

# **REQUIREMENTS and SPECIFICATIONS**

## **IFB J21283**

TO CONSTRUCT

**KAUIKEAOULI HALE -  
RECARPET SIXTH FLOOR  
PROJECT IDENTIFIER: 2021-07-059  
TAX MAP KEY: 2-1-017:003  
O'AHU, HAWAI'I**

FOR

**THE JUDICIARY  
STATE OF HAWAI'I**

**ROD MAILE  
ADMINISTRATIVE DIRECTOR OF THE COURTS  
STATE OF HAWAI'I**

APRIL, 2021

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## NOTICE TO BIDDERS

This solicitation is provided to you for information purposes. Bidders wishing to receive notices of addenda for this specific solicitation must register by fax at (808) 538-5805 or email to [Kelly.Y.Kimura@courts.hawaii.gov](mailto:Kelly.Y.Kimura@courts.hawaii.gov).

### SEALED BIDS (Chapter 103D, HRS) For:

**KAUIKEAOULI HALE  
RECARPET 6TH FLOOR  
Project Identifier: 2021-07-059**

Will be received through the electronic procurement website, HlePRO. The solicitation documents, including the Solicitation, Offer and Contract Forms, drawings and specifications may be obtained at the aforesaid place in electronic format. Prospective bidders are responsible to download and maintain complete bid documents in the HlePRO system.

**Submit the Competitive SOLICITATION, OFFER AND CONTRACT FORM up to 2:00 PM, MAY 6, 2021.** At that time, bids will be publicly opened. Bids received after the due time and date will not be considered.

The work generally consists of removal of existing carpet, floor preparation and replacement with new carpet tile and associated accessories on the Sixth Floor together with moves required to temporarily relocate the furnishings of the occupants to various locations on the same floor in the same building. Project will involve removal and disposal of some surplus furnishings.

The estimated construction cost is between \$150,000 and \$250,000.

Due to the extraordinary circumstances surrounding Covid19, there will be no Judiciary-conducted site visit.

We are sorry. No time for a site inspection will be scheduled or allowed.

The estimated value of the public works contract is less than \$250,000 and the apprenticeship agreement preference pursuant to Hawaii Revised Statutes §103-55.6 (ACT 17, SLH 2009) shall apply only to bids of \$250,000 or more.

The Hawaii product preference pursuant to ACT 175, SLH 2009 may be applicable for items of this solicitation. Persons wishing to certify and qualify a product not currently listed as a Hawaii Product shall submit a Certification for Hawaii Product Preference (for SPO-038) to the Hawaii State Procurement Office, 1151 Punchbowl Street, Suite 416, Honolulu, Hawaii 96813. The product shall meet the specifications of this project. The submittal must be received by 4:30 p.m. not later than 15 calendar days before this solicitation closes. View the current Hawaii Products List on the State Procurement Office (SPO) website at <http://hawaii.gov/spo>. From the 'For Vendor' drop-down menu, select 'Hawaii Product Preferences'.

For each product, one form shall be completed and submitted (i.e. 3 products should have 3 separate forms completed). The form is available on the SPO website at <http://hawaii.gov/spo>. Click on the 'Forms' drop-down menu. From the 'Audience' drop-

down menu, select 'Vendor' and from the 'Category' drop-down menu select 'Goods, Services and Construction'. Select SPO-038 to view and complete the form online.

Late submittals for this solicitation will not be reviewed by this agency.

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

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

To be eligible to submit a Bid, the Bidder must possess a valid State of Hawai'i Contractor's license classification C-7.

Refer to the **GENERAL NOTICE**, published with the project specifications for additional information.

/s/ Rodney A. Maile

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RODNEY MAILE  
ADMINISTRATIVE DIRECTOR OF THE COURTS  
The Judiciary - State of Hawai'i

## **GENERAL NOTICE**

### **TAX CLEARANCE AND HAWAII BUSINESS CERTIFICATES**

Refer to Instructions to Bidders for information regarding tax clearance and business certificates.

### **REQUIREMENT FOR CONTRACTORS LICENSING CLASSIFICATIONS**

Refer to Notice to Bidders for contractor licensing requirements.

### **OTHER INFORMATION**

Bid results and the Contract Awards notice will be posted at:

HlePRO website: <https://hiepro.ehawaii.gov/welcome.html>  
and

<https://www.courts.state.hi.us/judiciary-invitation-for-bid-ifb-results>

Refer to Instructions to Bidders for other conditions and requirements to award a contract.

Any protest shall be submitted to the Administrative Director of the Courts. Bidders shall comply with the GENERAL CONDITIONS Article 2.13 Protests.

## SECTION 00210 - INSTRUCTIONS TO BIDDERS

### PART 1 - GENERAL

#### 1.01 GENERAL

- A. Only bidders with the required Contractor's license(s) are eligible to submit a Bid.
- B. Bidders (Contractors) shall be incorporated or organized under the laws of the State or be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract. The following definitions are used in the solicitation documents.
  - 1. Hawaii Business §3-122-112 HAR: A bidder who is registered and incorporated or organized under the laws of the State is a "Hawaii Business" and eligible for an award.
  - 2. Compliant non-Hawaii Business §3-122-112 HAR: A bidder not incorporated or organized under the laws of the State, but is registered to do business in the State and complies with or is exempt from the requirements of §3-122-112 HAR, is a "Compliant Non-Hawaii Business" and eligible for an award.
  - 3. Non-compliant Bidder: If a bidder is a non-Hawaii business and is not registered with the DCCA Business Registration Division (BREG) or cannot comply with §3-122-112 HAR, then the bidder is non-compliant and is ineligible for an award.
- C. When announced by the NOTICE TO BIDDERS, all bidders who intend to submit a bid are invited to attend an initial pre-bid meeting and the accompanying site visit(s). Other interested parties may attend the initial pre-bid meeting and the accompanying site visit(s). For other site visits not conducted by the Department, bidders shall contact and make arrangements with the Project Contact Person listed in SECTION 00800 - SPECIAL CONDITIONS of these specifications.
- D. Bidders shall submit the "Solicitation, Offer and Contract Form", bid bond (if required), and any other documents required by these solicitation documents.
- E. The *GENERAL CONDITIONS* set forth additional terms and conditions for the bid and award process. The *GENERAL CONDITIONS* will be part of the contract documents by which the State and the bidder (prospective Contractor) will be bound. Bidders are directed to the *GENERAL CONDITIONS*, for contract and statutory requirements and for Bidding and Execution of Contract Requirements. Bidders are also directed to SECTION 00700 - GENERAL CONDITIONS and SECTION 00800 - SPECIAL CONDITIONS of these specifications for definitions and modifications to the *GENERAL CONDITIONS*.

#### 1.02 OFFEROR(S) or BIDDER(S)

- A. The terms "Offeror" and "Bidder" are synonymous when used in this Section 00210 and other solicitation documents.

### **1.03 PRE-BID MEETING AND SITE VISIT(S)**

#### **A. General**

1. The attendance of pre-bid meetings and site visits is strongly encouraged.
2. Failure to attend the pre-bid meeting(s) and site visit(s) for a project DOES NOT absolve the bidder from its responsibilities under section 2.4.1 of the Interim General Conditions.
3. Verbal responses and discussions may occur during the course of the pre-bid meeting or site visit and shall not be considered to alter any information in the solicitation documents (see Section 2.5.1 of the Interim General Conditions).

#### **B. Mandatory Pre-bid Meetings and Site Visits**

1. The Project Coordinator may require all prospective bidder/offerors to attend a mandatory Pre-bid Meeting(s) and Site Visit(s).
2. All bidders/offerors will be required to sign the attendance sheet.
3. Failure to attend mandatory pre-bid meetings and site visits, if required, will automatically be cause for rejection of the bid.

### **1.04 ADDENDA AND CLARIFICATIONS**

- A. The Department may periodically issue addenda and bid clarifications which may provide additional information or alter the plans and specifications.
- B. The Department will make addenda and bid clarifications available to Bidders through HlePRO. Bidders are responsible for the information contained in the addenda and bid clarifications whether or not the bidder receives the addenda or clarifications.
- C. Bidders discovering an ambiguity, inconsistency, or error when examining the bid documents or the site and bidders with questions or clarification requests shall transmit said discoveries, questions, and/or requests to the Department's Contracts Engineer in writing. Bidders may use the form entitled 'Questions and Clarifications' at the end of Section 00800 - SPECIAL CONDITIONS. Questions and requests for Clarifications shall be submitted through HlePRO. Bidders choosing not to use the form provided shall bear the responsibility for clearly labeling their submittal to allow its proper identification.
- D. All written transmittals shall be brief, concise, but complete enough to properly evaluate and determine the merits of the question or request. Include references to appropriate section numbers, paragraphs, drawings, details, schedule numbers, and provide other information as appropriate.
- E. Requests transmitted or otherwise communicated directly to the Consultant will not be considered to be transmitted to the Department and will not be addressed.
- F. Bidders shall submit all discoveries, questions, and/or requests no later than 14 calendar days prior to the submission date for sealed bids.
- G. Requests for Substitution will only be entertained prior to bid opening if Section 00800 - SPECIAL CONDITIONS indicates that substitutions before award are allowed for this project. If allowed, requests of this nature must be submitted before the deadline specified for this purpose in the Notice to Bidders.

#### 1.05 SOLICITATION, OFFER AND CONTRACT FORM (BID FORM)

- A. Bidder shall fill out the "Solicitation, Offer and Contract Form" completely. This includes the "Offer" portion of the form and all remaining fill-ins. Write in ink or type. Bidders must also comply with the supplemental instructions contained within the "Solicitation, Offer and Contract Form." Do not alter the "Solicitation, Offer and Contract Form", and maintain the form intact. When the State makes changes to the "Solicitation, Offer and Contract Form", a completely new bid form with appropriate addendum notation will be issued. Bidders shall use the most current version. Bidders shall use their exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate space on the Solicitation, Offer and Contract Form.
- B. Schedule for Work: Note the provisions of this article, the referenced COST, TIME AND SCHEDULE article, and specification SECTION 01100 - PROJECT REQUIREMENTS for the construction dates including: project schedule, project start date, jobsite start date, jobsite completion date, contract completion date and contract duration, if provided.
- C. Allowances: If applicable to this project, bidder shall include in its total lump sum (base) bid price all cash allowances that are itemized in the COST, TIME AND SCHEDULE article on the "Solicitation, Offer and Contract Bid Form" and described in SECTION 01210 - ALLOWANCES of these specifications. Unless otherwise provided in the contract documents, the bidder shall include costs for unloading and handling materials and equipment at the site, labor, installation costs, overhead, profit, coordination, insurance and other incidental expenses in the lump sum bid price and not in the allowance.
  - 1. For testing and inspection allowances, the allowance costs shall include the cost of engaging testing agencies, actual tests and inspections and reporting results. Allowance does not include incidental labor required to assist the testing agency or costs for retesting if previous tests and inspection result in failure.
- D. Variable Quantities Unit Prices: If applicable to this project, bidder shall include in its total lump sum (base) bid price a total cost for Variable Quantities Unit Prices (VQUP) that are described in SECTION 01270 - VARIABLE QUANTITIES UNIT PRICES. Bidder shall complete the VQUP schedule by extending costs for unit prices, subtotals and totals. The unit costs provided shall include all materials, labor, tools and equipment required to install the work complete, in addition to all charges for overhead, coordination, profit, insurance, and other incidental expenses. Bidder shall make sure to enter the variable quantities unit prices total amount in the bid form, COST, TIME AND SCHEDULE article.
- E. Alternates: If applicable to this project, bidder shall include its total cost(s) in the COST, TIME AND SCHEDULE article for the alternates that are described on the drawings or in SECTION 01230 - ALTERNATES. Bidder must completely fill in the cost for each listed alternate. Where the respective alternate's work will be performed at no cost to the State, bidder shall fill in '\$0.00' as the cost. **If the cost for any alternate is left blank, the "Solicitation, Offer and Contract Form" will be rejected as an irregular bid.**



1. For the purposes of evaluating the bid, the alternates are listed in the COST, TIME AND SCHEDULE article and in specification SECTION 01230 - ALTERNATES in the order of precedence from highest (listed first) to lowest for additive alternates and from lowest (listed first) to highest for deductive alternates.
  2. Bidders are directed to the COST, TIME AND SCHEDULE article that lists additional or deductive consecutive calendar days that will be allowed for each accepted alternate.
- F. Preference: If applicable to this project, preferences are considered when evaluating bids to determine the ranking of the respective bidders. The award of the contract will be in the amount of the bid exclusive of any preference adjustments.
- G. Hawaii Product Preference:
1. In accordance with ACT 175, SLH 2009, the Hawaii products preference is applicable to this solicitation. Hawaii Products may be available for those items noted on the offer form.
  2. The Hawaii products list is available on the SPO webpage at <http://spo.hawaii.gov>, click on '*Procurement of Goods, Services, and Construction-Chapter 103D, HRS*'; under '*Procurement*' click on '*Preferences*', '*Hawaii Products*' and select '*Hawaii Products List*' to view.
  3. Offeror offering a Hawaii Product (HP) shall identify the HP on the solicitation offer page(s). Any person desiring a Hawaii product preference shall have the product(s) certified and qualified if not currently on the Hawaii products list, prior to the deadline for receipt of offer(s) specified in the procurement notice and solicitation. The responsibility for certification and qualification shall rest upon the person requesting the preference.
  4. Persons desiring to qualify their product(s) not currently on the Hawaii product list shall complete form SPO-38, *Certification for Hawaii Product Preference* and submit to the Procurement Officer, and provide all additional information required by the Procurement Officer. For each product, one form shall be completed and submitted (i.e. 3 products should have 3 separate forms completed). Form SPO-38 is available on the SPO webpage at <http://spo.hawaii.gov> under the '*Quicklinks*' menu; click on '*Forms for Vendors, Contractors, and Service Providers*'.
  5. When a solicitation contains both HP and non-HP, then for the purpose of selecting the lowest bid or purchase price only, the price offered for a HP item shall be decreased by subtracting 10% for the class I or 15% for the class II HP items offered, respectively. The lowest total offer, taking the preference into consideration, shall be awarded the contract unless the offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the price offered, exclusive of the preferences.

6. Change in availability of Hawaii product. In the event of any change that materially alters the offeror's ability to supply Hawaii products, the offeror shall immediately notify the procurement officer in writing and the parties shall enter into discussions for the purposes of revising the contract or terminating the contract for convenience.
- H. Recycled Product Preference: If applicable to this project, a recycled product preference of at least 5 percent of the price of the item is available. All bidders, either proposing or not proposing to use the recycled product preference shall complete the "Recycled Product Schedule". If choosing to use a recycled product, enter the respective costs for the recycled product; otherwise, enter the cost for the non-recycled product. Make sure a cost is entered for each listed product. Each product cost shall be complete, including jobsite delivery and applicable taxes.
1. For each recycled product the bidder chooses to use, the bidder shall include in its bid package the complete "Certification of Recycled Content Form" (SPO-Form 8) along with all supporting information. A sample of the certification form is in the GENERAL CONDITIONS.
  2. The "Recycled Product Schedule" shows the percent preference used for each listed recycled product.
- I. Apprenticeship Agreement Preference:
1. If applicable to this project, any bidder seeking the preference must be a party to an apprenticeship agreement registered with the State Department of Labor and Industrial Relations (DLIR) at the time the bid is submitted for each apprenticeable trade the bidder will employ to construct the project. "Employ" means the employment of a person in an employer-employee relationship.
    - a. The apprenticeship agreement shall be registered with the DLIR and conform to the requirements of Hawaii Revised Statutes Chapter 372.
    - b. Subcontractors do not have to be a party to an apprenticeship agreement for the bidder to obtain the preference.
    - c. The bidder is not required to have apprentices in its employ at the time the bid is submitted to qualify for the preference.
  2. Self Certification. A bidder seeking the preference must identify each apprenticeable trade the bidder will employ to perform the work by completing the self-certification in the solicitation, offer and contract form. "Apprenticeable trade" shall have the same meaning as "apprenticeable occupation" pursuant to Hawaii Administrative Rules (HAR) §12-30-5.
  3. The certification of bidder's participation (Form 1)
    - a. The *Certification of Bidder's Participation - Form 1* shall be authorized by an apprenticeship sponsor listed on the DLIR list of registered apprenticeship programs. "Sponsor" means an operator of an apprenticeship program and in whose name the program is approved and registered with the DLIR pursuant to HAR §12-30-1.

