification of Attendance:_____4:00 PM Wednesday July 22, 2015

Site Visits:_____Monday August 3, 2015 – Friday August 7, 2015

Deadline for Questions:_____4:00 PM Monday August 10, 2015

Questions Answered:_____4:00 PM Tuesday August 11, 2015

Bids Due / Opening:_____2:00 PM Wednesday August 12, 2015

Award Notification:_____2:00 PM Thursday August 13, 2015

LANDSCAPING AND
BUILDING MAINTENANCE, BRUSH CLEARING, AND FIRE BREAK MAINTENANCE AT
REMOTE TELECOMMUNICATIONS FACILITIES
IFB-16-001

Chief Information Officer
Office of Information Management and Technology
Department of Accounting and General Services
State of Hawai'i
Honolulu, Hawai'i 96813

Dear Sir:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications, Special Provisions, and in the General Conditions, Form AG-008 103D (Rev. 10/17/13) attached to IFB-16-001; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof.

The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawai'i Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Date: _____
Telephone No.: _____
Fax No.: _____
e-mail Address: _____

Payment address, if other than street address at right:

_____

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

_____
Social Security or Federal I.D. No.:

_____

Respectfully submitted,

_____
Exact Legal Name of Offeror

_____
Authorized Signature (Original)

_____
Title

_____
Street Address
City, State, Zip Code

If Offeror shown above is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the contract, if awarded, will be executed:

_____

Offeror is: ____ Individual ____ Partnership ____ Corporation ____ Joint Venture ____Other (specify)

State of incorporation: Hawai'i_____ *Other _____ (Specify jurisdiction)

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

The following bid (Page OF-2) is hereby submitted for Landscaping and Building Maintenance, Brush Clearing, and Fire Break Maintenance at Remote Telecommunications Facilities (IFB-16-001)

Item 1. Per visit cost by site for Landscaping and Building Maintenance once every **four** months:

1A. Mt. Kilohana, Kaua'i: _____ $ _____

1B. Koko Head, O'ahu: _____ $ _____

1C. Round Top, O'ahu: _____ $ _____

1D. Puu Nana, Moloka'i: _____ $ _____

1E. Puu Kilea, Lanai: _____ $ _____

1E. Kaupulehu, Hawai'i: _____ $ _____

1F. Waimanalo Ridge, O'ahu: _____ $ _____

Item 2. Per visit cost by site to perform Brush Clearing once every **four** months:

2A. Mt. Kilohana, Kaua'i _____ $ _____

- Brush Clearing borders of access road to site (between site and irrigation ditch gate)

Item 3. Per visit cost by site to perform Fire-Break Maintenance once every **four** months:

3A. Koko Head, O'ahu: _____ $ _____

3B. Waimanalo Ridge, O'ahu: _____ $ _____

3C. Puu Nana, Moloka'i: _____ $ _____

Item 4. Total Annual Bid for All Sites:

4A. (All Item 1 + All Item 2 + All Item 3) X 3: _____ $ _____

I understand and agree that the State has the unilateral right to delete from the contract any telecommunications site(s) or item(s) above in its or their entirety at the pro-rated annual cost of the price bid for that site and/or items.

Prices quoted by the Offeror in the bid proposal shall remain firm for the longer of sixty days following formal notification of award, or through September 30, 2015.

OFFEROR MUST SIGN PAGE OF-2 /OF-2, OF-3, ON THE OFFER FORM WITH BLUE OR BLACK COLOR PERMANENT INK. DOLLAR AMOUNTS AND NAMES OF REFERENCES ON THESE PAGES MUST BE ENTERED IN PERMANENT INK OR TYPEWRITTEN.

OFFEROR: _____

INSURANCE COVERAGE

		Carrier	Policy No.
1.	Commercial General Liability	_____	_____
2.	Worker's Compensation	_____	_____
3.	Temporary Disability	_____	_____
4.	Prepaid Health Care	_____	_____
5.	Automobile Insurance	_____	_____

REFERENCES

Offeror shall list below the names and addresses of two (2) companies or government agencies in the State of Hawai'i other than the State of Hawai'i government to whom it has provided or is currently providing maintenance services for landscaping and building maintenance, etc. that is substantially similar to those requested herein:

	Name	Address	Contact Person	Telephone No.
1.				
2.				

OFFEROR: _____

WAGE CERTIFICATE
(For Service Contracts)

Subject: IFB/RFP No.: _____

Title of IFB/RFP: _____

_____

_____
(To be completed by Offeror)

Pursuant to Section 103-55, Hawaii Revised Statutes (HRS), I hereby certify that if awarded the contract in excess of $25,000, the services to be performed will be performed under the following conditions:

All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with; and

The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work, with the exception of professional, managerial, supervisory, and clerical personnel who are not covered by Section 103-55, HRS.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Payment in the final settlement of the contract or the release of bonds, if applicable, or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected; and

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

Offeror _____

Signature _____

Title _____

Date _____

1. INTRODUCTION

The State of Hawaii, Department of Accounting and General Services (DAGS), Information and Communication Services Division (ICSD) owns and operates radio facilities statewide. The ICSD radio facilities support microwave communications and land mobile radio communications systems used by State, federal, and county agencies. Many of the ICSD's radio facilities are located in remote areas that require the use of a 4WD vehicle to safely access the facility. Because these facilities contain and support mission critical systems used to support life, health, and safety the ICSD has decided to award this work to a single entity to ensure that security procedures are followed in a uniform and responsible manner and that all work is done in a safe, consistent, and reliable manner.