- b. The authorization shall be an original signature by an authorized official of the apprenticeship sponsor.
  - c. The completed *Certification of Bidder's Participation - Form 1* for each trade must be submitted with the bid. A facsimile or copy is acceptable to be submitted with the bid, however the signed original must be submitted within five (5) working days of the bid open date. If the signed original is not received within this timeframe, the preference may be denied. Previous certifications shall not apply.
  - d. When filling out the *Certification of Bidder's Participation - Form 1*, the name of Apprenticeable Trade and Apprenticeship Sponsor must be the same as recorded in the List of Construction Trades in Registered Apprenticeship Programs that is posted on the State Department of Labor and Industrial Relations website. "Registered apprenticeship program" means a construction trade program approved by and registered with the DLIR pursuant to HAR §12-30-1 and §12-30-4.
  - e. The *Certification of Bidder's Participation - Form 1* and the List of Construction Trades in Registered Apprenticeship Programs is available on the DLIR website at: <http://labor.hawaii.gov/wdd/files/2012/12/Form-1-Certification-of-Bidders-Participation.pdf>
4. Upon receiving the Self Certification and *Certification of Bidder's Participation - Form 1*, the Procurement Officer will verify that the apprenticeship program is on the List of Construction Trades in Registered Apprenticeship Programs and that the form is signed by an authorized official of the Apprenticeship Program Sponsor. If the programs and signature are not confirmed by the DLIR, the bidder will not qualify for the preference.
  5. If the bidder is certified to participate in an apprenticeship program for each trade which will be employed by the bidder for the project, a preference will be applied to decrease the bidder's bid amount by five (5) percent for evaluation purposes.
  6. Should the bidder qualify for other preferences (for example, Hawaii Products), all applicable preferences shall be applied to the bid price.
- J. Other Conditions: Bidder acknowledges and agrees to the provisions and certifications stated in this article.
  - K. Receipt of Addenda: Bidder shall fill in the appropriate dates any addenda were received.
  - L. Listing Joint Contractors or Subcontractors:
    1. Bidder shall complete the "Joint Contractors or Subcontractors List". It is the sole responsibility of the bidder to review the requirements of this project and determine the appropriate specialty Contractor's licenses that are required to complete the project. Failure of the bidder to provide the correct names and specialty Contractor's nature of work to be performed, may cause the bid to be rejected.

2. Bidder agrees the completed listing of joint Contractors or Subcontractors is required for the project and that the bidder, together with the listed joint Contractors and Subcontractors, have all the specialty Contractor's licenses to complete the work.
3. Based on the Hawaii Supreme Court's January 28, 2002 decision in Okada Trucking Co., Ltd. v. Board of Water Supply, et al., 97 Hawaii 450 (2002), the bidder as a general Contractor ('A' or 'B' license) is prohibited from undertaking any work solely or as part of a larger project, which would require the bidder ('A' or 'B' general Contractor) to act as a specialty ('C' license) Contractor in any area in which the bidder ('A' or 'B' general Contractor) has no specialty Contractor's license. Although the 'A' and 'B' Contractor may still bid on and act as the "Prime Contractor" on an 'A' or 'B' project (*See, HRS §444-7 for the definitions of an "A" and "B" project*), respectively, the 'A' and 'B' Contractor may only perform work in the areas in which they have the appropriate Contractor's license. The bidder ('A' or 'B' general Contractor) must have the appropriate 'C' specialty Contractor's licenses either obtained on its own, or obtained automatically under HAR §16-77-32.
4. General Engineering 'A' Contractors automatically have these 'C' specialty Contractor's licenses: C-3, C-9, C-10, C-17, C-24, C-31a, C-32, C-35, C-37a, C-37b, C-38, C-43, C-49, C-56, C-57a, C-57b, and C-61.
5. General Building 'B' Contractors automatically have these 'C' specialty Contractor's licenses: C-5, C-6, C-10, C-12, C-24, C-25, C-31a, C-32a, C-42a, and C-42b.
6. Instructions to complete the Joint Contractors or Subcontractors List:
  - a. Describe the specialty Contractor's nature of work to be performed for this project and provide the complete firm name of the joint Contractor or Subcontractor in the respective columns.
  - b. List only one joint Contractor or Subcontractor per required specialty Contractor's classification, unless the nature of work to be performed by each such joint contractor is both distinct and separate. (i.e. two C-13 contractors are listed but one has the responsibility for AC controls and the other for AC power).
  - c. For projects with alternate(s), fill out the respective "Joint Contractors or Subcontractors List for the Alternate(s)". Bidder shall describe the specialty Contractor's nature of work to be performed on this project for the respective alternate. Bidders shall fill in the complete firm name and nature of work to be performed by the respective joint Contractor or Subcontractor. If the joint Contractor or Subcontractor was previously listed under base bid, listing under Alternate(s) is not required.
- M. Cost, Time and Schedule: Bidder shall completely fill out the article and enter the cost for the Project Bid Price, Variable Quantities Unit Prices and Alternates when provided. Bidder shall tabulate the Project Bid Price, Variable Quantities Unit Prices and Allowances when provided, and the Bidders shall then enter the Total Lump Sum Bid Price. **BE SURE TO ENTER THE TOTAL LUMP SUM BID PRICE IN WORDS AND NUMERALS.** Refer to Bidder's Instructions located

within the article.

1. If provided, bidder shall fill in total costs for each alternate.
  2. The bidder is directed to the construction time information Article entitled "TIME" for the contract duration and construction time for alternates. Bidder shall refer to SECTION 01100 - PROJECT REQUIREMENTS of these specifications for additional construction time information, as applicable.
- N. Offer Page: Bidder shall completely fill out Blocks 11 through 22C. Bidder shall indicate if it is a "Hawaii Business" or a "Compliant Non-Hawaii Business" in Block 21. Also, bidder shall refer to Bidder's Instructions located near end of section.

#### **1.06 BID SECURITY**

- A. Bid security is required for bids procured as Invitation for Bid (IFB) Large Purchase.
1. Bidder shall refer to SECTION 00410 or 00411, SOLICITATION, OFFER AND CONTRACT FORM, 10. ADDITIONAL SOLICITATION REQUIREMENTS, B. Bid Security, for applicable requirement.
  2. Bid security submittal shall be as follows:
    - a. Photocopy of the bid security shall be submitted with the bid documents in HlePRO.
    - b. Original bid security shall be delivered within 72 hours of date/time bids are due to:

Financial Services Department  
Contracts and Purchasing Branch  
1111 Alakea Street, 6th Floor  
Honolulu, Hawaii 96813  
Attention: Kelly Kimura
    - c. Bidder bears whole and exclusive responsibility for assuring that the bid security is received by the Contracts and Purchasing Branch.

#### **1.07 EVALUATION CRITERIA**

- A. Evaluating Bids: The lowest responsive, responsible bid is determined by the following procedures:
1. Chapter 103D, HRS, which provides for the preferences, shall apply.
  2. The total lump sum bid price is adjusted to reflect the applicable preferences.
    - a. For projects with alternates, the total lump sum base bid price and alternates will be adjusted to reflect the applicable preferences.
  3. Project control budget is established prior to the submission of bids.
  4. If there is more than one alternate for a project, the State will determine the precedence of the alternates for each project prior to the submission of bids.
  5. The project will be evaluated based on the adjusted bid price.
- B. Evaluating Bids with Additive Alternates:
1. Prior to opening bids, the State will announce the project control budget. All bids will be evaluated on the basis of the same alternate item.

2. After adjusting for applicable preferences, the alternates, in their precedence order, are added to the total lump sum base bid price. This (these) sum(s) are compared to the project control budget, and must be within the project control budget.
3. If adding another alternate would make the aggregate amount exceed the project control budget for all bidders, that alternate will be skipped and the next alternate will be added, provided an award might be made within the project control budget. This procedure will continue, until adding any remaining alternates will result in the aggregate total amount for all the bidders to exceed the project control budget, or until no additional alternates remain.
4. The bidder with the lowest aggregate amount, within the project control budget (after application of the various preferences), for the total lump sum base bid plus the alternates in their precedence order, is the "Low Bidder" for that project and is designated for award.
5. Additive Alternate Example: The project control budget available is \$100,000. In the order of precedence, alternates A-1, A-2 and A-3 are additive alternates. After applying the preferences, the bids are ranked lowest price to highest price and are "Bid A", "Bid B" and "Bid C". Bid A's total lump sum base bid price and three additive alternates (in the precedence order) are \$80,000, \$16,000, \$10,000 and \$5,000 respectively. Bid B's total lump sum base bid price and three additive alternates (in the precedence order) are \$82,000, \$10,000, \$9,000 and \$3,000 respectively. Bid C's total lump sum base bid price and three additive alternates (in the precedence order) are \$85,000, \$10,000, \$8,000 and \$4,000 respectively.
  - a. In adding the alternates to the bids, alternate A-1 is under the project control budget for all bids. The second alternate A-2 is initially skipped since it would cause the aggregate amount of all bids to exceed \$100,000. The third alternate A-3 is added and the aggregate amounts, including base bid price plus alternates A-1 and A-3, of both Bid B and Bid C, are under the project control budget.
  - b. Bid A's aggregate total is \$101,000. Bid B's aggregate total is \$95,000. Bid C's aggregate total is \$99,000.
  - c. Bid B's price including alternates A-1 and A-3 is the lowest bid price (over Bid C) and has an aggregate amount within the adjusted project control budget, and therefore is designated the "Low Bidder" for the project.
6. Should the Lump Sum Base Bid of all bidders exceed the project control budget, the bidder with the lowest total lump sum base bid after application of the preferences is designated the low bidder for the project.

#### **1.08 METHOD OF AWARD**

- A. The contract will be awarded to the lowest responsive and responsible Bidder whose bid (including any alternates which may be selected) meets the requirements and criteria set forth in the solicitation documents and as determined by the Comptroller.
- B. In the event the total lump sum bid for bids without alternates or with additive alternates of all bidders exceeds the project control budget, the Department

reserves the right to make an award to the apparent Low Bidder if additional funds are available or by reducing the scope of work through negotiation.

- C. Not used.
- D. Additional Requirements for Bids with Alternates: After determining the designated Low Bidder for the project, an award may be made on the amount of the Low Bidder's total lump sum base bid alone or on any combination of alternates exclusive of any preferences. The combination of alternates may include substituting any of the alternates that were included in the designated Low Bidder's aggregate price with an alternate that was not included, provided:
  - 1. It is in the best interest of the State,
  - 2. Funds are available at the time of award, and
  - 3. The combination of the total lump sum base bid plus alternate(s) does not change the established Low Bidder for the project.

#### **1.09 OTHER CONDITIONS FOR AWARD**

- A. The Comptroller may reject any or all bids and waive any defects if the Comptroller believes the rejection or waiver is in the best interest of the State.
- B. The Comptroller may hold all bids up to 60 calendar days from the date bids were opened. Unless otherwise required by law, bids may not be withdrawn without penalty.
- C. The award of the contract is conditioned upon funds made available for the project (or projects if applicable).
- D. Any agreement or contract is subject to approval by the Department of the Attorney General, and the approval of the Governor, as required by statute, regulation, rule, order, or other directive.

#### **1.10 RESPONSIBILITY OF AWARDED BIDDER**

- A. Pursuant to Section 103D-310(c), HRS, the responsive bidder recommended for contract award, if any, shall be compliant with all laws governing entities doing business in the State including the following chapters:
  - 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.
- B. The State will verify compliance on Hawaii Compliance Express (HCE). The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily obtain proof that they are compliant with applicable laws. The HCE certificate, 'Certificate of Vendor Compliance', allows this single printable electronic certificate to be substituted for the tax clearance, labor certificate, and a Certificate of Good Standing required in Hawaii Revised Statutes (HRS), Section 103D-310(c), and Hawaii Administrative Rules (HAR), Section 3-122-112. The HCE provides compliance status in real time.

- C. Bidders are advised to register with Hawaii Compliance Express at <https://vendors.ehawaii.gov> before submitting an offer. Bidders are strongly encouraged to submit a 'Certificate of Vendor Compliance' with their bid package to ensure the State's ability to quickly verify compliance at the time of award. If an offeror is not compliant at the time of award, an otherwise responsive and responsible offeror may not receive the award.

**PART 2 - PRODUCTS (Not Used)**

**PART 3 – EXECUTION (Not Used)**

END OF SECTION



## SOLICITATION, OFFER AND CONTRACT FORM

1. JUD Project Identifier: <div style="text-align: center;">2021-07-059</div>	2. TYPE OF SOLICITATION HiePRO (IFB)	3. PAGE OF PAGES <div style="text-align: center;">1 of 10</div>
<b>IMPORTANT - The "offer" section must be fully completed by offeror.</b>		
NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder."		
4. ISSUED BY: THE JUDICIARY – STATE OF HAWAII CONTRACTS AND PURCHASING 6TH FLOOR KAUIKEAOULI HALE 1111 ALAKEA STREET HONOLULU, HAWAII 96813	5. ADDRESS OFFER TO: THE JUDICIARY – STATE OF HAWAII CONTRACTS AND PURCHASING 6TH FLOOR KAUIKEAOULI HALE 1111 ALAKEA STREET HONOLULU, HAWAII 96813  AND SUBMIT THROUGH HIEPRO	
6. FOR INFORMATION Call or Email:	A. NAME Joanne Krippaehne <a href="mailto:Joanne.M.Krippaehne@courts.hawaii.gov">Joanne.M.Krippaehne@courts.hawaii.gov</a>	B. TELEPHONE NO. (NO COLLECT CALLS) (808) 539-4784
<b>SOLICITATION</b>		
7. THE STATE OF HAWAII REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS TO CONSTRUCT: <b>KAUIKEAOULI HALE          RECARPET 6TH FLOOR          TMK: TMK: 2-1-017: 003          Honolulu, O'ahu, Hawaii</b>  After carefully examining the bid documents including the specifications, drawings, addenda, and other proposed contract documents, the bidder shall furnish all labor, materials, machinery, tools, superintendence, transportation, and other construction accessories, services, and facilities necessary to construct and complete, at its own risk and expense, the work and requirements of the Project for the cost and time stipulated in the COST, TIME AND SCHEDULE article of Attachment A of the Form. The bidder agrees to the conditions and requirements stipulated in this SOLICITATION, OFFER AND CONTRACT FORM and any attachments thereto.		
8. The Contractor shall complete the work as stipulated in the COST, TIME AND SCHEDULE article of Attachment A. This performance period is mandatory.		
9. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS WITHIN 10 CONSECUTIVE CALENDAR DAYS AFTER DATE OF THE LETTER OF AWARD. IF ALTERNATE FORMS OF SECURITY WILL BE SUBMITTED, REFER TO STATE OF HAWAII, GENERAL CONDITIONS 3.7.1.3. INCORPORATED HEREIN BY REFERENCE.		

10. ADDITIONAL SOLICITATION REQUIREMENTS:

- A. Offers to perform the work required are due at the place specified in Block 5, by the date and time specified in the Notice to Bidders.
- B. Bid Security is required and must be submitted with the offer. For more information, see Section 00210, subsection 1.06 BID SECURITY (Section 103D-323, HRS)
- C. Hawaii Product Preference –Not Applicable
- D. Apprenticeship Agreement Preference – Any offeror seeking the apprenticeship agreement preference must complete the self certification form and the DLIR Certification of Bidder's Participation – Form 1.
- E. Listing of Joint Contractors and Subcontractors – Any offeror must submit with its offer, the name of each person or firm to be engaged by the offeror as a joint contractor or subcontractor in the performance of the contract and the nature and scope of the work to be performed by each. The offeror is directed to complete the joint contractors and subcontractors list form included in the solicitation and submit it with the offer.
- F. The Offeror be registered and compliant with Hawaii Compliance Express, link found at <http://vendors.ehawaii.gov/hce/splash/welcome.html>.
- G. All offers are subject to the requirements of the solicitation, including the Specifications, Notice to Bidders, Instruction to Bidders, General Conditions, and Drawings, any Special Conditions, Addenda, Bid Clarifications, and any other provision whether incorporated in full text or by reference in, or attached to, the solicitation.
- H. Contractors are hereby notified of the applicability of Section 11-355 HRS, 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.
- I. Recycled Product Preference – Not applicable.