2. BID SPECIFICATIONS

2.0 Overview

Service provided by the successful Offeror for this contract, in accordance with the specifications herein, includes the routine upkeep of grounds and property so that areas within and around radio facility boundaries are kept neatly groomed and cut back to provide a clean, neat and safe work environment. As part of this work the successful Offeror shall trim unwanted vegetation and remove the trimmings from the site and dispose of them in an environmentally appropriate manner. Landscaping work includes, but is not limited to, trimming and removal of unwanted vegetation. Building maintenance services include, but are not limited to, cleaning, rubbish removal, provisioning of supplies as specified, replacement of light bulbs, maintenance of door seals and threshold barriers to keep out insects, and lubrication of door locks and hinges. Building maintenance also includes miscellaneous tasks such as removal of debris from building roofs where specified and occasional touch up painting. Brush cleaning and fire break maintenance services are required at certain locations to enable vehicle passage and/or provide a clear area to minimize wildfire threats to facilities.

All labor, wages (both regular and overtime), personnel travel costs, per diem, parts, materials, supplies (both required by this specification and those used by the Offeror), consumables (such as, but not limited to, light bulbs and lubricants), tools, equipment, safety gear, costs for storage, transportation, shipping, supervision, access fees, inspection fees, and taxes as required to accomplish the maintenance activities described herein shall be included in the fixed price bid.

2.1 Work Locations

Mt. Kilohana, Kauai, located on Grove Farm property mauka of the agricultural fields above Lihue several miles past the end of Ehiku Road. Use of a four-wheel drive vehicle is required to safely access the radio facility.

Round Top, Oahu, within Puu Ualakaa State Park at 3270 Round Top Drive, Honolulu 96822.

Waimanalo Ridge, Oahu, located at the end of a private 1.1 mile long paved access driveway which starts at the upper end of Kamehame Drive. This site is comprised of the former Navy equipment building 133 and antenna tower platform 133A and is bordered on one side by the fence for the City radio site.

Koko Head, Oahu, located within the Hanauma Bay Nature Preserve about one mile south of Kalanianaole Highway, State Route 72, at 7501 Kalanianaole Highway, Honolulu.

Puu Nana, Molokai, located south of Maunaloa Road (state Route 460) about 5 miles west of the Molokai Airport, in the Kaluakoi District of Molokai. A ½ mile dirt access trail leads south to the facility. This remotely located radio facility does not have a street address. Use of a four-wheel drive vehicle is required to safely access the radio facility.

Puu Kilea, Lanai, located in the forest above Lanai City on Munro Trail, approximately 3 miles past the end of the paved section of the trail. This remotely located radio facility does not have a street address. Use of a four-wheel drive vehicle is required to safely access the facility.

Kaupulehu, Hawaii, located north of Kona, 2.2 miles mauka of the 29 mile marker on the Mamalahoa highway (State route 190). This remotely located radio facility does not have a street address. Use of a four-wheel drive vehicle is required to safely access the facility.

2.2 Landscaping Upkeep Services

Contractor will complete this work during the months of September, January, and May.

Routine landscaping upkeep shall consist of the following services performed during daylight hours:

a. Trim grass and plants growing within the boundary of the radio site.

b. Remove and eradicate all weeds, weed roots, shrubs, and new growth trees within 10 feet of the building, fence line, fuel tanks, tower, and the cable trays between the building and tower. Remove any vines, weeds, or moss growing on, near, or over the building, generator, fuel tanks, tower, and cable trays. At sites where the edge of the forest abuts the fence line remove and eradicate all weeds, weed roots, shrubs, and new growth trees that are within the portion of the forest within 10 feet of the fence line. The telecommunication site always includes the space under the tower and the cable bridge.

c. Trim and/or top off trees such that they are not on the same horizontal level as any antenna on the structure. Trim and/or remove any new growth trees and/or brush within the boundary of the telecommunications site that are brushing up against the building, tower, or waveguide bridge. If blocking trees are noticed that are not within the boundary of the telecommunication site, include a special note on the work report. In areas other than the Puu Nana vegetation control zone, the Contractor is responsible for keeping new tree and weed growth from occurring. The Contractor is not responsible for removing existing large trees.

d. Remove from the site and properly dispose of all landscape maintenance generated rubbish. Cuttings shall be bagged, removed, and disposed of in accordance with the requirements of the local government.

e. Remove any debris that has accumulated around the base of the tower and ensure that the tower leg bolts are free from debris and dirt.

2.3 Building Maintenance Services

Contractor will complete this work during the months of September, January, and May.
Building Maintenance Services shall consist of the following services performed during daylight hours:

a. Unless they already exist on site, the Contractor shall furnish and leave at each facility the following supplies:

   i. Small metal rubbish can and extra can liner plastic trash bags.
   ii. Upright sweeping broom or corn broom
   iii. Hand broom and dust bin.
   iv. Synthetic doormat for each entryway (to be kept inside door).
   v. One roll of paper towels and one roll of toilet paper.
   vi. One 16 ounce aerosol spray can of Tri Flow Superior PTFE Lubricant, part number TF20027, or equivalent lubricant.

   The Contractor shall replace missing supplies at least once per calendar year.

b. Remove from the site and properly dispose of all cans of WD-40 lubricants.

c. Lubricate all locks and door hinges with Tri Flow Superior Lubricant or equivalent lubricant formulated with Polytetrafluoroethylene (PTFE). The use of WD-40 is prohibited.

d. Replace all failed room light bulbs and entry door light fixture bulbs as necessary. The Contractor is not responsible for replacing light bulbs in dusk-to-dawn light fixtures or aviation warning lamps.

e. Vacuum interior floors.

f. Wet mop floors and re-coat with wax as necessary.

g. Empty all rubbish cans, properly remove and discard rubbish, and replace rubbish can liner. Contact the ICSD Radio Engineer if there are any questions regarding if an item is to be kept or discarded.

h. Maintain interior free of rodents, insects and dust. Seal or close any openings, which may permit rodents, insects and dust to enter the building. Clean up and remove any rodent or insect droppings and make sure the building and its eaves are clear of any insect, spider, or wasp nests.

i. Replace or add, if necessary, barrier strips at door thresholds to keep buildings sealed.

j. Replace or add, if necessary, weather-stripping around door frames.

k. Inspect roof of building and roof flashing for water ponding or incursion and report any ponding or roof problems to the ICSD Radio Engineer in writing. Remove leaves, branches, and other debris from the building roof, eaves, rain gutters, and downspouts. Remove from site and properly dispose of all debris.

l. Inspect exterior of building for structure and paint deterioration. Inspect building walls, building foundation, and walkways for cracks. Report any problems discovered to the ICSD Radio Engineer in writing.

m. Perform minor touch up of paint chipping or flaking with water base latex for exterior walls and UGL Dry-Loc or equivalent for interior walls.

2.4 Brush Clearing

Contractor will complete this work during the months of September, January, and May.

Brush clearing services are required to keep both the paved driveway and the dirt roads leading to the Mt. Kilohana radio facility open for safe vehicle access. Note that the total section to be cleared includes approximately 1 mile of dirt road in addition to the 0.2 mile driveway. Starting from the site gate, the portion to be cleared extends beyond the state property fence at the end of the paved road, past the next gate through the cow pasture to the gate near the irrigation ditch edging the fields. Note that the length to be kept clear is substantially longer than just the paved driveway portion between the upper gate and the ICSD building. Brush clearing shall consist of the following services:

- Cut back all vegetation growing in the roadway and extending three feet beyond the end of the roadway on either side of the driveway and the old cane field access road between the ICSD radio facility fence and the irrigation ditch.
- Remove mud and debris accumulating in the low spot on the paved access driveway.
- At the Mt. Kilohana facility fence line cut back the vegetation growing to the right side of the gate of the site fence as viewed from the driveway (the building is on the left side of the compound in this view). Trim the vegetation along that fence so that it is trimmed to the ground 3' from the fence line, and such that up to 10' outside the fence line the vegetation is no higher than the fence.

2.5 Fire-Break Maintenance

Contractor will complete this work during the months of September, January, and May.

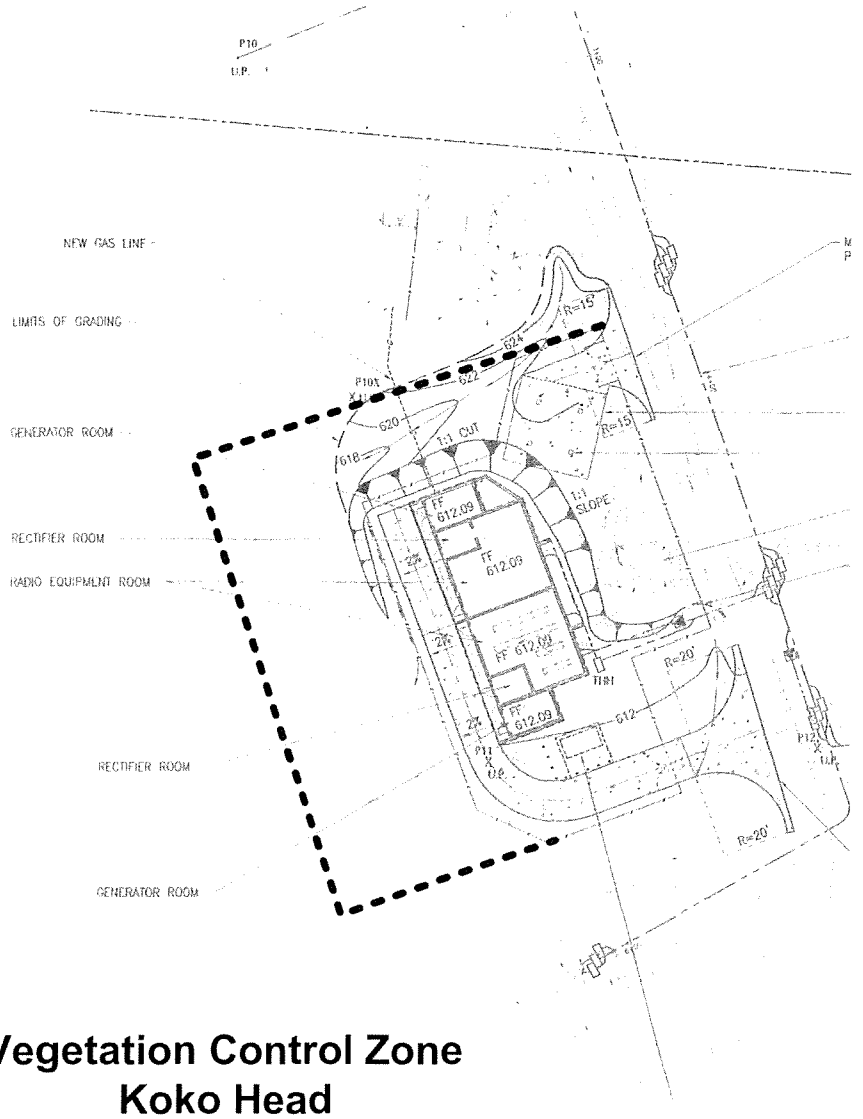
Fire-Break Maintenance Services shall be done at the following sites and include the services specified for each:

- Koko Head radio facility
- Waimanalo Ridge radio facility
- Puu Nana radio facility

See diagrams below for details.