<b>OFFER (Must be fully completed by offeror)</b>	
11. NAME AND ADDRESS OF OFFEROR (Include Zip Code) (*1)	12. REMITTANCE ADDRESS (Include only if different than item 11)
13. TELEPHONE NO. (Include area code ) FAX NO.	14. EMAIL ADDRESS
15. FEDERAL EMPLOYER ID # (FEIN)	16. HAWAII GENERAL EXCISE ID #
17. BUSINESS ORGANIZATION (*2)	18. CONTRACTOR'S LICENSE NO.
19. The offeror agrees to perform the work required at the price(s) specified in the COST, TIME AND SCHEDULE article of Attachment A in strict accordance with the terms of this solicitation, including any attachments thereto, if this offer is accepted by the State of Hawaii within 60 calendar days after the date offers are due.	
20. The offeror has completed Attachment A.	
21. COMPLIANCE WITH §3-122-112 (HAR) {BIDDER'S INSTRUCTIONS: Mark one box only. If a Non-Hawaii Business, write your State's name where incorporated.}  The undersigned represents: <input type="checkbox"/> A Hawaii Business incorporated or organized under the laws of the State of Hawaii. Or <input type="checkbox"/> A Compliant Non-Hawaii Business not incorporated or organized under the laws of the State of Hawaii, but registered at the State of Hawaii, Department of Commerce and Consumer Affairs, Business Registration Division to do business in the State of Hawaii. State of incorporation: _____	
22A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)	
22B. SIGNATURE: I declare under penalty of law that the foregoing is true and correct to the best of my knowledge. (*3)	22C. DATE:

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**BIDDERS INSTRUCTIONS AND SOLICITATION, OFFER AND CONTRACT FORM FOOTNOTES (footnotes relate to boxes 11, 17 & 22B)**

(\*1) If the Offeror is a "dba" of a sole proprietor, furnish the exact legal name as registered with the Department of Commerce and Consumer Affairs.

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

The address included in this box will be used for correspondence.

(\*2) For Business Organization, enter one of the following: Sole Proprietor, Partnership, Corporation, Joint Venture, or Other.

(\*3) **MANUAL SIGNATURE REQUIRED:** attach to this page evidence of the authority of this signatory to submit bids on behalf of the Offer, and also the names and residence addresses of all officers of the company.

Fill in information in all blank spaces or the bid may be invalidated. SOLICITATION, OFFER AND CONTRACT FORM MUST BE INTACT; MISSING PAGES OR ANY ALTERATIONS MAY INVALIDATE THE BID. TYPE OR WRITE ALL INFORMATION IN INK. USE INK FOR MANUAL SIGNATURE.

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<b>CONTRACT (To be completed by The Judiciary - State of Hawai'i)</b>	
23. CONTRACT NO.	23A. CONTRACT DATE:
24. ITEMS ACCEPTED:	
25. AMOUNT:	27. PAYMENT WILL BE MADE BY: The Judiciary – State of Hawai'i  By _____ Signature  _____ Print Name  _____ Title
26. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 4 UNLESS DIFFERENT ADDRESS STIPULATED HERE (7 copies unless otherwise specified)	
<b>ADMINISTRATOR WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE</b>	
<input type="checkbox"/> 28. NEGOTIATED AGREEMENT ( <i>Contractor is required to sign this document and return ____ copies to issuing office.</i> ) Contractor agrees to furnish and deliver all items or perform all work for the consideration slated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) any document incorporated by reference in or attached to this contract.	<input type="checkbox"/> 29. AWARD ( <i>Contractor is not required to sign this document.</i> ) Your offer on this solicitation is hereby accepted as to the items listed in Block 24. This award consummates the contract, which consists of (a) The Judiciary - State of Hawaii solicitation and your offer, and (b) this contract award. No further contractual document is necessary.
28A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN ( <i>Type or print</i> )	29A. NAME OF ADMINISTRATIVE DIRECTOR OF THE COURTS ( <i>Type or print</i> )
28B. SIGNATURE: I declare under penalty of law that the foregoing is true and correct to the best of my knowledge.	29B. THE JUDICIARY - STATE OF HAWAI'I By:
28C. DATE	

## ATTACHMENT A

### A. COST, TIME AND SCHEDULE

KAUIKEAOULI HALE  
RECARPET SIXTH FLOOR  
PROJECT IDENTIFIER: JUD -2021-07-059

#### 1. COST:

**TOTAL LUMP SUM BASE BID PRICE** \$ \_\_\_\_\_

\_\_\_\_\_ DOLLARS  
{BIDDER'S INSTRUCTIONS: Fill in the total lump sum base bid price in numbers and write out the total lump sum base bid price in words.}

**Alternates** (See Section 01230 - ALTERNATES for description).  
For the purposes of evaluating the Bid, the Alternates are listed in the order of precedence.

Alternate A-1 Add: Provide carpet tile backing with  
attached cushion EcoFlex AIR in  
lieu of carpet tile backing EcoFlex  
NXT \$ \_\_\_\_\_

\_\_\_\_\_ DOLLARS  
{BIDDER'S INSTRUCTIONS: Fill in the alternate bid price in numbers and write out the alternate bid price in words.}

#### 2. TIME:

See SECTION 01100 - PROJECT REQUIREMENTS for additional time and duration requirements.

**Contract Duration** 180 Calendar Days \_\_\_\_\_

**Construction Time for Alternates**  
Additional days for Alternate A-1 0 Calendar Days \_\_\_\_\_

#### 3. SCHEDULE FOR WORK

Contractor shall commence and complete all work within the contract duration stipulated and as follows:

- a. After the project is awarded, the contractor shall begin preparatory work, obtain approvals, permits, process submittals or conduct other work as directed. The contractor shall not start any work at the jobsite or order any materials, unless the Contracting Officer specifically issues a written authorization to proceed with designated work.
- b. The Contractor shall not start any work at the jobsite before the formal Notice to Proceed is issued, unless the Contracting Officer specifically issues a

written authorization to proceed with designated work. Payment for materials ordered and received prior to Judiciary's issuance of the formal Notice to Proceed are subject to the following conditions:

1. The Contractor is responsible for all storage costs incurred. No additional compensation will be made;
2. Ordering materials prior to the formal Notice to Proceed will not decrease or increase the specified contract time; and
3. Conditions as specified in the DAGS 1999 INTERIM GENERAL CONDITIONS, and other conditions required by the contract documents.

- c. After issuance of the formal Notice to Proceed or upon written authorization from the Contracting Officer to proceed with designated work, the contractor shall order approved materials, do off-site fabrication and similar work. The contractor shall start and complete the jobsite work per the dates, times and durations noted in the COST, TIME AND SCHEDULE article.>

## B. ALTERNATES

Bidder offers to incorporate in the work the alternates that are described on the drawings and in specification SECTION 01230 – ALTERNATES. For the purpose of evaluating the bid, the alternates listed in COST, TIME AND SCHEDULE article and in SECTION 01230 – ALTERNATES, are in the order of precedence.

## C. BID SECURITY - Required for this project.

*Mark the applicable box. State in words and numerals the Bid Bond dollar amount. See the Bidder's Instructions at the end of this section for additional information and see the Instructions to Bidders 00210 1.06 for additional information about how to submit Bid Security.*

Enclosed with this BID FORM:

- |   |  |
|---|--|
| <input type="checkbox"/> Surety Bond (*4)       | <input type="checkbox"/> Legal Tender (*5)           |
| <input type="checkbox"/> Cashier's Check (*6)   | <input type="checkbox"/> Certificate of Deposit (*6) |
| <input type="checkbox"/> Certified Check (*6)   | <input type="checkbox"/> Official Check (*6)         |
| <input type="checkbox"/> Share Certificate (*6) | <input type="checkbox"/> Teller's Check (*6)         |
| <input type="checkbox"/> Treasurer's Check (*6) | <input type="checkbox"/> Not Applicable              |

{BIDDER'S INSTRUCTIONS: \* See below for footnotes.

(\*4) *Surety bond underwritten by a company licensed to issue bonds in this State (Note: Surety bond shall be substantially in the form of the sample in the Appendix to the Interim General Conditions);*

(\*5) *Legal tender; or*

(\*6) *A certificate of deposit; share certificate; or cashier's, treasurer's, teller's, or official check drawn by, or a certified check accepted by, and payable on demand to the State by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.*

a. *These instruments may be utilized only to a maximum of \$100,000.*

b. *If the required security or bond amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be accepted.}*

In the amount of:

\_\_\_\_\_ DOLLARS (\$\_\_\_\_\_)

(Bid Security shall be no less than 5% of the total lump sum base bid amount including alternates) as required by law.

#### **D. RECEIPT OF ADDENDA AND BID CLARIFICATIONS**

Bidder acknowledges receipt of the following Addenda and Bid Clarifications issued by the Department, and the bidder shall indicate by marking each applicable box:

- |   |  |
|---|--|
| <input type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Bid Clarification No. 1 |
| <input type="checkbox"/> Addendum No. 2 | <input type="checkbox"/> Bid Clarification No. 2 |
| <input type="checkbox"/> Addendum No. 3 | <input type="checkbox"/> Bid Clarification No. 3 |
| <input type="checkbox"/> Addendum No. 4 | <input type="checkbox"/> Bid Clarification No. 4 |
| <input type="checkbox"/> Addendum No. 5 | <input type="checkbox"/> Bid Clarification No. 5 |

#### **E. APPRENTICESHIP AGREEMENT PREFERENCE**

The estimated value of the public works contract is less than \$250,000 and the apprenticeship agreement preference pursuant to Hawai'i Revised Statutes §103-55.6 (Act 17, SLH 2009) shall apply only to bids of \$250,000 or more.

#### **F. OTHER CONDITIONS**

1. Bidder agrees to pay liquidated damages as specified in SECTION 00800 - SPECIAL CONDITIONS.
2. Bidder declares that its firm was not assisted or represented by an individual who has, in a State capacity, been involved in this project or this proposed contract in the past two consecutive years.
3. **Anti-collusion Certification** - In accordance with §3-122-192 (HAR), the bidder declares that the price submitted for this bid is independently arrived at without collusion.
4. **Certification for Safety and Health Programs for Offers in excess of \$100,000** - In accordance with HRS 396-18, the bidder certifies that its organization will have a written safety and health plan for this project that will be available and implemented by the date when onsite construction starts. Bidder may obtain the requirements for the safety plan from the Department of Labor and Industrial Relations, Occupational, Safety and Health Division (HIOSH).
5. **Labor and Wage Certification** (Chapter 104 HRS) - For projects in excess of \$2,000, the bidder shall comply with the requirements of Chapter 104 HRS, "Wages and Hours of Employment on Public Works Construction Projects" and shall certify that:
  - a. Individuals engaged in the performance of the contract on the job site shall not be paid less than wages the Director of Labor and Industrial Relations determines to be prevailing for corresponding classes of laborers and mechanics employed on public works projects, including any periodic adjustments to the prevailing wages during the performance of the contract; and
  - b. Overtime compensation shall be at one and one-half times the basic hourly rate plus fringe benefits for hours worked on Saturday, Sunday, or legal holiday of the State or in excess of eight hours on any other day; and

- c. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety shall be fully complied with.
6. Upon the acceptance of the bid by the Procurement Officer, the bidder must enter into and execute a contract and furnish a performance and payment bond. These bonds shall conform to the provisions of HRS Sections 103D-324 and 325, and any law applicable thereto.
7. **Compliance with §103D-310 HRS:** Bidder shall be incorporated or organized under the laws of the State or registered to do business in the State as a separate branch or division that is capable of fully performing under the contract.

**G. LISTING JOINT CONTRACTORS OR SUBCONTRACTORS (HRS, 103D-302)**

It is the sole responsibility of the bidder to review the requirements of this project and determine the appropriate specialty contractor's licenses that are required to complete the project. The bidder acknowledges that as a general contractor ('A' or 'B' license) the bidder is prohibited from undertaking any work solely or as part of a larger project, which would require the bidder ('A' or 'B' general contractor) to act as a specialty ('C' license) contractor in any area in which the bidder ('A' or 'B' general contractor) has no specialty contractor's license. The bidder ('A' or 'B' general contractor) must have the appropriate 'C' specialty contractor's licenses either obtained on its own, or obtained automatically under HAR §16-77-32.

General Engineering 'A' Contractors automatically have these 'C' specialty contractor's licenses: C-3, C-9, C-10, C-17, C-24, C-31a, C-32, C-35, C-37a, C-37b, C-38, C-43, C-49, C-56, C-57a, C-57b, and C-61.

General Building 'B' Contractors automatically have these 'C' specialty contractor's licenses: C-5, C-6, C-10, C-12, C-24, C-25, C-31a, C-32a, C-42a, and C-42b.

Bidder agrees the completed listing of joint contractors or subcontractors is required for the project and that the bidder, together with the listed joint contractors and subcontractors, have all the specialty contractor's licenses to complete the work.

**Joint Contractors or Subcontractors List**

*{BIDDER'S INSTRUCTIONS: Refer to SECTION 00210 - INSTRUCTIONS TO BIDDERS for detailed instruction to fill out this list. Write in the complete firm name and nature of work to be performed by the required joint contractor or subcontractor.}*

COMPLETE FIRM NAME JOINT CONTRACTOR OR SUBCONTRACTOR	NATURE OF WORK TO BE PERFORMED



COMPLETE FIRM NAME JOINT CONTRACTOR OR SUBCONTRACTOR	NATURE OF WORK TO BE PERFORMED

#### **Joint Contractors or Subcontractors List for the Alternate(s)**

Bidder agrees that for projects with alternate(s), the joint Contractors or Subcontractor listed in the completed "Joint Contractors or Subcontractors List for the Alternate(s)" will perform work for the respective alternate.

*{BIDDER'S INSTRUCTIONS: Refer to SECTION 00210 - INSTRUCTIONS TO BIDDERS for detailed instruction to fill out this list. Write in the complete class number, class description, firm name and license number of the required joint Contractor or Subcontractor.}*

#### **Alternate A-1**

COMPLETE FIRM NAME JOINT CONTRACTOR OR SUBCONTRACTOR	NATURE OF WORK TO BE PERFORMED

#### **H. LIQUIDATED DAMAGES**

Liquidated damages in the sum stated in the Special Conditions will be deducted from the Contractor's final payment if the work is not completed within the time specified in this solicitation and any time extensions granted in writing to the Contractor by the State.

#### **I. COMPENSATION**

All payments shall be made in the manner and at the times indicated in the Contract Documents.

It is understood and agreed that the compensation paid by the Judiciary to the Contractor shall include all expenses incurred by the Contractor for all loss or damage arising out of the nature of the work, from the action of the elements, or from any delay or unforeseen obstruction or difficulty encountered in the prosecution of the work; for all risks of every description connected with the work; and for all expenses incurred by or in consequence of the suspension or discontinuation of the work, except as set forth in the General Conditions.

It is further agreed by the parties that any portion of the Contract price payable to the Contractor out of federal funds shall be paid to the Contractor only when such federal

funds are received, and this contract shall not be construed as binding the State to pay said portion out of any fund other than those which are received from the Federal government.

**J. GUARANTY OF WORK**

The Contractor agrees to guaranty all work under this Contract for the period(s) stipulated in the Contract Documents from the project acceptance date.

If any unsatisfactory condition or damage develops within the time of this guaranty due to materials or workmanship that are deficient, inferior, or not in accordance with the contract, the Contractor shall, when notified by the State, immediately place such guaranteed work in a condition satisfactory to the State and make repairs of all damage to the buildings, equipment and grounds made necessary in fulfillment of the guaranty. Everything necessary for the fulfillment of any guaranty shall be done without any expense to the State. It is understood that the performance and payment bond furnished by the Contractor under this Contract may be used to secure performance of Contractor's guaranty.

**K. CONTRACT DOCUMENTS**

It is understood and agreed that the following documents, and any amendments or addenda thereto, comprise this contract and are fully a part of this Contract as though attached hereto or set forth at length herein: (1) Contractor's accepted proposal; (2) General Conditions; (3) Drawings; (4) Specifications, including the Notice to Bidders, Instructions to Bidders, and Special Conditions, Addenda, Bid Clarifications, if any; (5) Combination Performance and Labor and Material Payment Bond; and (6) this Contract Agreement.

**L. ENTIRE AGREEMENT**

This Contract is the entire agreement between parties, and no alterations, changes, or additions thereto shall be made, except in writing approved by the parties.

**M. ATTACHMENTS TO BE PROVIDED BY OFFER AS APPLICABLE**

- ☐ Corporate Resolution
- ☐ Certificate of Vendor Compliance (HCE)
- ☐ Bid Security - See Instructions to Bidders 00210 1.06
- ☐ Power of Attorney

END OF SECTION

## SECTION 00700 – GENERAL CONDITIONS

### Part 1 – GENERAL

#### 1.01 GENERAL CONDITIONS

- A. These GENERAL CONDITIONS are hereby made part of the contract.
- B. The GENERAL CONDITIONS AND SECTION 00800 – SPECIAL CONDITIONS shall govern the Work specified in all DIVISIONS and SECTIONS.