At the Koko Head radio facility:

- Trim all vegetation to the ground within the facility.
- Cut back all non-tree vegetation to 6 inches or lower to the north, west, and south of and within 75 feet from the fence line of the Koko Head radio facility.
- Trim all trees to no more than 5 feet high. Of the trees below 5 feet and trimmed to be below 5 feet, remove (thin out) at least 50% of their fuel load to the north, west, and south of and within 75 feet from the fence line of the Koko Head radio facility.
- Outside the fence, cut-back and trimming shall be done in a manner that does not kill the plants providing ground cover or leave bare soil that would be subject to erosion from wind and rain.
- Refer to the diagram "Vegetation Control Zone - Koko Head."



Vegetation Control Zone
Koko Head

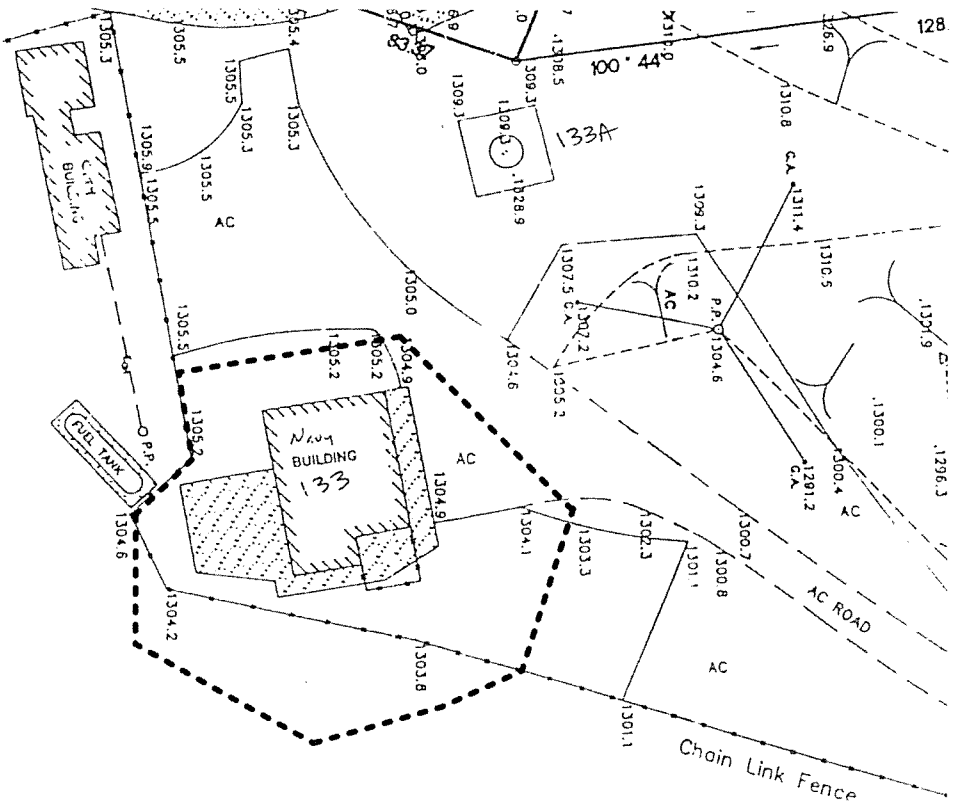
At the Waimanalo Ridge radio facility:

- Trim all vegetation to the ground within the fence line to the South, and outlined area to the North within the compound.

- Cut back all trees and non-tree vegetation to 6 inches or lower within 50 feet from Building 133 and within 30 feet of Antenna Tower 133A. The Offeror is not responsible to cut-back trees or vegetation that is within the fence line of the City compound at the upper left on the map. The Offeror is responsible to cut back all non-tree vegetation to 6 inches or lower on the sloping areas to the south and west of Building 133 up to 50 feet away as far as safely possible without the use of climbing harnesses or fall restraints. This will properly expose the hidden hike trail used by vandals.

- Outside the fence, cut-back and trimming shall be done in a manner that does not kill the plants providing ground cover or leave bare soil that would be subject to erosion from wind and rain.

- Refer to the diagram "Vegetation Control Zone - Waimanalo Ridge."



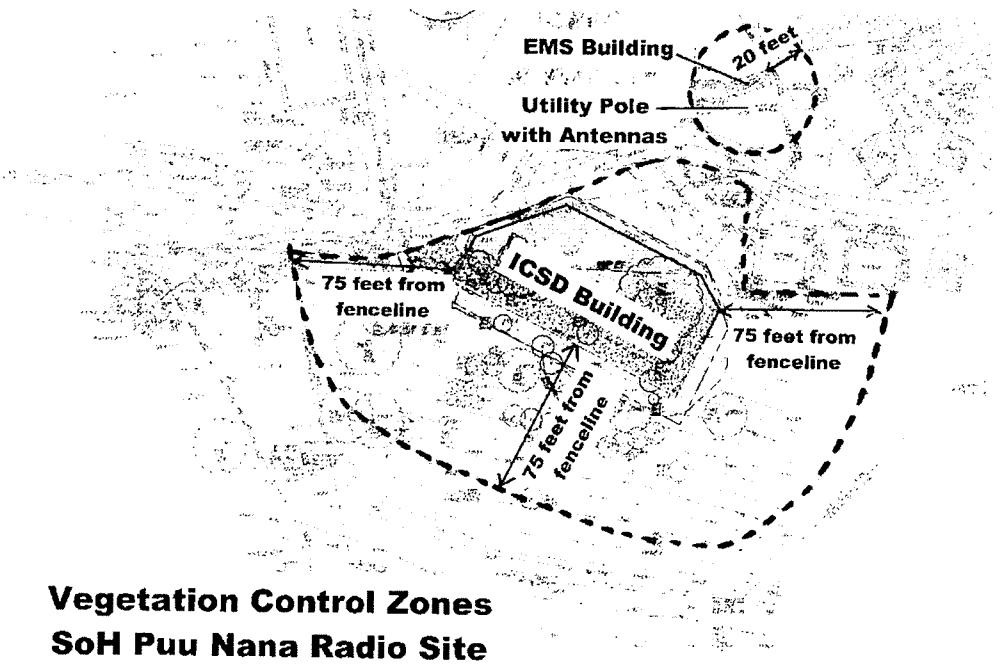
Vegetation Control Zone
Waimanalo Ridge

At the Puu Nana radio facility:

- Cut back all non-tree vegetation to 6 inches or lower within 75 feet from the fence line of the ICSD radio facility.

- Trim all trees to less than 5 feet high and remove (thin out) at least 50% of their fuel load within 75 feet from the fence line of the ICSD radio facility.

- Trim all vegetation to the ground within the facility.
- Keep all vegetation trimmed to 3 inches or lower within the area 20 feet from the EMS Building and the EMS utility pole with antennas. Remove all trees and bushes from within this area.
- Outside the fence, cut-back and trimming shall be done in a manner that does not kill the plants providing ground cover or leave bare soil that would be subject to erosion from wind and rain.
- Refer to the diagram "Vegetation Control Zones - SoH Puu Nana Radio Site."



Vegetation Control Zones
SoH Puu Nana Radio Site

2.6 Miscellaneous Items and Services Required with no Additional Charge

At no additional charge to the State, the Contractor shall, as part of the work to provide Landscaping Upkeep, Building Maintenance, Brush Clearing, and Fire-Break Maintenance

services provide the miscellaneous items and/or services per site for the radio facilities listed below:

- **Mt. Kilohana**

  At least once a year provide and leave at the Mt. Kilohana radio facility a new aerosol spray can of Wasp Repellant.

- **Puu Kilea**

  During each visit, sweep the building roof clear of leaves and debris, sweep the top of fuel tank to clear leaves and debris, and remove by hand any debris accumulating along the path of the above ground fuel lines.

2.7 CLEAN UP

The Contractor shall remove and dispose of all left over fuel, lubricants, and solvents in accordance with federal, State, and local environmental regulations. The Contractor shall remove and properly dispose of all green waste and site rubbish found inside or outside the radio building.

The Contractor shall keep the job sites free of debris, litter, refuse, etc. The Contractor shall remove all tools, equipment, and machines from the areas upon completion of the work.

2.8 Required Written Reports

Within five working days after the beginning of the month of periodic service, the Offeror shall provide the ICSD a full written report that describes all work done on this contract during the previous period. The written report shall list the sites visited, describe work performed and list all items supplied to each site. The report shall include embedded photographs to depict site and building conditions, broken and/or damaged items, and the final condition of the facilities and grounds

2.9 Pre-Bid Examination of Service Areas and Equipment

Prospective Offerors should visit each radio facility to inspect the facility and grounds; familiarize themselves with the existing conditions; and understand the amount and type of work to be performed. No additional compensation will be made due to any misunderstanding or error regarding conditions at the sites and facilities or the amount and type of work required to be performed by the Offeror. Offeror shall consider ICSD facilities and grounds to be in "as is" condition as the ICSD cannot guarantee their status. Prospective Offerors are responsible for their traveling expenses incurred for the examination of the radio facilities. The ICSD will not arrange or provide 4WD transportation to those sites where 4WD drive vehicles are required.

Notify ICSD if you intend to attend the inspection visits no later than 4:00 PM Wednesday July 22, 2015. If not notified by any vendor, ICSD staff are not required to attend a site inspection visit and no access will be possible.

The ICSD has scheduled **one-time-per-site inspection visits** as follows:

SITE	DATE
Day 1:	**August 3, 2015**
Kilohana Meet at gate on Ehiku St. Lihue, Kauai.	**9:00 AM**
Day 2:	**August 4, 2015**
Koko Head Meet at Hanauma Bay gate to Kokohead facility.	**8:30 AM**
Waimanalo Ridge Meet at Kamehame Ridge Gate, Hawaii Kai.	**11:00 AM**
Round Top Meet at Round Top Radio Facility within Puu Ualakaa State Park at 3270 Round Top Drive, Honolulu 96822	**1:00 PM**
Day 3:	**August 5, 2015**
Puu Kilea, Lanai Meet at the Blue Ginger Cafe, 409 7th, Lanai City	**7:30 PM**
Day 4:	**August 6, 2015**
Puu Nana, Molokai Meet at DAGS Maintenance Baseyard, 45 Makaena Place, Kaunakakai, Molokai	**8:30 AM**
Day 5:	**August 7, 2015**
Kaupulehu, Hawaii Meet at the Pine Tree Cafe, 73-4040 Hulikoa Drive, Kailua-Kona, Hawaii	**9:00 AM**

The State and the ICSD will **not be responsible for the Offeror's inability to bid** due to either: 1) the unavailability of ICSD personnel to arrange and/or accompany Offerors on site visits other than the dates and times listed above; or 2) unavailability of Offeror's representative to visit the sites and facilities during the scheduled site inspection visit.