### ARTICLE 1 – Definitions

Whenever the following terms or pronouns are used in these Bidding and Execution of Contract Requirements, and General Conditions, or in any contract documents or instruments where these Bidding and Execution of Contract Requirements, and General Conditions govern, the intent and meaning shall be interpreted as follows:

- 1.1 **ADDENDUM (plural – Addenda)** A written or graphic document, including Drawings and Specifications, issued by the Administrative Director of the Courts during the bidding period which modify or interpret the bidding documents, by additions, deletions, clarifications or corrections which shall be considered and made a part of the bid proposal and the contract when executed.
- 1.2 **ADDITION** (to the contract sum) Amount added to the contract Sum by Change Order.
- 1.3 **ADMINISTRATIVE RULES** Hawaii Administrative Rules for Chapter 103D of the Hawaii Revised Statutes.
- 1.4 **Not used**
- 1.5 **ADVERTISEMENT** A public announcement soliciting bids or offers.
- 1.6 **AMENDMENT** A written document properly executed by the Contractor and the Administrative Director of the Courts issued to amend the existing contract between the State and the Contractor.
- 1.7 **BAD WEATHER DAY** When weather or other conditions prevent a minimum of four hours of work with the Contractor's normal work force on controlling items of work at the site.
- 1.8 **BENEFICIAL OCCUPANCY** The point of project completion when the State can use the constructed facility in whole or in part for its intended purpose even though substantial completion may not be achieved.
- 1.9 **BID** See Offer.
- 1.10 **BID SECURITY** The security furnished by the bidder from which the State may recover its damages in the event the bidder breaches its promise to enter into a contract with the State and fails to execute the required bonds covering the work contemplated, if its proposal is accepted.

- 1.11 BIDDER** See Offeror.
- 1.12 BIDDING DOCUMENTS (or SOLICITATION DOCUMENTS)** The advertisement solicitation notice and instructions, Offer requirements, Offer forms, and the proposed contract documents including all addenda, and clarifications issued prior to receipt of the Offer.
- 1.13 BULLETIN** A written notice to the CONTRACTOR requesting a price and/or time proposal for contemplated changes preparatory to the issuance of a field order or change order.
- 1.14 BY OR TO THE ENGINEER** To avoid cumbersome and confusing repetition of expressions in these General Conditions, it is provided that whenever the following word or words of like import are used, they shall be understood as if they were followed by the words “by the Engineer” or “to the Engineer”, unless the context clearly indicates another meaning: contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected, or condemned.
- 1.15 CALENDAR DAY** Any day shown on the calendar beginning at midnight and ending at midnight the following day. If no designation of calendar or working day is made, “day” shall mean calendar day.
- 1.16 CHANGE ORDER** A written order signed by the Engineer that establishes the full payment and final settlement of all claims for direct, indirect and consequential costs, including costs of delays, and establishes any adjustments to contract time related to the work covered and affected by one or more field orders, or for change work done or agreed to be done without issuance of a separate field order. A change order signed by all the parties to the contract constitutes a supplemental agreement.
- 1.17 COMPLETION.** See SUBSTANTIAL COMPLETION and FINAL COMPLETION.
- 1.18 Not used**
- 1.19 CONSULTANT.** A person, firm, or corporation having a contract with the State to furnish services with respect to the project.
- 1.20 CONTRACT** The written agreement between the Contractor and the State of Hawaii by its Administrative Director of the Courts, by which the Contractor is bound to furnish all labor, equipment and materials and to perform the specified work within the contract time stipulated, and by which the State of Hawaii is obligated to compensate the Contractor therefor at the prices set forth therein. The contract shall include the Contract Documents and also any and all amendments and change orders which are required to complete the construction in an acceptable manner.
- 1.21 CONTRACT COMPLETION DATE** The calendar day on which all work on the project, required by the contract, must be completed. See CONTRACT TIME and FINAL COMPLETION.
- 1.22 CONTRACT DOCUMENTS** The Contract, Addenda (which pertain to the Contract Documents, Contractor’s Proposal (including Wage Schedule, List of Subcontractors and other documentation accompanying the Bid and any post bid documentation submitted prior to the Notice of Award) when attached as an

exhibit to the Contract, the Notice to Proceed, the Bonds, these GENERAL CONDITIONS, the SPECIAL CONDITIONS, the Specifications and the Drawings as the same are more specifically identified in the Contract together with all written Amendments, Change Orders, Field Orders, a written order for minor changes in the work and Engineer's written interpretations and clarifications issued on or after the effective date of the Contract.

- 1.23 CONTRACT PRICE** The amount designated on the face of the contract for the performance of work including allowances for extra if any.
- 1.24 CONTRACT TIME** The number of working or calendar (or working) days provided for completion of the contract, inclusive of authorized time extensions. The number of days shall begin running on the effective date of the Notice to Proceed. If in lieu of providing a number of calendar (or working) days, the contract requires completion by a certain date, the work shall be completed by that date.
- 1.25 CONTRACTOR** Any individual, partnership, firm, corporation, joint venture or other legal entity undertaking the execution of the work under the terms of the contract with the State of Hawaii, and acting directly or through its agents, or employees.
- 1.26 DEPARTMENT** The Judiciary.
- 1.27 DRAWINGS (or Plans)** The contract drawings in graphic or pictorial form, which show the design, location, character, dimensions, details of the Work to be done and which shall be a part of the Contract Documents.
- 1.28 ENGINEER** The Administrative Director of the Courts, or the authorized person to act in the Administrator's behalf.
- 1.29 EQUAL OR APPROVED EQUAL** Whenever this term is used in the drawings or specifications, it shall be interpreted to mean a brand or article, prequalified in accordance with Section 6.3 SUBSTITUTION OF MATERIALS AND EQUIPMENT, that may be used in place of the one specified.
- 1.30 FIELD ORDER** A written order issued by the Engineer or the Engineer's authorized representative to the Contractor requiring the contract work to be performed in accordance with a change order or changes in the work. A field order may (1) establish a price adjustment and/or time adjustment in an amount the Engineer believes is reasonable for the change; or (2) may declare that the Engineer does not intend to adjust the contract time or price for the work; or (3) may request the Contractor to submit a proposal for an adjustment to the contract time and/or price by a certain date.
- 1.31 FINAL COMPLETION** The date set by the Administrative Director of the Courts that all work required by the contract and any amendments or changes thereto is in full compliance with the contract.
- 1.32 FORCE ACCOUNT** Term used when Work is ordered to be done without prior agreements as to the lump sum or unit price cost thereof and is to be billed for at cost of labor, materials and equipment, insurances, taxes, etc., plus an agreed percentage for overhead and profit.
- 1.33 GUARANTEE** Legally enforceable assurance of the duration of satisfactory performance of quality of a product or Work.

- 1.34 GOODS** Materials. §103D-104
- 1.35 HAZARDOUS MATERIALS** Any and all radioactive materials, asbestos, polychlorinated biphenyls, petroleum, crude oil, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, toxic substances or materials cited in Hazardous Material Laws. Abandoned motor vehicles or parts thereof are not hazardous material.
- 1.36 HOLIDAYS** The days of each year which are set apart and established as State holidays pursuant to Chapter 8, Hawaii Revised Statutes.
- 1.37 INSPECTOR** The person assigned by the Contracting Officer to make detailed inspections of contract performance and materials supplied for the work.
- 1.38 LAWS** All Federal, State, and City and County Laws, ordinances, rules and regulations, and standard specifications, including any amendments thereto effective as of the date of the call for sealed bids.
- 1.39 LIQUIDATED DAMAGES** The amount prescribed in the General Conditions Section 7.26 FAILURE TO COMPLETE WORK ON TIME to be paid to the State or to be deducted from any payments due or to become due the Contractor for each working day or calendar day (as applicable) delay in completing the whole or any specified portion of the work beyond the Contract Time.
- 1.40 LETTER OF AWARD** A written notice from the Administrative Director of the Courts to the successful bidder(s) stating that its proposal has been accepted by the State.
- 1.41 MAJOR UNIT PRICE ITEM** A unit price item which, when extended on its estimated quantities in the proposal form, exceeds five percent (5%) of the total base bid proposal less any allowance and contingent items included in the proposal.
- 1.42 NON-CONFORMING WORK** Work that does not fulfill the requirements of the Contract Documents.
- 1.43 NOTICE TO CONTRACTOR** See Solicitation.
- 1.44 NOTICE TO PROCEED** A written notice from the Department to the Contractor establishing the applicable Contract Durations, Project Start Date, Jobsite Start Date, Jobsite Completion Date, and Contract Completion Date.
- 1.45 POST CONTRACT DRAWINGS** Drawings issued after the award of the contract for the purpose of clarification and/or changes to the work indicated in the original drawings and which may be made a part of the contract.
- 1.46 PROJECT ACCEPTANCE DATE** The calendar day on which the Engineer accepts the project as sufficiently completed in compliance with the contract so that the State can occupy or utilize the Work for its intended use. See SUBSTANTIAL COMPLETION.
- 1.47 PROJECT CONTRACT LIMITS** (or Contract Zone) The portion of the site as delineated on the drawings which define the Contractor's primary area of operation for the prosecution of the work. It does not define the exact limits of all construction that may be required under the contract.
- 1.48 PROJECT GUARANTEE** A guarantee issued by the Contractor to the State. See GUARANTEE.
- 1.49 PROPOSAL (Bid)** See Offer (or Bid).

- 1.50 PROPOSAL FORM** See Offer Form (or Bid Form).
- 1.51 PUNCHLIST** A list compiled by the Engineer ( or Contractor) stating work yet to be completed or corrected by the Contractor in order to substantially complete or finally complete the contract requirements.
- 1.52 QUESTIONNAIRE** The specified forms on which the bidder shall furnish required information as to its ability to perform and finance the work.
- 1.53 SHOP DRAWINGS** All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for the Contractor and submitted by Contractor to illustrate some portion of the work.
- 1.54 SPECIAL CONDITIONS** Supplements or modifies the standard clauses of the GENERAL CONDITIONS setting forth conditions or requirements peculiar to the individual project under consideration, which are not thoroughly or satisfactorily covered, described or explained in these GENERAL CONDITIONS.
- 1.55 SPECIFICATIONS** That portion of the Contract Documents consisting of written descriptions for materials, equipment, construction systems, standards, workmanship, directions, provisions and requirements that pertain to the method and manner of performing the work and certain administrative requirements applicable thereto.
- 1.56 STATE** The State of Hawaii acting through its authorized representative.
- 1.57 SUBCONTRACT** Any written agreement between the Contractor and its subcontractors which contains the conditions under which the subcontractor is to perform a portion of the work for the Contractor.
- 1.58 SUBCONTRACTOR** An individual, partnership, firm, corporation, joint venture or other legal entity, as covered in Chapter 444, Hawaii Revised Statutes, which enters into an agreement with the Contractor to perform a portion of the work for the Contractor.
- 1.59 SUBSTANTIAL COMPLETION** The status of the project when the Contractor has completed all the work and 1) all utilities and services are connected and working, 2) all equipment is in acceptable working condition, 3) additional activity by the Contractor to correct punchlist items as described herein will not prevent or disrupt use of the work or the facility in which the work is located, and 4) the building, structure, improvement or facility can be used for its intended purpose.
- 1.60 SUPERINTENDENT** The employee of the Contractor who is charged with the responsibility of all the Work.
- 1.61 SURETY** The qualified individual, firm or corporation, other than the Contractor, which executes a bond with and for the Contractor to insure its acceptable performance of the contract.
- 1.62 UNUSUALLY SEVERE WEATHER** Uncommonly harsh weather including but not limited to hurricanes, tornados, tropical storms and tropical depressions, or as otherwise defined in the SPECIAL CONDITIONS.
- 1.63 WORK** The furnishing of all labor, materials, equipment, and other incidentals necessary or convenient for the successful completion of the project and the execution of all the duties and obligations imposed by the contract.
- 1.64 WORKING DAY** A calendar day, exclusive of Saturdays, Sundays and State-recognized legal holidays for the month in question.

- 1.65 CONTRACTING OFFICER** Director, Financial Services.
- 1.66 JOBSITE START DATE** The date when on-site construction may start.
- 1.67 JOBSITE COMPLETION DATE** The date when on-site construction must be completed.
- 1.68 OFFER (or BID)** The executed document submitted by an Offeror in response to a solicitation request, to perform the work required by the proposed contract documents, for the price quoted and within the time allotted.
- 1.69 OFFEROR (or BIDDER)** Any individual, partnership, firm, corporation, joint venture or other legal entity submitting directly or through a duly authorized representative or agent, an Offer for the work or construction contemplated.
- 1.70 OFFER FORM (or BID FORM)** The form prepared by the Department on which the Offeror submits the written offer or bid. By submitting an offer or bid, the Offeror adopts the language on the form as its own.
- 1.71 PROJECT CONTROL BUDGET** The amount of funds set aside for the construction of the Project.
- 1.72 PROJECT START DATE** The date established in the Notice to Proceed when the Contractor shall begin prosecution of the work and the start of contract time.
- 1.73 RESIDENT** A person who is physically present in the State of Hawaii at the time the person claims to have established the person's domicile in the State of Hawaii and shows the person's intent is to make Hawaii the person's primary residence.
- 1.74 SHORTAGE TRADE** A construction trade in which there is a shortage of Hawaii residents qualified to work in the trade as determined by the Department of Labor and Industrial Relations.
- 1.75 SOLICITATION** An Invitation to Bid or Request for Proposals or any other document issued by the Department to solicit bids or offers to perform a contract. The solicitation may indicate the time and place to receive the bids or offers and the location, nature and character of the work, construction or materials to be provided."

## ABBREVIATIONS

HAR	Hawaii Administrative Rules
HRS	Hawaii Revised Statutes
VECP	Value Engineering Cost Proposal
DOTAX	State Department of Taxation
IRS	Internal Revenue Service



# **BIDDING AND EXECUTION OF CONTRACT REQUIREMENTS**

## **ARTICLE 2 – Proposal Requirements and Conditions**

**2.1 QUALIFICATION OF BIDDERS** Prospective bidders must be capable of performing the work for which bids are invited, and must be capable of entering into a public contract of \$25,000 or more.

### **2.1.1 Notice of Intention to Bid**

2.1.1.1 In accordance with Section 103D-310, Hawaii Revised Statutes, and Section 3-122-111, Hawaii Administrative Rules, a written notice of intention to bid need not be filed for construction of any public building or public work. A written notice of intention to bid need not be filed for the mere furnishing and installing of furniture, equipment, appliances, material and any combination of these items when a Contractor's license is not required under Chapter 444 of the Hawaii Revised Statutes, as amended, and the rules and regulations of the Contractor's License Board.

2.1.1.2 If two (2) or more prospective bidders desire to bid jointly as a joint venture on a single project, they must file an affidavit of joint venture. Such affidavit of joint venture will be valid only for the specific project for which it is filed. No further license is required when all parties to the joint venture possess current and appropriate contractor's licenses. Joint ventures are required to be licensed in accordance with Chapter 444 of the Hawaii Revised Statutes, as amended, and the rules and regulations of the Contractor's License Board when any party to the joint venture agreement does not hold a current or appropriate contractor's license. The joint venture must register with the office of the Director of Commerce and Consumer Affairs in accordance with Chapter 425 of the Hawaii Revised Statutes, as amended.

2.1.1.3 No persons, firm or corporation may bid where (1) the person, firm, or corporation, or (2) a corporation owned substantially by the person, firm or corporation, or (3) a substantial stockholder or an officer of the corporation, or (4) a partner or substantial investor in the firm is in arrears in any payment owed to the State of Hawaii or any of its political subdivisions or is in default of any obligation to the State of Hawaii or to all or to any of its political subdivisions, including default as a surety or failure to perform faithfully and diligently any previous contract with the Department.

**2.1.2 Compliance Certificate 103D-310(c), Hawaii Revised Statutes** The Contractors are required to provide proof of compliance in order to receive a contract of \$25,000 or more. To meet this requirement, Bidders may apply and register at the "Hawaii Compliance Express website:  
<http://vendors.ehawaii.gov/hce/splash/welcome.html>

**2.1.3 Wrongful Refusal to Accept Bid** – In the event the Administrative Director of the Courts, for any reason, wrongfully refuses to accept what would otherwise be a responsive and responsible lowest bid, the exclusive remedy for such lowest bidder shall be the recovery of the reasonable actual costs of preparing the bid. No other bidder shall have any claim for damages. Refer to 2.13 PROTEST.

## **2.2 INTERPRETATION OF QUANTITIES IN BID SCHEDULE**

**2.2.1** When quantities for individual items of work are listed in the proposal form for which respective unit prices are asked, said quantities are estimated or approximate and are to be used by the Department only for the purpose of comparing on a uniform basis bids offered for the work. The Department does not, expressly or by implication, agree that the actual quantity of work will correspond therewith.

**2.2.2** After determining the low bidder by comparison of bids submitted in accordance with the proposal form and Section 3.1 CONSIDERATION OF PROPOSALS; CANCELLATION in these specifications, the quantities of unit price items of work may increase or decrease.

**2.2.3** On unit price bids, payment will be made only for the actual number of units incorporated into the finished project at the unit price bid, subject to Section 4.7 VARIATIONS IN ESTIMATED QUANTITIES.

## **2.3 CONTENTS OF PROPOSAL FORMS**

**2.3.1** Prospective bidders will be furnished with proposal forms giving the location, description, and the contract time of the work contemplated for which a lump sum bid price is asked or containing a schedule of items, together with estimated quantities of work to be performed and materials to be furnished, for which unit bid prices and/or lump sum bid prices are asked.