Offerors are **not permitted** to visit the ICSD sites and facilities **without an ICSD escort**.

Offerors are not required to visit the facilities to submit a bid but are **recommended** to do so.

Submission of bid shall be evidence that the Offeror has familiarized himself/herself with the various equipment and site locations; understands and shall comply with the specifications if awarded the contract.

No additional compensation shall be made because of any misunderstanding regarding the conditions at the sites, or the amount and type of work to be performed.

2.10 Questions

Questions regarding the bid specifications must be submitted in writing to the ICSD and be received by the ICSD **no later than 4:00 PM Monday, August 10, 2015.** Although submittal of questions via electronic mail is acceptable, the State of Hawaii is not responsible should the sender's electronic mail be compromised, delayed, or discarded for any reason (e.g. for size in excess of 10 Mb).

2.11 Site Access and Security

The Offeror shall follow the ICSD's site security and access procedures as they now exist or may be amended from time to time. The Offeror shall provide personal background information for its employees and a unique employee identifying number such as last four digits of employee Social Security number or similar unique number.

The Contractor shall not show, give tours, or invite third parties to view or visit any of the ICSD radio facilities or inspect ICSD equipment or spares without the express written permission of the ICSD Radio Engineer.

Unless otherwise arranged and approved in advance with the ICSD Radio Engineer, all keys necessary for sites that require keys for access, including those on the neighbor islands, shall be picked up from and returned to the ICSD Assistance Center on O'ahu. The Assistance Center is located in the basement of the Kalanimoku Building at 1151 Punchbowl Street, Honolulu, HI 96813.

2.12 Safety

The Contractor and its employees shall comply with all applicable health and safety regulations including, but not limited to, rules and regulations of the Federal Occupational Safety and Health Administration (OSHA) and the State of Hawaii Department of Labor and Industrial Relations (DLIR).

The Contractor and its employees shall comply at all times with standards regarding work activities in and around radio transmission facilities including, but not limited to, OSHA General Industry Standard 29 CFR 1910.268 Sub-Section p. Contractor must ensure that all employees are familiar with the hazards associated with exposure to radio-frequency (RF) radiation and the precautions that must be taken when working in a "controlled" RF environment as described in FCC Rules, Part 1, Section 1.310, as the same exists or may be amended from time to time.

Alcoholic beverages, illegal drugs, fireworks, and firearms are prohibited at all facilities.

Hunting is prohibited on or near ICSD facilities or while commuting to or from working at an ICSD facility.

All ICSD radio facilities are smoke free; smoking is prohibited at all times inside any of the ICSD facilities within the fence line of the radio facility compound.

The Contractor and its employees must obey all signs and posted notices.

3. Contract Contacts

3.0 Contract Administrator

For the purpose of this contract, Ms. Sharon N.H. Wong, ICSD Acting Administrator, or her duly appointed representative, is designated the Contract Administrator (CA). Ms. Wong may be contacted at telephone: (808) 586-1910 or facsimile: (808) 586-1922.

3.1 Technical Representative

For the purpose of this contract, Mr. Vince Krog, is designated the Technical Representative. Mr. Krog may be contacted at telephone: (808) 586-1930 x625, or facsimile: (808) 586-1962.

4. BID PREPARATION

4.1 Legal Name

Offeror is requested to submit its offer using Offeror's exact legal name as registered with the DCCA, if applicable; and to indicate exact legal name in the appropriate space on OFFER FORM, PAGE OF-1. Failure to do so may delay proper execution of the contract.

Offeror's authorized signature shall be an original signature in blue or black ink. If OFFER FORM, PAGE OF-1, is unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

4.2 Bid Quotation

The bid prices shall be all inclusive and include all costs for labor, regular wages and benefits, overtime wages; personnel travel costs and per diem; parts (in accordance with the terms described herein), materials, consumables, and supplies; any additional tools, machines, equipment and safety equipment required; costs for storage, transportation, shipping; costs for management and supervision; taxes; and costs for commercial general liability insurance; as required herein by the State as necessary to accomplish the Routine Landscaping Upkeep, Building Maintenance, and Brush Clearing at Remote Telecommunications Facilities as specified herein.

4.3 Hawai'i General Excise Tax License

Offeror shall submit a current Hawai'i General Excise Tax I.D. number in the space provided on OFFER FORM, page OF-1, thereby attesting that Offeror is doing business in the State, and that Offeror will pay such taxes on all sales made to the State.

4.4 Responsibility of Offeror

Offeror is advised that if awarded a Contract under this solicitation, Offeror shall, upon award of the Contract, furnish proof of compliance with the requirements of §103D-310(c), HRS:

1. **Chapter 237, tax clearance;**
2. **Chapter 383, unemployment insurance;**
3. **Chapter 386, workers' compensation;**
4. **Chapter 392, temporary disability insurance;**
5. **Chapter 393, prepaid health care; and**
6. **Chapter 103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.**

The Offeror, if awarded a Contract pursuant to this IFB, shall comply with all laws governing entities doing business in the State. The Offeror shall obtain and provide to the State:

Responsibility of Lowest Responsive Bidder. Reference §103D-310(c), HRS. A compliance document (see **Hawaii Compliance Express** below) or equivalent must be submitted **prior to the State awarding the Contract**.

Final Payment Requirements. Contractor is required to submit a compliance document for final payment on the contract.

In addition to the compliance document, an original "Certification of Compliance for Final Payment" (SPO Form-22), will be required for final payment. A copy of the Form is available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" from under the "Quick Links" menu at the right of the webpage.

Hawaii Compliance Express. Vendors may use the Hawaii Compliance Express (HCE) to show proof of compliance with the requirements of §103D-310(c), HRS. The HCE allows businesses to register online through a simple wizard interface at http://vendors.ehawaii.gov for an annual fee payable to Hawaii Information Consortium, LLC (currently $12.00) to acquire a "Certificate of Vendor Compliance," which provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance" indicating that vendor's status is compliant with the requirements of §103D-310(c), HRS, is accepted for both contracting purposes and final payment.

Vendors not utilizing HCE to demonstrate compliance shall provide the paper certificates as instructed below. All certificates must be valid on the date it is received. All applications for applicable clearances are the responsibility of the Offeror.

HRS Chapter 237 tax clearance requirement for award. Pursuant to Section 103D-328, HRS, the lowest responsive Offeror shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp date on the certificate.

The *Tax Clearance Application*, Form A-6, and its completion and filing instructions are available on the DOTAX website: http://tax.hawaii.gov/forms/.

HRS Chapters 383 (Unemployment Insurance), 386 (Worker's Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award. Pursuant to Section 103D-310(c), HRS, the lowest responsive Offeror shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue. A photocopy of the certificate is acceptable.

The *DLIR Form LIR#27 Application for Certificate of Compliance with Section 3-122-112*, HAR, and its filing instructions are available on the DLIR website: http://labor.hawaii.gov/forms.

Compliance with Section 103D-310(c), HRS, for an entity doing business in the State. The lowest responsive Offeror shall be required to submit a *Certificate of Good Standing* (COGS) issued by the State of Hawaii Department of Commerce and Consumer Affairs (DCCA) – Business Registration Division (BREG). The Certificate is valid for six (6) months from the date of issue. A photocopy of the certificate is acceptable.

Timely Submission of all Certificates. If a valid Certificate of Vendor Compliance is not submitted on a timely basis as determined by the Procurement Officer for award of a contract, an offer otherwise responsive and responsible may not receive the award.

4.5 Offer Guarantee

A bid security deposit is NOT required for this IFB.

4.6 Original Proposal and Copies to be Submitted

One (1) original and four (4) copies shall be submitted on the forms specified in this IFB. The original shall be clearly marked "ORIGINAL" and copies shall be clearly marked "COPY." It is imperative that the Offeror submit only one original and the required number of copies. The State will not provide any reimbursement for the cost of developing, presenting, submitting, or evaluating any proposal in response to this IFB.

Offeror is encouraged to submit typewritten offers. If handwritten, it should be clearly printed. Offeror is cautioned that illegible offers of any item(s) may be automatically rejected.

4.7 References

Offeror shall list on Offer Form Page OF-3 at least two references in the State of Hawaii, other than the State of Hawaii government, for whom Offeror has performed or is currently providing landscape maintenance services.

4.8 Insurance

Offeror shall provide insurance information as requested on Offer Form Page OF-3.

4.9 Rate of Wages & Wage Certificate

Offeror is required to complete and submit a Wage Certificate by which the Offeror certifies that wages will be paid and work will be performed in accordance with HRS Section 103-55.5 and Chapter 104.

5. CAMPAIGN CONTRIBUTIUONS BY STATE AND COUNTY CONTRACTORS

Offerors are hereby notified of the applicability of HRS section 11-355, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. For more information, FAQs are available at the Campaign Spending Commission webpage (http://hawaii.gov/campaign). Information on spending issues should be directed to the Campaign Spending Commission's Executive Director or its General Counsel at (808) 586-0285.

6. AWARD

6.1 Method of Award

Award, if any, will be made to the **responsive and responsible Offeror submitting the lowest CALCULATED ANNUAL COST** for all sites statewide (see Item 4A on page OF-2). The CALCULATED ANNUAL COST (per site) is the sum of:

3.0 times Item 1 (Landscaping and Building Maintenance once every FOUR months);

3.0 times Item 2 (Brush Clearing on the borders of the access road to Kilohana, Kauai once every FOUR months);

3.0 times Item 3 (Fire-Break Maintenance once every FOUR months);

Offeror **must bid on all sites**, to have a qualifying bid proposal.

6.2 Certifications Required Prior To Award

Prior to awarding contract(s), the State will require certification of the following insurance coverage, in accordance with the requirements specified below in Section 8.0:

Commercial General Liability (occurrence form); and
Worker's Compensation.
Prior to awarding contract(s), the State will require certification of the following insurance coverage:

Temporary Disability
Unemployment Insurance
Prepaid Health Care
Automobile Insurance

6.3 Acceptance of Bid

Acceptance of bid, if any, will be made within sixty calendar days after the opening of offers. Prices quoted by the Offeror in the bid proposal shall remain firm for the longer of sixty days following formal notification of award, or through September 30, 2015.

7. CONTRACT

7.0 Contract Execution

The State shall forward a written contract to the successful Offeror for execution. The contract shall be signed by the successful Offeror and returned within ten (10) days after receipt by the Offeror. NO PERFORMANCE AND PAYMENT BONDS ARE REQUIRED.