**2.3.2** All papers bound with or attached to the proposal form shall be considered a part thereof and shall not be detached or altered when the proposal is submitted.

**2.3.3** The drawings, specifications, and other documents designated in the proposal form will also be considered a part thereof whether attached or not.

**2.3.4** By submitting a bid on the proposal form, a bidder accepts the language therein as its own.

## **2.4 THE SITE AND PROPOSED CONTRACT DOCUMENTS**

**2.4.1** The Bidder shall examine carefully the Project Site contemplated and the proposal, drawings, specifications, and supplemental specifications, SPECIAL

CONDITIONS, and any documents or items referenced therein and contract and bond forms therefore. The submission of a bid shall be considered as a warranty that the Bidder has made such examination and is informed of the conditions to be encountered in performing the Work and of the requirements of the drawings, specifications, and supplemental specifications, SPECIAL CONDITIONS, and any documents or items referenced therein, and contract and bonds.

## **2.5 ADDENDA AND BID CLARIFICATIONS**

**2.5.1** The terms and requirements of the bid documents (i.e. drawings, specifications and other bid and contract documents) cannot be changed prior to the bid opening except by a duly issued addenda or bid clarification.

**2.5.2** The Department may alter, increase or decrease the scope of the work or the contract time, provisions and conditions by issuing a written addendum which sets forth such alterations, increase or decrease.

**2.5.3 Bid Discrepancy** – If a bidder discovers what it considers to be a discrepancy, ambiguity, omission or doubt as to the meaning of drawings, specifications, and any other bid or contract documents, the bidder shall request in writing no less than 14 days before the bids are opened.

**2.5.4** Addenda to the bid documents will be provided to all prospective bidders at the respective offices furnished for such purposes. Each addendum shall be in addition to the Contract Documents.

**2.5.5** Upon providing an addenda, all bidders shall be deemed to be on notice of the information therein whether or not the addendum or bid clarification is actually received. All addenda and bid clarifications so issued shall become part of the Contract Documents.

**2.5.6** No claim for additional compensation and/or time for performance will be allowed if the Contractor discovered, or in the exercise of reasonable care, should have discovered a discrepancy, ambiguity, omission or doubt for which an interpretation was not requested.

## **2.6 SUBSTITUTION BEFORE CONTRACT AWARD**

**2.6.1** For Substitutions after the Letter of Award is issued; refer to Section 6.3 SUBSTITUTION AFTER CONTRACT AWARD.

**2.6.2** Unless specifically required otherwise in the contract documents, Offerors shall not submit products, materials, equipment, articles or systems for review or approval prior to submitting their Offers.

**2.6.3** Offerors shall prepare their Offer forms based on the performance requirements of the materials, equipment, articles or systems noted on the drawings and specifications. If trade names, makes, catalog numbers or brand names are specified, Offerors shall infer that these items indicate the quality, style, appearance or performance of the material, equipment, article, or systems to be used in the project.

## **2.7 PREPARATION OF PROPOSAL**

**2.7.1** The Bidder's proposal must be submitted on the proposal form furnished by the Department. The proposal must be prepared in full accordance with the instructions thereon. The Bidder must state, both in words and numerals, the lump sum price or total sum bid at which the work contemplated is proposed to be done. These prices must be written in ink or typed. In case of a discrepancy between the prices written in words and those written in figures, the words shall govern over the figures. The Bidder shall sign the proposal in the spaces provided with ink. By submitting a bid, the Bidder adopts the language of the proposal as its own.

**2.7.2** If the proposal is made by an individual, the person's name and post office address must be shown in the space provided. If made by a partnership, the name and post office address of each member of the partnership must be shown and the proposal signed by all partners or evidence in the form of a partnership agreement must be submitted showing the authority of the partner to enter, on behalf of said partnership, into contract with the State. If made by a corporation, the proposal must show the name, titles, and business address of the president, secretary and treasurer and also evidence in the form of a corporate resolution must be submitted showing the authority of the particular corporate representative to enter on behalf of said corporation into contract with the State. If made by a joint venture the name and post office address of each member of the individual firm, partnership or corporation comprising the joint venture must be shown with other pertinent information required of individuals, partnerships or corporations, as the case may be. The proposal must be signed by all members to the joint venture or evidence in the form of a Joint-Venture Agreement must be submitted showing the authority of the joint-venture's representative to enter on behalf of said joint-venture into contract with State.

**2.7.3** Pursuant to the requirements of Section 103D-302, HRS, each Bidder shall include in its bid the name of each person or firm to be engaged by the Bidder on the project as joint contractor or subcontractor indicating also the nature and scope of work to be performed by such joint contractor and/or subcontractor. If the Bidder fails to list a joint contractor or subcontractor, the State may accept the bid if it is in the State's best interest and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one percent of the total bid amount. The Bidder shall be solely responsible for verifying that their joint contractor or subcontractor has the proper license at the time of the submitted bid.

## **2.8 BID SECURITY §3-122-223(d) HAR**

**2.8.1** Subject to the exceptions in Section 3-122-223(d) HAR, all lump sum bids of \$25,000 and higher, or lump sum base bids including alternates of \$25,000 and higher, that are not accompanied by bid security are non-responsive. Bid security shall be one of the following: §3-122-222(a) HAR

2.8.1.1 Surety bid bond underwritten by a company licensed to issue bonds in this State which shall be substantially in the form of the Surety Bid Bond form in the Appendix; or

2.8.1.2 Legal Tender; or

2.8.1.3 Certificate of Deposit; Credit Union share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the State by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

- (a) These instruments must be utilized only to a maximum of \$100,000.
- (b) If the required security or bond amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be accepted.
- (c) **CAUTION** – Bidders are cautioned that certificates of deposit or share certificates with an early withdrawal penalty must have a face value sufficient to cover the maximum penalty amount in addition to the proposal guaranty requirement. If the certificate is made out to two names, the certificate must be assigned unconditionally to the Administrative Director of the Courts.

**2.8.2** Unless otherwise stated, the bid security shall be in an amount equal to at least five percent (5%) of the lump sum bid or lump sum base bid including alternates or in an amount required by the terms of the federal funding, where applicable.

**2.8.3** If the Bidder is a corporation, evidence in the form of a corporate resolution, authorizing the corporate representative to execute the bond must be submitted with the proposal. (See sample in the Appendix.) If the Bidder is a partnership, all partners must sign the bond or evidence in the form of a partnership agreement must be submitted showing the authority of the partner.

**2.8.4** If the Bidder is a joint venture, all parties to the joint venture must sign the bond; provided, that one party to the joint venture may sign on behalf of the joint venture if evidence in the form of a joint venture agreement or power of attorney is submitted showing the authority of the signatory to sign the bond on behalf of the joint venture.

**2.8.5** In the case where the award will be made on a group or item basis, the amount of bid security shall be based on the total bid for all groups or items submitted.

**2.8.6** Bidders are cautioned that surety bid bonds which place a limit in value to the difference between the bid amount and the next acceptable bid, such value not to exceed the purported amount of the bond, are not acceptable. Also, surety bid bonds which place a limit on the right of the State to make claim other than allowed by statutes or these GENERAL CONDITIONS are not acceptable. Bidders are hereby notified that a surety bid bond containing such limitation(s) is not acceptable and a bid accompanied by such bid bond will be automatically rejected.

**2.9 DELIVERY OF PROPOSALS** – The entire proposal shall be placed together with the bid security, in a sealed envelope no smaller than 9-1/2" x 12" so marked as to indicate the identity of the project, the project number, the date of bid opening and the name and address of the bidder and then delivered as indicated in the Notice to Contractors. Bids which do not comply with this requirement may not be considered. Proposals will be received up to the time fixed in the public notice for opening of bids and must be in the hands of the official by the time indicated. The words "SEALED BID" must be clearly written or typed on the face of the sealed envelope containing the proposal and bid security.

**2.10 WITHDRAWAL OR REVISION OF PROPOSAL** – may be modified prior to the deadline to submit the offers by any of the following documents.

**2.10.1 Withdrawal of Proposals:**

2.10.1.1 A signed, written notice received in the office designated in the solicitation; or

2.10.1.2 A written notice faxed to the office designated in the solicitation; or

**2.10.2 Modification of Proposals**

2.10.2.1 A written notice received in the office designated in the solicitation, stating that a modification to the offer is submitted; and

2.10.2.2 The actual modification sealed securely in a separate envelope or container, accompanying the written notice.

**2.11 PUBLIC OPENING OF PROPOSALS** – Proposals will be opened and read publicly at the time and place indicated in the Notice to Contractors. Bidders, their authorized agents and other interested parties are invited to be present.

**2.12 DISQUALIFICATION OF BIDDERS** – Any one or more of the following causes will be considered as sufficient for the disqualification of a Bidder and the rejection of its proposal or proposals:

**2.12.1** Non-compliance with Section 2.1 QUALIFICATION OF BIDDERS.

**2.12.2** Evidence of collusion among bidders.

**2.12.3** Lack of responsibility and cooperation as shown by past work such as failing to complete all of the requirements to close the project within a reasonable time or engaging in a pattern of unreasonable or frivolous claims for extra compensation.

**2.12.4** Being in arrears on existing contracts with the State of Hawaii, or having defaulted on a previous contract with the State of Hawaii.

**2.12.5** Lack of proper equipment and/or sufficient experience to perform the work contemplated, as revealed by the Standard Questionnaire and Financial Statement for Bidders.

**2.12.6** No contractor's license or a contractor's license which does not cover type of work contemplated.

**2.12.7** More than one proposal for the same work from an individual, firm, partnership, corporation or joint venture under the same or different name.

**2.12.8** Delivery of bids after the deadline specified in the advertisement calling for bids.

**2.12.9** Failure to pay, or satisfactorily settle, all bills overdue for labor and materials of former contracts in force at the time of issuance of proposal forms.

**2.12.10** Debarment or suspension pursuant to the provisions of Chapters 103D, 104 and 444, Hawaii Revised Statutes, as amended.

## **2.13 PROTEST**

**2.13.1** Protests shall be adjudicated in accordance with §103D-701, HRS and as amended.

**2.13.2** No Protest based upon the contents of the solicitation shall be considered unless it is submitted in writing to the Administrative Director of the Courts prior to the date set for the receipt of proposals.

**2.13.3** A protest of an award or proposed award pursuant to §103D-302 or §103D-303, HRS, shall be submitted in writing to the Administrative Director of the Courts within five (5) working days after the posting of the award of the Contract.

**2.13.4** All protests must be received at Financial Services Division (FSD), 1111 Alakea, Sixth Floor, Honolulu, HI 96813 by the appropriate deadline. Timely receipt shall be evidenced by the date and time registered by the FSD time stamp clock.

If the bidder chooses to deliver its protest by the United States Postal Service (USPS), the documents shall be sent to Financial Services Division, 1111 Alakea, Sixth Floor, Honolulu, HI 96813. USPS does not deliver directly to Financial Services Division and mail must be processed through a mail room. This may cause a delay in receipt by Financial Services.

The Protestor bears the sole responsibility for ensuring that the protest letter / documentation is delivered by the appropriate deadline.

**2.13.5** In addition to any other relief, when a protest is sustained and the protestor should have been awarded the contract under the solicitation but is not, then the protestor shall be entitled to actual costs reasonably incurred in connection with the solicitation, including bid or proposal preparation costs but not attorney's fees.

## **ARTICLE 3 – Award and Execution of Contract**

**3.1 CONSIDERATION OF PROPOSALS; CANCELLATION** – After the proposals are opened and read, the figures will be extended and/or totaled in accordance with the bid prices of the acceptable proposals and the totals will be compared and the results of such comparison shall be made public. In the event of a tie bid, the low bidder shall be determined by lot. In the comparison of bids, words written in the proposals will govern over figures and unit prices will govern over totals. Until the award of the contract, the Department may cancel the solicitation, reject any and all proposals in whole or part and may waive any defects or technicalities whenever such action is deemed to be in the best interest of the State.

**3.2 IRREGULAR PROPOSALS** – Proposals will be considered irregular and may be rejected for the following reasons:

**3.2.1** If the proposal is unsigned.

**3.2.2** If bid security is not in accordance with Section 2.8 BID SECURITY.

**3.2.3** If proposal is on a form other than that furnished by the Department; or if the form is altered or any part thereof detached.



**3.2.4** If the proposal shows any non-compliance with applicable law, alteration of form, additions not called, conditional bids, incomplete bids, non-initialed erasures, other defects, or if the prices are obviously unbalanced.

**3.2.5** If the Bidder adds any provisions reserving the right to accept or reject an award.

**3.2.6** If the Bidder adds any provisions reserving the right to enter into a contract pursuant to an award.

**3.2.7** When a proposal is signed by an officer or officers of a corporation and a currently certified corporate resolution authorizing such signer(s) to submit such proposal is not submitted with the proposal or when the proposal is signed by an agent other than the officer or officers of a corporation or a member of a partnership and a power of attorney is not submitted with the proposal.

**3.2.8** When there is an incomplete or ambiguous listing of joint contractors and/or subcontractors the offer may be rejected. Bidders are solely responsible to ensure that their subcontractor listing is complete (i.e. all work which is not listed as being performed by joint contractors and/or subcontractors can be performed by the bidder using its license(s)). Additions to the subcontractor listing by the bidder will not be allowed after bid opening. When there is an ambiguity, as determined by The Judiciary, as to the completeness of the listing, The Judiciary reserves the right to seek information from the bidder to determine whether, in Judiciary's discretion, the listing is an error that may be forgiven.

**3.2.9** If in the opinion of the Administrative Director of the Courts, the Bidder and its listed subcontractors do not have the contractor's licenses or combination of contractor's licenses necessary to complete all of the work.

### **3.3 CORRECTION OF BIDS AND WITHDRAWAL OF BIDS §3-122-31 HAR**

**3.3.1** Corrections to bids after bid opening but prior to award may be made under the following conditions:

3.3.1.1 If the mistake is attributable to an arithmetical error, the Administrative Director of the Courts shall so correct the mistake. In case of error in extension of bid price, the unit price shall govern.

3.3.1.2 If the mistake is a minor informality which shall not affect price, quantity, quality, delivery, or contractual conditions, the Bidder shall request correction by submitting proof of evidentiary value which demonstrates that a mistake was made. The Administrative Director of the Courts shall prepare a written approval or denial in response to this request. Examples of such mistakes include:

- (a) Typographical errors;
- (b) Transposition errors;
- (c) Failure of a Bidder to sign the bid, but only if the unsigned bid is accompanied by other material indicating the Bidder's intent to be bound.

3.3.1.3 For reasons not allowable under paragraphs 3.3.1.1 and 3.3.1.2 when the Administrative Director of the Courts determines that the correction or waiver of an obvious mistake is in the best interest of the Department or is warranted for the fair treatment of other bidders.

**3.3.2** Withdrawal of bids after bid opening but prior to award may be made when the bid contains a mistake attributable to an obvious error which affects price, quantity, quality, delivery, or contractual conditions, and the bidder requests withdrawal by submitting proof of evidentiary value which demonstrates that a mistake was made. The Administrative Director of the Courts shall prepare a written approval or denial in response to this request.

**3.3.3** Correction or withdrawal of bids after award is not permissible except in response to a written withdrawal or correction request by the Contractor, and the Administrative Director of the Courts makes a written determination that the Department's procurement practices and policies would not be materially affected by such correction or withdrawal.

## **3.4 AWARD OF CONTRACT**

**3.4.1** The award of contract, if it be awarded, will be made within sixty (60) consecutive calendar days after the opening of the proposals to the lowest responsible and responsive Bidder (including the alternate or alternates which may be selected by the Administrative Director of the Courts in the case of alternate bids) whose proposal complies with all the requirements prescribed, but in no case will an award be made until all necessary investigations are made. The successful Bidder will be notified, by letter mailed to the address shown on the proposal, that its bid has been accepted and that it has been awarded the contract.

**3.4.2** If the contract is not awarded within the sixty (60) days noted in paragraph 3.4.1 above, the Department may request the successful Bidder to extend the time for the acceptance of its bid. The Bidder may reject such a request without penalty; and in such case, the Department may at its sole discretion make a similar offer to the next lowest responsive and responsible bidder and so on until a bid is duly accepted or until the Department elects to stop making such requests.

**3.4.3** No contract will be awarded to any person or firm suspended or debarred under the provisions of Chapters 103D, 104 and Chapter 444, Hawaii Revised Statutes, as amended.

**3.4.4** The contract will be drawn on the offer forms furnished by the Administrative Director of the Courts. The contract will not be binding on the Department until all required signatures have been affixed thereto and written certification that funds are available for the work has been made.