7.1 Term of Contract

The successful Offeror shall enter into a contract for furnishing guaranteed landscaping and building maintenance, brush clearing, and fire break maintenance for a period of twelve (12) months from the commencement date on the Notice to Proceed. Unless terminated, the contract may be extended for not more than four (4) additional twelve (12) month periods or portions thereof without rebidding, upon mutual agreement, provided the contract price remains the same or lower than the initial contract price, subject to any price increase allowed by the contract.

If the extension for each twelve-month period or portion thereof is mutually agreed upon, Contractor shall be required to execute a supplement to the contract for each extended period.

7.2 Notice to Proceed (NTP)

No work shall be undertaken by the successful Contractor prior to the commencement date specified on the Notice to Proceed. The State is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the successful Offeror prior to the official starting date.

8. LIABILITY INSURANCE

NOTE: Minimum insurance requirements are different from those in prior bid specifications.

Contractor shall maintain insurance acceptable to the State in full force and effect throughout the term of the contract. The policy or policies of insurance maintained by the Contractor shall provide the following limit(s) and coverage(s):

Coverage Limits

Commercial General Liability (occurrence form)	Minimum bodily injury and broad form property damage combined single limits of liability of **$1,000,000** combined single limit per occurrence for bodily injury and property damage
Workers Compensation	Minimum coverage of Statutory: $250,000 each accident, Liability: $100,000 disease per each employee, and $500,000 disease policy limit

Automobile Insurance	Minimum coverage of $1,000,000 per accident

Each insurance policy required by this contract shall contain the following clauses:

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

2. For Commercial General Liability coverage, "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."

3. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The Contractor shall maintain the minimum insurance required in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements. The policy or policies of insurance maintained by the Contractor shall provide the limits and coverages specified herein.

The Contractor shall deposit with the State of Hawaii, DAGS, ICSD on or before the effective date of the contract, certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this IFB and the contract have been complied with and to keep such insurance in effect and the certificate(s) therefor on deposit with the State during the entire term of the contract, and any extensions thereof. Upon request by the State, Contractor shall furnish a copy of the policy or policies.

Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default under the contract, entitling the State to exercise any or all of the remedies provided in the contract for a default of the Contractor.

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

9. SERVICE REQUIREMENTS

Any adjustments to the contract shall be made through a contract modification.

10. INSPECTION

All work done and all materials furnished shall be subject to inspection and approval by the ICSD so as to ascertain that the services rendered are in accordance with requirements and intentions listed herein.

11. INVOICING AND PAYMENT

The Contractor shall submit an original and three copies of the invoice to:

Department of Accounting and General Services
Information and Communication Services Division
P.O. Box 119
Honolulu, HI 96810-0119
Attention: Fiscal Office

Payment shall be made to the Contractor at the contracted price upon certification by the State that the Contractor has satisfactorily performed the required services. All invoices shall reference the contract number.

A tax clearance certificate, not over two months old, with an original green certified copy stamp, or an HCE certificate of compliance must accompany the invoice for final payment on the contract.

12. LIQUIDATED DAMAGES

Refer to Section 9 of the General Conditions. Liquidated damages are fixed at the sum of FIFTY DOLLARS ($50.00) for each and every calendar day the Contractor delays in the completion of any item of the contract after the required date of said completion.

13. AUTHORITY

This IFB is issued under the provisions of the State Procurement Code (HRS Chapter 103D) and the State Procurement Office's applicable Directives, Circulars and administrative rules. All prospective Offerors are charged with the presumptive knowledge of all applicable legal authorities. Submission of a valid executed offer by any prospective Offeror shall constitute admission of such knowledge on the part of such prospective Offeror.

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

14. PROTEST

A protest based upon the content of the solicitation shall be submitted in writing within five (5) working days after the aggrieved persons knows or should have known of the facts giving rise thereto; provided further that the protest shall not be considered unless it is submitted in writing prior to the bid opening date.
A protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract. The notice of award letter(s), if any, resulting from this solicitation shall be posted on the Procurement Reporting System, which is available on the SPO website: http://www.hawaii.gov/spo2/source/.

Any protest pursuant to §103D-701, HRS, and Section 3-126-3, HAR, shall be submitted in writing to the Procurement Officer, ICSD, 1151 Punchbowl Street, Room B-10, Honolulu, Hawaii 96813.

15. CANCELLATION OF SOLICITATIONS AND REJECTION OF OFFERS

The solicitation may be cancelled or the offers may be rejected, in whole or in part, when in the best interest of the purchasing agency, as provided in Sections 3-122-95 through 3-122-97, Hawaii Administrative Rules.

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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 section103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.

h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.

i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.

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

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

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

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

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

(1) The Assignee assumes all of the CONTRACTOR'S obligations;

(2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and

(3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

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

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

c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.

d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.

7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.

8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.

9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.

10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.

11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.

12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

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

(1) Cancel the stop performance order; or

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

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

(1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and

(2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

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

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

13. Termination for Default.

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

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

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

c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.

e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.

f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.

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

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

(1) Any completed goods or work product; and

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

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

d. Compensation.

(1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.

(2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.

(3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:

(A) Contract prices for goods or services accepted under the Contract;

(B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);

(D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.

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

17. Payment Procedures; Final Payment; Tax Clearance.

a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.

b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.

c. Prompt payment.

(1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and

(2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

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

19. Modifications of Contract.

a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.

b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

(A) Changes in the work within the scope of the Contract; and

(B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.

d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.

f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.

g. 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 for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

(1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or

(2) Immediately terminate this Contract.

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

e. Records Retention.

(1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

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