**3.5 CANCELLATION OF AWARD** – The Department reserves the right to cancel the award of any contract at any time before the execution of said contract by all parties. The exclusive remedy to the awardee for such cancellation shall be payment of the reasonable bid preparation costs and the reimbursement of direct expenses incurred as directed in the Notice of Award. Such cancellation will not incur any liability by the Department to any other Bidder.

**3.6 RETURN OF BID SECURITY** – All bid securities, except those of the four (4) lowest Bidders, will be returned following the opening and checking of the proposals. The retained bid securities of the four lowest Bidders will be returned within five (5) working days following the complete execution of the contract.

### **3.7 REQUIREMENT OF PERFORMANCE AND PAYMENT BONDS**

**3.7.1** Performance and Payment Bonds shall be required for contracts \$25,000 and higher. At the time of contract award, the successful Bidder shall file good and sufficient performance and payment bonds on the form furnished by the Department (see Appendix), each in an amount equal to one hundred percent (100%) of the amount of the contract price unless otherwise stated in the solicitation of bids. Acceptable performance and payment bonds shall be limited to the following:

3.7.1.1 Surety bonds underwritten by a company licensed to issue bonds in this State; or

3.7.1.2 A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the State by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(a) These instruments may be utilized only a maximum of \$100,000.

(b) If the required security or bond amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be acceptable.

**3.7.2** If the Contractor fails to deliver the required performance and payment bonds, the contractor's award shall be canceled, the Department shall have the remedies provided

under Section 3.9 FAILURE TO EXECUTE THE CONTRACT and award of the contract shall be made to the next lowest responsible and responsive bidder.

**3.7.3** For additional Performance and Payment Bond requirements due to changes in the contract amount after contract award, see section 4.2.4.2 Additional Performance and Payment Bond Increases.

**3.8 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS –** Contractors are hereby notified of the applicability of Section 11-355 HRS, 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.

### **3.9 EXECUTION OF THE CONTRACT**

**3.9.1** Upon acceptance of the successful bidder's offer by the Administrative Director of the Courts, the contractor shall provide satisfactory performance and payment bonds within ten (10) calendar days after award of the contract or within such further time as granted by the Administrative Director of the Courts. No proposal or contract shall be considered binding upon the State until the contract has been fully and properly executed by all parties thereto and the Administrative Director of the Courts has endorsed thereon its certificate, as required by Section 103D-309, HRS, that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the State's amount required by such contract.

**3.9.2** On any individual award totaling less than \$25,000, the State reserves the right to execute the contract by the issuance of a State Purchase Order. Issuance of a State Purchase Order shall result in a binding contract between the parties without further action by the State. The issuance of a State Purchase Order shall not be deemed a waiver of these General Conditions and Contract Document requirements.

### **3.10 FAILURE TO EXECUTE THE CONTRACT**

**3.10.1 Before the Award** – If a low bidder without legal justification withdraws its bid after the opening of bids but before the award of the contract, the State shall be entitled to retain as liquidated damages the amount established as bid security, and may take all appropriate actions to recover the liquidated damages sum from the property or third-party obligations deposited as bid security.

**3.10.2 After the Award** – If the Bidder to whom a contract is awarded shall fail or neglect to enter into the contract and to furnish satisfactory security within ten (10) calendar days after such award or within such further time as the Administrative Director of the Courts may allow, the State shall be entitled to recover from such Bidder its actual damages,

including but not limited to the difference between the bid and the next lowest responsive bid, as well as personnel and administrative costs, consulting and legal fees and other expenses incurred in arranging a contract with the next low responsive bidder or calling for new bids. The State may apply all or part of the amount of the bid security to reduce its damages. If upon determination by the State of the amount of its damages the bid security exceeds that amount, it shall release or return the excess to the person who provided same.

**3.10.3 Administrative Director of the Court's Options** – Upon a withdrawal of the lowest responsive bid, or upon a refusal or failure of the lowest Bidder to execute the contract, the Administrative Director of the Courts may thereupon award the contract to the next lowest responsible and responsive Bidder or may call for new bids, whichever method the Administrative Director of the Courts may deem to be in the best interests of the State.

### **3.11 NOTICE TO PROCEED**

**3.11.1** After the contract is fully executed and signed by the Administrative Director of the Courts, the Contractor will be sent a formal Notice to Proceed letter advising the Contractor of the date on which it may proceed with the work. The Contractor shall be allowed ten (10) consecutive working days from said date to begin its work. In the event that the Contractor refuses or neglects to start the work, the Administrative Director of the Courts may terminate the contract in accordance with Section 7.27 TERMINATION OF CONTRACT FOR CAUSE.

**3.11.2** The Contractor may commence its operations strictly at its own risk prior to receipt of the formal notice to proceed, provided it makes a written request and has received approval from the Engineer in writing. All work performed shall be conducted in accordance with Section 7.1 PROSECUTION OF THE WORK.

**3.11.3** In certain cases, the State, with agreement of the Contractor, may issue a Notice to Proceed before full execution of the contract by the Administrative Director of the Courts and it may further issue a Notice to Proceed concurrently with the Notice of Award.

**3.11.4** In the event the Notice to Proceed is not issued within one hundred and eighty (180) days after the date of the award of the contract the Contractor may submit a claim for increased labor and material costs (but not overhead costs) which are directly attributable to the delay beyond the first 180 days. Such claims shall be accompanied by the necessary documentation to justify the claim. No payment will be made for escalation costs that are not fully justified.

## **GENERAL CONDITIONS**

### **ARTICLE 4 – Scope of Work**

**4.1 INTENT OF CONTRACT, DUTY OF CONTRACTOR** – The intent of the Contract is to provide for the construction, complete in every detail, of the Work described at the accepted bid price and within the time established by the contract. The Contractor has the duty to furnish all labor, materials, equipment, tools, transportation, incidentals and supplies and to determine the means, methods and schedules required to complete the work in accordance with the drawings, specifications and terms of the contract.

**4.2 CHANGES** – The Engineer may at any time, during the progress of the work, by written order, and without notice to the sureties, make changes to the work as may be found to be necessary or desirable. Such changes shall not invalidate the Contract nor release the Surety, and the Contractor will perform the work as changed, as though it had been a part of the original Contract.

**4.2.1 Minor Changes** – Minor changes in the work may be directed by the Engineer with no change in contract price or time of performance. Minor changes are consistent with the intent of the Contract Documents and do not substantially alter the type of work to be performed or involve any adjustment to the contract sum or extension of the contract time.

#### **4.2.2 Oral Orders**

4.2.2.1 Any oral order, direction, instruction, interpretation or determination from the Engineer or any other person which in the opinion of the Contractor causes any change, shall be considered as a change only if the Contractor gives the Engineer written notice of its intent to treat such oral order, direction, instruction, interpretation or determination as a change directive. Such written notice must be delivered to the Engineer before the Contractor acts in conformity with the oral order, direction, instruction, interpretation or determination, but not more than five (5) days after delivery of the oral order to the Contractor. The written notice shall state the date, circumstances, whether a time extension will be requested, and source of the order that the Contractor regards as a change. Such written notice may not be waived and shall be a condition precedent to the filing of any claim by the Contractor. Unless the Contractor acts in accordance with this procedure, any such oral order shall not be treated as a change for which the Contractor may make a claim for an increase in the contract time or contract price related to such work.

4.2.2.2 No more than five (5) days after receipt of the written notice from the Contractor, a Field Order shall be issued for the subject work if the State agrees that it constitutes a change. If no Field Order is issued in the time established, it shall be deemed a rejection of Contractor's claim for a change. If the Contractor objects to the

failure to issue a Field Order, it shall file a written protest with the Engineer within thirty (30) days after delivery to the Engineer of the Contractor's written notice of its intention to treat the oral order as a change. In all cases, the Contractor shall proceed with the work. The protest shall be determined as provided in Section 7.25 DISPUTES AND CLAIMS.

**4.2.3 Field Orders** – Upon receipt of a Field Order, the Contractor shall proceed with the changes as ordered. If the Contractor does not agree with any of the terms or conditions or in the adjustment or non-adjustment to the contract time and/or contract price, Contractor shall file a notice of intent to claim within thirty (30) calendar days after receipt of the written Field Order that was not agreed upon by both parties. Failure to file such protest within the time specified shall constitute agreement on the part of the Contractor with the terms, conditions, amounts and adjustment or non-adjustment to contract price and/or contract time set forth in the Field Order. The requirement for timely written notice shall be a condition precedent to the assertion of a claim.

#### **4.2.4 Change Orders**

4.2.4.1 The Department will issue sequentially numbered Change Orders at times it deems appropriate during the contract period. A change order may contain the adjustment in contract price and/or time for a number of Field Orders. The Change Order will be issued in the format attached (refer to Appendix). No payment for any change will be made until the change order is issued.

4.2.4.2 Performance and Payment Bond Increases. When the contract price is increased, performance and payment bonds shall each be automatically increased in amounts equal to 100% of the increase in contract price.

4.2.4.3 Upon receipt of a change order, if the Contractor does not agree with any of the terms or conditions or in the adjustment or non-adjustment to the contract price or contract time, the Contractor shall not execute or sign the change order, but shall return the unsigned change order, along with a written notification of the conditions or items that are in dispute.

4.2.4.4 If the Contractor signs or executes the change order, this constitutes an agreement on the part of the Contractor with the terms and conditions of the change order. A change order that is mutually agreed to and signed by the parties of the contract constitutes a contract modification.

**4.2.5 Claim Notification** – The Contractor shall file a notice of intent to claim for a disputed change order within 30 calendar days after receipt of the written order. Failure to file the protest within the time specified constitutes an agreement on the part of the Contractor with the terms, conditions, amounts and adjustment or non-adjustment to contract price or contract time set forth in the disputed change order. The requirement for timely written notice shall be a condition precedent to the assertion of a claim.

**4.2.6 Proceeding with Directed Work** – Upon receipt of a contract modification, change order, or field order, the Contractor shall proceed with the directed changes and instructions. The Contractor's right to make a claim for additional compensation or an extension of time for completion is not affected by proceeding with the changes and instructions described in a change order and field order.

**4.2.7 Pricing or Negotiating Costs Not Allowed** – The Contractor's cost of responding to requests for price or time adjustments is included in the contract price. No additional compensation will be allowed unless authorized by the Contracting Officer.

### **4.3 DUTY OF CONTRACTOR TO PROVIDE PROPOSAL FOR CHANGES**

**4.3.1** A Field Order may request the Contractor to supply the Department with a proposal for an adjustment to the contract time or contract price for the work described therein. Any such request for a proposal shall not affect the duty of the Contractor to proceed as ordered with the work described in the Field Order.

**4.3.2** The Engineer from time to time may issue a Bulletin to the Contractor requesting price and/or time adjustment proposals for contemplated changes in the work. A Bulletin is not a directive for the Contractor to perform the work described therein.

**4.3.3** Within fifteen (15) days after receipt of a Bulletin or a Field Order containing a request for proposal, the Contractor shall submit to the Engineer a detailed written statement in a format similar to the one shown in the Appendix to these General Conditions setting forth all charges the Contractor proposes for the change and the proposed adjustment of the contract time, all properly itemized and supported by sufficient substantiating data to permit evaluation. No time extension will be granted for delays caused by late Contractor pricing of changes or proposed changes. If the project is delayed because Contractor failed to submit the cost proposal within the fifteen (15) days, or as allowed by the Engineer, liquidated damages will be assessed in accordance with Section 7.26 FAILURE TO COMPLETE THE WORK ON TIME.

### **4.4 PRICE ADJUSTMENT HRS 103D-501**

**4.4.1** A fully executed change order or other document permitting billing for the adjustment in price under any method listed in paragraphs (4.4.1.1) through (4.4.1.5) shall be issued within ten days after agreement on the price adjustment. Any adjustment in the contract price pursuant to a change or claim in this contract shall be made in one or more of the following ways:

4.4.1.1 By agreement to a fixed price adjustment before commencement of the pertinent performance;



4.4.1.2 By unit prices specified in the contract or subsequently agreed upon before commencement of the pertinent performance;

4.4.1.3 Whenever there is a variation in quantity for any work covered by any line item in the schedule of costs submitted as required by Section 7.2 COMMENCEMENT REQUIREMENTS, by the Department at its discretion, adjusting the lump sum price proportionately;

4.4.1.4 FORCE ACCOUNT METHOD. At the sole option of the Contracting Officer, by the costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as specified in Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT and the force account provision of Section 8.3 PAYMENT FOR ADDITIONAL WORK before commencement of the pertinent performance;

4.4.1.5 In such other manner as the parties may mutually agree upon before commencement of the pertinent performance;

4.4.1.6 In the absence of an agreement between the two parties:

4.4.1.6.a For change orders with a value not exceeding \$50,000 by documented actual costs of the work, allowing for overhead and profit as set forth in Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT. A change order shall be issued within fifteen days of submission by the contractor of proper documentation of completed force account work, whether periodic (conforming to the applicable billing cycle) or final. The contracting officer shall return any documentation that is defective to the contractor within fifteen days after receipt, with a statement identifying the defect; or

4.4.1.6.b For change orders with a value exceeding \$50,000 by a unilateral determination by the Contracting Officer of the reasonable and necessary costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as computed by the Contracting Officer in accordance with applicable sections of Chapters 3-123 and 3-126 of the Hawaii Administrative Rules, and Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT. When a unilateral determination has been made, a unilateral change order shall be issued within ten days. Upon receipt of the unilateral change order, if the contractor does not agree with any of the terms or conditions, or the adjustment or nonadjustment of the contract time or contract price, the contractor shall file a notice of intent to claim within thirty days after the receipt of the written unilateral change order. Failure to file a protest within the time specified shall constitute agreement on the part of the contractor with the terms, conditions, amounts and adjustment or nonadjustment of the contract time or the contract price set forth in the unilateral change order.

**4.4.2 Cost or Pricing Data** – Contractor shall provide and certify cost or pricing data for any price adjustment to a contract involving aggregate increases and decreases in costs plus applicable profits expected to exceed \$100,000. The certified cost or pricing data shall be subject to the provisions of HAR chapter 3-122, subchapter 15.

## **4.5 ALLOWANCES FOR OVERHEAD AND PROFIT HRS 103D-501**

**4.5.1** In determining the cost or credit to the Department resulting from a change, the allowances for all overhead, including, extended overhead resulting from adjustments to contract time (including home office, branch office, and field overhead and related delay impact costs) and profit combined, shall not exceed the percentages set forth below:

4.5.1.1 For the Contractor, for any work performed by its own labor forces, twenty percent (20%) of the direct cost;

4.5.1.2 For each subcontractor involved, for any work performed by its own forces, twenty percent (20%) of the direct cost;

4.5.1.3 For the Contractor or any subcontractor for work performed by their subcontractors, ten percent (10%) of the amount due the performing subcontractor.

**4.5.2** Not more than three markup allowance line item additions not exceeding the maximum percentage shown above will be allowed for profit and overhead, regardless of the number of tier subcontractors.

**4.5.3** The allowance percentages will be applied to all credits and to the net increase of direct costs where work is added and deleted by the changes.

## **4.6 PAYMENT FOR DELETED MATERIAL**

**4.6.1 Canceled Orders** – If acceptable material was ordered by the Contractor for any item deleted by an ordered change in the work prior to the date of notification of such deletion by the Engineer, the Contractor shall use its best efforts to cancel the order. The Department shall pay reasonable cancellation charges required by the supplier excluding any markup for overhead and profit to the Contractor.

**4.6.2 Returned Materials** – If acceptable deleted material is in the possession of the Contractor or is ultimately received by the Contractor, if such material is returnable to the supplier and the Engineer so directs, the material shall be returned and the Contractor will be paid for the reasonable charges made by the supplier for the return of the material, excluding any markup for overhead and profit to the Contractor. The cost to the Contractor for handling the returned material will be paid for as provided in Section 4.4 PRICE ADJUSTMENT.

**4.6.3 Uncancelled Materials** – If orders for acceptable deleted materials cannot be canceled at a reasonable cost, it will be paid for at the actual cost to the Contractor including an appropriate markup for overhead and profit as set forth in Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT. In such case, the material paid for

shall become the property of the State and the cost of further storage and handling shall be paid for as provided in Section 4.4 PRICE ADJUSTMENT.

#### **4.7 VARIATIONS IN ESTIMATED QUANTITIES §3-125-10 HAR**

**4.7.1** Where the quantity of a major unit price item in this contract is estimated on the proposal form and where the actual quantity of such pay item varies more than fifteen percent (15%) above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. The adjustment shall be subject to Section 4.4 PRICE ADJUSTMENT and Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT. If the quantity variation is such as to cause an increase in the time necessary for completion, the Engineer shall, upon receipt of a written request for an extension of time within thirty (30) days of the item's completion, ascertain the facts and make such adjustment to the completion date as the Engineer finds justified.

#### **4.8 VARIATIONS IN BOTTOM ELEVATIONS**

The Contractor shall plan and construct to the bottom elevations of footings, piles, drilled shafts, or cofferdams as shown on the drawings. When the bottom of a pile, drilled shaft or cofferdam is shown as an estimated or approximate elevation, the Contractor shall plan and construct to that elevation or to any deeper elevation required by the drawings or direction of the Engineer. In the event the bottom elevation is lowered, the Contractor shall be entitled to additional payment in accordance with Sections 4.4 PRICE ADJUSTMENT and 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT. In the event the bottom elevation is raised, the State shall be entitled to a credit in accordance with Section 4.2 CHANGES, 4.4 PRICE ADJUSTMENT and 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.

#### **4.9 DIFFERING SITE CONDITIONS §3-125-11 HAR**

**4.9.1** During the progress of the work, if the Contractor encounters conditions at the site differing materially from those shown in the drawings and specifications, Contractor shall promptly, and before any such conditions are disturbed or damaged (except in an emergency as required by section 7.17.8), notify the Engineer in writing of:

4.9.1.1. Subsurface or latent physical conditions at the site differing materially from those indicated in the contract; or

4.9.1.2 Unknown physical conditions at the site, of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

**4.9.2.** After receipt of written notice, the Engineer shall promptly investigate the site, and if it is found that such conditions do materially differ and cause an increase in the Contractor's cost of, or the time required to, perform any part of the Work, whether or not changed as a result of such conditions, an adjustment shall be made and the contract modified accordingly. Any adjustment in contract price made pursuant to this Section 4.9 shall be determined in accordance with Sections 4.4 PRICE ADJUSTMENT and 7.25 DISPUTES AND CLAIMS.

**4.9.3** Nothing contained in this Section 4.9 shall be grounds for an adjustment in compensation if Contractor had actual knowledge or should have known of the existence of such conditions prior to the submission of bids.

#### **4.10 UTILITIES AND SERVICES**

**4.10.1** The cost of all the following will be included in the contract price and the Contractor shall be fully responsible for:

4.10.1.1 Reviewing and checking all such information and data,

4.10.1.2 Locating all underground and overhead utilities shown or indicated in the contract documents,

4.10.1.3 Coordination of the Work with the Owners of such underground and overhead utilities during construction; and

4.10.1.4 The safety and protection of all such underground and overhead utilities as provided in Section 7.17 PROTECTION OF PERSONS AND PROPERTY and repairing any damage thereto resulting from the work.

**4.10.2 Unknown Utilities** – During the progress of the work, if an underground utility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents, or found at a location that is substantially different than shown or indicated in the Contract Documents, Contractor shall promptly, and before any such conditions are disturbed or damaged (except in an emergency as required by subsection 7.17.8), notify the Engineer. Contractor shall be responsible for the safety and protection of the underground utility as provided in Section 7.17 PROTECTION OF PERSONS AND PROPERTY. Refer to subsections 4.9.2 and 4.9.3.

**4.10.3** If the Engineer determines a change in the Contract Documents is required, a Field Order or Change Order will be issued. Upon issuance of a duly authorized Field Order or Change Order regarding the disposition of a newly discovered utility, Contractor

shall be responsible for damages to the utility, including any damage claims due to the disruption of service caused by the utility being damaged.

**4.10.4 Restoration of Damaged Utilities** – The Contractor shall repair and restore to pre-damaged conditions any utilities or any other property it damaged. The Contractor shall be liable for any resulting damages, to the Work or to the utility owner or property owner and shall pay any claim due to the disruption of service caused by the utilities being damaged. Contractor shall defend and save harmless the State from all suits, actions, or claims of any character brought on account of such damages, whether or not the State may have been partially at fault. Contractor shall obtain public liability and property damage insurance pursuant to Article 7 PROSECUTION AND PROGRESS to cover such risk of damage.

**4.10.5** In the event the Contractor, simultaneously with the discovery of an unknown utility or other property, damages that utility or other property, the Contractor shall immediately notify the Engineer. If the Contractor is without fault in such a situation, notwithstanding subsection 4.10.4, the Contractor shall not be liable for resulting damages or the defense of the State from claims brought on account of said damages to unknown utilities or other property. Upon instruction from the Engineer, the Contractor shall repair all damages and execute a plan for dealing with the damaged utility or other property. This repair work shall be considered additional work as covered in Section 4.2 CHANGES.

## **ARTICLE 5 – Control of Work**

### **5.1 AUTHORITY OF THE ENGINEER**

**5.1.1** The Engineer shall make final and conclusive decisions on all questions which may arise relating to the quality and acceptability of the materials furnished and work performed, the manner of performance and rate of progress of the work, the interpretation of the Contract Documents, the acceptable fulfillment of the contract on the part of the Contractor, the compensation under the Contract and the mutual rights of the parties to the Contract.

**5.1.2** The Engineer shall have the authority to enforce and make effective such decisions and orders at the Contractor's expense when the Contractor fails to carry such decisions and orders out promptly and diligently.

**5.1.3** The Engineer shall have the authority to suspend the work wholly or in part as provided in Section 7.24 SUSPENSION OF WORK.

**5.1.4** The Engineer may delegate specific authority to act for the Engineer to a specific person or persons. Such delegation of authority shall be established in writing by the Contractor.

## **5.2 AUTHORITY OF THE INSPECTOR**

**5.2.1** The Inspector shall observe and inspect the contract performance and materials. The Inspector does not have any authority vested in the Engineer unless specifically delegated in writing.

**5.2.2** The Inspector may offer advice and recommendations to the Contractor, but any such advice and recommendations are not directives from the Engineer.

**5.2.3** The Inspector has no authority to allow deviations from the Contract Documents and may reject any and all work that the Inspector deems is not in conformity with the contract requirements. Failure of an Inspector at any time to reject non-conforming work shall not be considered a waiver of the Department's right to require work in strict conformity with the Contract Documents as a condition of final acceptance.

**5.3 AUTHORITY OF CONSULTANT(S)** - The Department may engage Consultant(s) for limited or full observation to supplement the inspections performed by the State and respective counties. Unless otherwise specified in writing to the Contractor, such retained Consultant(s) will have the authority of a Project Inspector.

## **5.4 SHOP DRAWINGS AND OTHER SUBMITTALS**

**5.4.1** The following documents shall be submitted where required by the contract documents:

### **5.4.1.1 Shop Drawings**

(a) The Contractor shall prepare, and thoroughly check, approve, all shop drawings, including those prepared by subcontractors or any other persons. The Contractor shall indicate its approval by stamping and signing each drawing. Any shop drawing submitted without being reviewed, stamped and signed will be considered as not having been submitted, and any delay caused thereby shall be the Contractor's responsibility.

(b) Shop drawings shall indicate in detail all parts of an item of work, including erection and setting instructions and engagements with work of other trades or other separate contractors. Shop drawings for structural steel, millwork and pre-cast concrete shall consist of calculations, fabrication details, erection drawings, and other working drawings, as necessary, to show the details, dimensions, sizes of members, anchor bolt plans, insert locations, and other information necessary for the complete fabrication and erection of the structure to be constructed.

(c) All shop drawings as required by the contract, or as determined by the Engineer to be necessary to illustrate details of the Work shall be submitted to the Engineer with such promptness as to cause no delay in the work or in that of any other Contractor. Delay caused by failure of the Contractor to submit shop drawings on a timely basis to

allow for review, possible resubmittal and acceptance will not be considered as a justifiable reason for a contract time extension. Contractor, at its own risk, may proceed with the work affected by the shop drawings before receiving acceptance, however, the Department shall not be liable for any costs or time required for the correction of work done without the benefit of accepted shop drawings.

(d) It is the Contractor's obligation and responsibility to check all of its and its subcontractor's shop drawings and be fully responsible for them and for coordination with connecting and other related work. The Contractor shall prepare, and submit to the Engineer coordination drawings showing the installation locations of all plumbing, piping duct and electrical work including equipment throughout the project. By approving and submitting shop drawings, the Contractor thereby represents that it has determined and verified all field measurements and field construction criteria, or will do so, and that it has checked and coordinated each shop drawing with the requirements of the work and contract documents. When shop drawings are prepared and processed before field measurements and field construction criteria can be or have been determined or verified, the Contractor shall make all necessary adjustments in the work or resubmit further shop drawings, all at no change in contract price or time.

5.4.1.2 Shop Drawing Form – Each drawing and/or series of drawings submitted must be accompanied by a letter of transmittal giving a list of the titles and number of the drawings. Each series shall be numbered consecutively for ready reference and each drawing shall be marked with the following information:

- (a) Date of Submission
- (b) Name of Project
- (c) Project Number
- (d) Location of Project
- (e) Name of submitting Contractor and Subcontractor
- (f) Revision Number

5.4.1.3 The size of the sheets that shop drawings are prepared on shall be as appropriate to suit the drawing being presented so that the information is clearly and legibly depicted. At the determination of the Engineer, for each sheet of drawings, the submittal shall consist of either; one reproducible transparency and five prints, or eight prints.

5.4.1.4 Descriptive Sheets and Other Submittals. When a submittal is required by the contract, the Contractor shall submit to the Contracting Officer eight (8) complete sets of descriptive sheets such as shop drawings, brochures, catalogs, illustrations, calculations, material safety data sheets (MSDS), certificates, reports, warranty, etc., which will completely describe the material, product, equipment, furniture or appliances to be used in the project as shown in the drawings and specifications and how it will be integrated into adjoining construction. Prior to the submittal, the Contractor will review and check all descriptive sheets for conformity to the contract requirements and indicate such conformity by marking or stamping and signing each sheet. Where descriptive sheets include materials, systems, options, accessories, etc. that do not apply to this

contract, non-relevant items shall be crossed out so that all remaining information will be considered applicable to this contract. It is the responsibility of the Contractor to submit descriptive sheets for review and acceptance by the Engineer as required at the earliest possible date after the date of award in order to meet the Contract Duration. Delays caused by the failure of the Contractor to submit descriptive sheets as required will not be considered as justifiable reasons for contract time extension.

**5.4.1.5 Material Samples and Color Samples** – When material and color sample submittals are required by the contract, the Contractor shall submit to the Contracting Officer no less than three (3) samples conforming to Section 6.6 MATERIAL SAMPLES. One sample will be retained by the Consultant, one sample will be retained by the State, and the remaining sample(s) will be returned to the Contractor. Prior to the material and color submittal, the Contractor shall review and check all samples for conformity to the contract requirements and indicate such conformity by marking or stamping and signing each sample. It is the responsibility of the Contractor to submit samples for review and acceptance by the Contracting Officer as required at the earliest possible date after the date of award in order to meet the Contract Duration. Delays caused by the failure of the Contractor to submit material and color samples will not be considered as justification for contract time extension.

**5.4.1.6** Unless the technical sections (Divisions 2 – 16) specifically require the Contractor furnish a greater quantity of shop drawings and other submittals, the Contractor shall furnish the quantities required by this section.

**5.4.2 Submittal Variances** – The Contractor shall include with the submittal, written notification clearly identifying all deviations or variances from the contract drawings, specifications and other Contract Documents. The notice shall be in a written form separate from the submittal. The variances shall also be clearly indicated on the shop drawing, descriptive sheet, material sample or color sample. Failure to so notify of and identify such variances shall be grounds for the subsequent rejection of the related work or materials, notwithstanding that the submittal was accepted by the Engineer. If the variances are not acceptable to the Engineer, the Contractor will be required to furnish the item as specified or indicated on the contract documents at no additional cost or time.

**5.4.3 Review and Acceptance Process** – Submittals will be returned to the Contractor within twenty one (21) days (for projects on Oahu) and twenty five (25) days (for projects on the islands of Hawaii, Maui, Kauai, Molokai and Lanai) after receipt by the Engineer unless otherwise agreed between the Contractor and the Engineer or as stated elsewhere in the contract documents.

**5.4.3.1** The acceptance by the Engineer of the Contractor's submittal relates only to their sufficiency and compliance with the intention of the contract. Acceptance by the Engineer of the Contractor's submittal does not relieve the Contractor of any responsibility for accuracy of dimensions, details, and proper fit, and for agreement and conformity of submittal with the contract drawings and specifications. Nor will the



Engineer's acceptance relieve the Contractor of responsibility for variance from the contract documents unless the Contractor, at the time of submittal, has provided notice and identification of such variances required by this section. Acceptance of a variance shall not justify a contract price or time adjustment at the time of submittal and the adjustment is explicitly agreed to in writing by the Engineer. Any such request shall include price details and proposed scheduling modifications. Acceptance of a variance is subject to all contract terms, stipulations and covenants, and is without prejudice to any and all rights under the surety bond.

5.4.3.2 If the Engineer returns a submittal to the Contractor that has been rejected, the Contractor, so as not to delay the work, shall promptly make a resubmittal conforming to the requirements of the contract documents and indicating in writing on the transmittal and the subject transmittal what portions of the resubmittal has been altered in order to meet the acceptance of the Engineer. Any other differences between the resubmittal and the prior submittal shall also be specifically described in the transmittal.

5.4.3.3. No mark or notation made by the Engineer on or accompanying the return of any submittal to the Contractor shall be considered a request or order for a change in work. If the Contractor believes any such mark or notation constitutes a request for a change in the work for which it is entitled to an adjustment in price and/or time, the Contractor must follow the same procedures established in Section 4.2 CHANGES for oral orders, directions, instructions, interpretations or determinations from the Engineer or else lose its right to claim for an adjustment.

**5.5 COORDINATION OF CONTRACT DOCUMENTS** – It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. The Contract Documents are complementary: any requirement occurring in one document is as binding as though occurring in all. In the event of conflict or discrepancy, the priorities stated in the following subparagraphs shall govern:

**5.5.1 Addenda** shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda only to the extent specified.

**5.5.2 SPECIAL CONDITIONS and Proposal** shall govern over the GENERAL CONDITIONS and Specifications.

**5.5.3 Specifications** shall govern over drawings.

**5.5.4 Specification Error** – Should an error or conflict appear within the specification, the Contractor shall immediately notify the Engineer. The Engineer shall promptly issue instructions as to procedure. Any requirement occurring in one or more parts of the specification is as binding as though occurring in all applicable parts.

5.5.4.1 Should an error or conflict appear within a specification section, between a listed manufacturer/product and the performance requirements of the specification section, the performance requirements shall govern.

## **5.5.5 Drawings**

5.5.5.1 Schedules shall govern over all other notes and drawings.

5.5.5.2 Bottom elevations of footings shown on drawings shall govern over a general note such as: "All footings shall rest on firm, undisturbed soil and extend a minimum of a certain number of feet into natural or finish grade, whichever is lower."

5.5.5.3 Except for drawing schedules and bottom elevations as noted above, general notes shall govern over all other portions of the drawings:

5.5.5.4 Larger scale drawings shall govern over smaller scale drawings.

5.5.5.5 Figured or numerical dimensions shall govern over dimensions obtained by scaling. Measurements from the drawings when scaled shall be subject to the approval of the Engineer.

5.5.5.6 In cases of discrepancies in the figures or drawings, the discrepancies shall be immediately referred to the Engineer without whose decision said discrepancy shall not be corrected by the Contractor save at its own risk and in the settlement of any complications arising from such adjustment without the knowledge and consent of the Engineer, the Contractor shall bear all extra expense involved.

5.5.5.7 Items shown on the drawings that are completely void in terms of description, details, quality and/or performance standards in both the drawings and specifications to make a price determination shall be considered an omission and the Contractor shall immediately refer same to the Engineer for a decision.

5.5.5.8 Where there is a conflict between the architectural sheets and the civil or landscaping or electrical sheets, etc., the conflict shall be considered a discrepancy and the Contractor shall immediately refer the same to Engineer for a decision.

5.5.5.9 Any requirement occurring in one or more of the sheets is as binding as though occurring in all applicable sheets.

**5.6 INTERPRETATION OF DRAWINGS AND SPECIFICATIONS** – The Contractor shall carefully study and compare the Contract Documents with each other, with field conditions and with the information furnished by the State and shall at once report to the Engineer errors, conflicts, ambiguities, inconsistencies or omissions discovered. Should an item not be sufficiently detailed or explained in the Contract Documents, Contractor shall report and request the Engineer's clarification and interpretation. The Engineer will

issue a clarification or interpretation that is consistent with the intent of and reasonably inferred from Contract Documents.

## **5.7 EXAMINATION OF DRAWINGS, SPECIFICATIONS, PROJECT SITE**

**5.7.1** The Contractor shall examine carefully the Project Site to become familiar with the conditions to be encountered in performing the Work and the requirements of the Contract Documents.

5.7.1.1 No extra compensation shall be given by reason of the Contractor's misunderstanding or lack of knowledge of the requirements of the Work to be accomplished or the conditions to be encountered in performing the project.

5.7.1.2 No extra compensation will be given by reason of the Contractor's misunderstanding or lack of knowledge when the existence of differing site, subsurface or physical conditions could have been reasonably discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the Bidding requirements or Contract Documents to be conducted by or for the Contractor.

**5.7.2** When the Contract Drawings include a log of test borings showing a record of the data obtained by the Department's investigation of subsurface conditions, said log represents only the opinion of the Department as to the character of material encountered in its test borings and at only the location of each boring. The Contractor acknowledges that underground site conditions in Hawaii vary widely. There is no warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work or any part of it, or that other conditions may not occur.

**5.7.3** Reference is made to the SPECIAL CONDITIONS for identification of subsurface investigations, reports, explorations and tests utilized by the State in preparation of the Contract Documents. Such reports, drawings, boring logs, etc. are not part of the Contract Documents.

## **5.8 COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT**

**5.8.1 Furnishing Drawing and Specifications** – Judiciary will not furnish hard copies of contract plans and specifications to Contractors. Contractors who receive award for projects shall download the files of drawings and specifications from HlePro website: <https://hiepro@ehawaii.gov> and make their own hard copies. Contractor shall have and maintain at least one hard copy of the Contract Drawings and Specifications on the work site, at all times.

**5.8.2 Superintendent** – The Contractor shall have a competent superintendent or agent on the work site while work is being performed under the contract. The superintendent or agent shall be experienced in the type of project being undertaken and the work being performed. The superintendent or agent shall represent the Contractor and shall have the authority to act on behalf of the Contractor. Communications given to the superintendent or agent shall be as binding as if given to the Contractor.

5.8.2.1 If the superintendent or agent is not present at the work site, the Engineer shall have the right to suspend the work as described under Section 7.24 SUSPENSION OF WORK.

5.8.2.2 The Contractor shall file with the Engineer a written statement giving the name of the superintendent or agent assigned to the project. The Contractor shall be responsible for notifying the Engineer in writing of any change in the superintendent or agent.

5.8.2.3 The requirements of this subsection 5.8.2 may be waived by the Engineer.

**5.8.3 Engineering Work** – The Contractor shall properly and accurately lay out the work, perform all engineering work, and furnish all engineering materials and equipment required to establish and maintain all lines, grades, dimensions and elevations called for in the drawings or required in the progress of construction, unless otherwise noted in the contract documents. The Contractor will be held definitely and absolutely responsible for any errors in lines, grades, dimensions, and elevations and shall at once, on instruction from the Engineer, correct and make good such errors or any errors, or faults in the work resulting from errors in engineering performed under the requirements of its contract to the entire satisfaction of the Engineer. Full compensation for the work shall be included in the prices paid for contract items of work. No additional allowance will be made for the correction of incorrect engineering work.

5.8.3.1 The Engineer shall furnish the requisite bench elevations.

5.8.3.2 The Contractor shall locate and verify all lines, grades, dimensions, and elevations indicated on the drawings before any excavation or construction begins. Any discrepancy shall be immediately brought to the attention of the Engineer, any change shall be made in accordance with the Engineer's instruction.

5.8.3.3 The Contractor shall verify all street survey monuments (horizontal and vertical alignment) prior to final acceptance by the Engineer in accordance with any governmental requirements.

5.8.3.4 The Contractor shall provide a surveyor or Civil Engineer licensed in the State of Hawaii to verify and establish all lines, grades, dimensions and elevations.

**5.8.4 Use of Structure or Improvement** – The Department shall have the right, at any time during construction of the structure or improvements, to enter same for the purpose

of installing by government labor or by any other Contractor or utility any necessary work in connection with the installation of facilities, it being mutually understood and agreed, however, that the Contractors, utilities and the Department will, so far as possible, work to the mutual advantage of all, where their several works in the above mentioned or in unforeseen instances touch upon or interfere with each other. As a convenience to those involved, the Engineer shall allocate the work and designate the sequence of construction in case of controversy between Contractors on separate projects under State jurisdiction.

5.8.4.1 The Department shall also have the right to use the structure, equipment, improvement or any part thereof, at any time after it is considered by the Engineer as available. In the event that the structure, equipment or any part thereof is so used, the Department shall be responsible for all expenses incidental to such use and any damages resulting from the Department's use.

5.8.4.2 Equipment warranty will commence to run before the work is complete when and if the Department begins actual use of the equipment for the purpose for which the equipment was designed and installed.

5.8.4.3 If the Department enters the structure for construction and/or occupancy and the Contractor is delayed because of interference by the Department or by extra work resulting from damage which the Contractor is not responsible for, or by extraordinary measures the Contractor must take to accommodate the Department, the Contractor shall be granted an extension of time in accordance with Section 7.21 CONTRACT TIME. However, if such use increases the cost or delays the completion of the remaining portions of work, Contractor shall be entitled to such extra compensation or extension of time or both, as the State may determine to be proper. Any additional work necessary will be paid in accordance with Section 8.3 PAYMENT FOR ADDITIONAL WORK.

**5.9 INSPECTION** – The Engineer, the Department's consultants, Inspectors employed by the Department and other representatives duly authorized by the Department shall at all times have access to the work during its construction and shall be furnished with every reasonable facility for ascertaining at any time that the materials and the workmanship are in accordance with the requirements and intentions of the contract. All work done and all materials furnished shall be subject to inspection and acceptance.

**5.9.1** Such inspection and approval may extend to all or part of the work, and to the preparation, fabrication or manufacture of the materials to be used. By entering into a contract for the supply of materials, equipment, or performance of labor in connection with the Work, such Material and Equipment Supplier or Labor Contractor consents to and is subject to the terms of this Section 5.9 to the same extent as the Contractor.

**5.9.2. Authority to Suspend Operations** – The Inspector shall have the authority to suspend operations of any work being improperly performed by issuing a written order

giving the reason for shutting down the work. Should the Contractor disregard such written order, the work done thereafter will not be accepted nor paid for.

**5.9.3** The inspection of the work shall not relieve the Contractor of any of its obligations to fulfill the contract as prescribed. Notwithstanding prior payment and acceptance by the Engineer, defective and nonconforming work shall be corrected to comply with the contract requirements. Unsuitable, unspecified or unapproved materials may be rejected.

**5.9.4 Federal Agency Inspection** – Projects financed in whole or in part with Federal funds shall be subject to inspection and corrective requirements at all times by the Federal Agency involved at no cost to the State.

## **5.10 REMOVAL OF DEFECTIVE, NON-CONFORMING AND UNAUTHORIZED WORK**

**5.10.1** All work which has been rejected as not conforming to the requirements of the Contract shall be remedied or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed for such removal or replacement. Any work done beyond the work limits shown on the drawings and specifications or established by the Engineer or any additional work done without written authority will be considered as unauthorized and will not be paid for. Work so done may be ordered removed at the Contractor expense.

**5.10.2 Scheduling Corrective Work** – The Contractor shall perform its corrective or remedial work at the convenience of the State and shall obtain the Engineer's approval of its schedule.

**5.10.3 Failure to Correct Work** – Upon failure on the part of Contractor to comply promptly with any order of the Engineer made under the provisions of this Section 5.10, the Engineer shall have authority to cause defective work to be remedied or removed and replaced, and unauthorized work to be removed, at the Contractor's expense, and to deduct the costs from any monies due or to become due the Contractor.

## **5.11 VALUE ENGINEERING INCENTIVE**

§3-132 HAR amended by Act 149 SLH 1999 – On projects with contract amounts in excess of \$250,000, the following Value Engineering Incentive Clause shall apply to allow the Contractor to share in cost savings that ensue from cost reduction proposals it submits.

**5.11.1** The Value Engineering Incentive Clause applies to all Value Engineering Change Proposals (cost reduction proposals, hereinafter referred to as (VECP)) initiated and developed by the Contractor for changing the drawings, designs, specifications or

other requirements of this contract. This clause does not, however, apply to any VECP unless it is identified as such by the Contractor at the time of its submission to the Engineer.

**5.11.2 Value Engineering Change Proposal – All VECP must:**

5.11.2.1 Result in a savings to the State of at least four thousand dollars (\$4,000) by providing less costly items than without impairing any essential functions and characteristics such as service life, reliability, economy of operation, ease of maintenance, and all necessary features of the completed work.

5.11.2.2 Require, in order to be applied to this contract, a change order to this contract.

5.11.2.3 Not adversely impact on the schedule of performance or the contract completion date.

**5.11.3 VECP Required Information** – The VECP will be processed expeditiously and in the same manner as prescribed for any other change order proposal. As a minimum, the following information will be submitted by the Contractor with each proposal:

5.11.3.1 A description of the difference between the existing contract requirements and the VECP, and the comparative advantages and disadvantages of each including durability, service life, reliability, economy of operation, ease of maintenance, design safety standards, desired appearance, impacts due to construction and other essential or desirable functions and characteristics as appropriate;

5.11.3.2 An itemization of the requirements of the contract which must be changed if the VECP is adopted and a recommendation as to how to make each such change;

5.11.3.3 An estimate of the reduction in performance costs that will result from adoption of the VECP taking into account the costs of implementation by the Contractor, including any amounts attributable to subcontracts, and the basis for the estimate;

5.11.3.4 A prediction of any effects the VECP would have on other costs to the State, such as State furnished property costs, costs of related items, and costs of maintenance and operation over the anticipated life of the material, equipment or facilities as appropriate; the construction schedule, sequence and time; and bid item totals used for evaluation and payment purposes;

5.11.3.5 A statement of the time by which a change order adopting the VECP must be issued so as to obtain the maximum cost reduction during the remainder of this contract noting any effect on the contract time; and

5.11.3.6 The dates of any previous submissions of the VECP, the numbers any Government contracts under which submitted and the previous action by the Government, if known.

**5.11.4 Required Use of Licensed Architect or Engineer** – When, in the judgment of the Engineer, a VECP alters the design prepared by a registered professional architect or engineer, the Contractor shall ensure the changes to be prepared are by or under the supervision of a licensed professional architect or engineer, and stamped and so certified.

**5.11.5** Unless and until a change order applies a VECP to a contract, the Contractor shall remain obligated to perform in accordance with the terms of the contract and the Department shall not be liable for delays incurred by the Contractor resulting from the time required for the Department's determination of the acceptability of the VECP.

5.11.5.1 The determination of the Engineer as to the acceptance of any VECP under a contract shall be final.

**5.11.6 Acceptance of VECP** – The Engineer may accept in whole or in part any VECP submitted pursuant to this section by issuing a change order to the contract. Prior to issuance of the change order, the Contractor shall submit complete final contract documents similar to those of the original contract showing the accepted changes and the new design and features as well as the following:

5.11.6.1 Design calculations;

5.11.6.2 The design criteria used; and

5.11.6.3 A detailed breakdown of costs and expenses to construct or implement such revisions.

5.11.6.4 The change order will identify the final VECP on which it is based.

**5.11.7 VECP Price Adjustments** – When a VECP is accepted under a contract, an adjustment in the contract price shall be made in accordance with Section 4.4 PRICE ADJUSTMENT. The adjustment shall first be established by determining the effect on the Contractor's cost of implementing the change, including any amount attributable to subcontractors and to the Department's charges to the Contractor for architectural, engineering, or other consultant services, and the staff time required to examine and review the proposal. The contract price shall then be reduced by fifty percent (50%) of the net estimated decrease in the cost of performance.

**5.11.8** The Contractor may restrict the Department's right to use the data or information or both, on any sheet of a VECP or of the supporting data, submitted pursuant to this paragraph, if it is stated on that sheet as follows:



5.11.8.1 “This data or information or both shall not be disclosed outside the Department or be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this VECP. This restriction shall not limit the Department’s right to use this data or information or both if obtained from another source, or is otherwise available, without limitations. If this VECP is accepted by the Department by the issuance of a Change Order after the use of this data or information or both in such an evaluation, the Department shall have the right to duplicate, use and disclose any data or information or both pertinent to the proposal as accepted in any manner and for any purpose whatsoever and have others do so.”

**5.11.9** In the event of acceptance of a VECP, the Department shall have all rights to use, duplicate or disclose in whole or in part in any manner and for any purpose whatsoever, and to have or permit others to do so, any data or information or both reasonably necessary to fully utilize such proposal.

**5.11.10** The Contractor shall submit with each VECP all required information and provide all additional information as may be required by the Engineer to evaluate and implement the VECP. The cost for preparing the VECP shall be the Contractor’s responsibility, and any part of the Contractor’s cost for implementing the change shall be due only when the proposal is accepted and a change order is issued.

**5.11.11** If the services of the Department’s architect, engineer or consultant is necessary to review and evaluate a VECP, the cost therefor shall be paid for by the Contractor.

**5.11.12** Each VECP shall be evaluated as applicable to this contract, and past acceptance on another Department project for a similar item shall not be automatic grounds for approval.

**5.11.13** The method by which the Contractor will share a portion of the cost savings from an accepted VECP shall be for this contract only, and no consideration shall be made for future acquisition, royalty type payment or collateral savings.

5.11.13.1 The Department may accept the proposed VECP in whole or in part. The Engineer shall issue a contract change order to identify and describe the accepted VECP.

**5.12 SUBCONTRACTS** – Nothing contained in the contract documents shall create a contractual relationship between the Department and any subcontractor. The contractor may subcontract a portion of the work but the contractor shall remain responsible for the work that is subcontracted.

**5.12.1 Replacing Subcontractors** – Contractors may enter into subcontracts only with subcontractors listed in the offer form. The contractor will be allowed to replace a listed subcontractor if the subcontractor:

5.12.1.1 Fails, refuses, or is unable to enter into a subcontract consistent with the terms and conditions of the subcontractor's offer presented to the contractor; or

5.12.1.2 Becomes insolvent; or

5.12.1.3 Has any license or certification necessary for performance of the work suspended or revoked; or

5.12.1.4 Has defaulted or otherwise breached the subcontract in connection with the subcontracted work; or

5.12.1.5 Agrees to be substituted by providing a written release; or

5.12.1.6 Is unable to comply with other requirements of law applicable to contractors, subcontractors and public works projects.

**5.12.2 Notice of Replacing a Subcontractor** – The Contractor shall provide a written notice to the Contracting Officer when it replaces a subcontractor, including in the notice, the reasons for replacement. The Contractor agrees to defend, hold harmless, and indemnify the State against all claims, liabilities, or damages whatsoever, including attorney's fees arising out of or related to the replacement of a subcontractor.

**5.12.3 Adding Subcontractors** – The Contractor may enter into a subcontract with a subcontractor that is not listed in the offer form only after this contract becomes enforceable.

**5.12.4 Subcontracting** – Contractor shall perform with its own organization, work amounting to not less than twenty percent (20%) of the total contract cost, exclusive of costs for materials and equipment the Contractor purchases for installation by its subcontractors, except that any items designated by the State in the contract as "specialty items" may be performed by a subcontract and the cost of any such specialty items so performed by the subcontract may be deducted from the total contract cost before computing the amount of work required to be performed by the Contractor with its own organization.

## **ARTICLE 6 – Control of Material and Equipment**

**6.1 MATERIALS AND EQUIPMENT** – Contractor shall furnish, pay for and install all material and equipment as called for in the drawings and specifications. Materials and equipment shall be new and the most suitable for the purpose intended unless otherwise specified. The State does not guarantee that the specified or pre-qualified product listed in the drawings and specifications are available at the time of bid or during the contract period.

## **6.2 SOURCE OF SUPPLY AND QUALITY OF MATERIALS**

**6.2.1** Only materials conforming to the drawings and specifications and, when required by the contract have been accepted by the Engineer, shall be used. In order to expedite the inspection and testing of materials, at the request of the Engineer, the Contractor shall identify its proposed sources of materials within ten (10) days after notification by the Engineer.

**6.2.2** At the option of the Engineer, the materials may be accepted by the Engineer at the source of supply before delivery is started. Representative preliminary samples of the character and quantity prescribed shall be submitted by the Contractor or producer for examination and tested in accordance with the methods referred to under samples and tests.

**6.2.3 Engineer's Authorization to Test Materials** - Materials proposed to be used may be inspected and tested whenever the Engineer deems necessary to determine conformance to the specified requirements. The cost of testing shall be borne by the Contractor. However, should test results show that the material(s) is in compliance with the specified requirements, the cost of testing will be borne by the State.

**6.2.4 Unacceptable Materials** – In the event material(s) are found to be unacceptable, the Contractor shall cease their use, remove the unacceptable material(s) that have already been installed or applied, and furnish acceptable materials all at no additional cost to the State. No material which is in any way unfit for use shall be used.

## **6.3 SUBSTITUTION AFTER CONTRACT AWARD**

**6.3.1** Materials, equipment, articles and systems noted on the drawings and specifications, establish a standard of quality, function, performance or design requirements and shall not be interpreted to limit competition. Should trade names, makes, catalog numbers or brand names be specified, the Contractor shall infer that these items indicate the quality, style, appearance or performance of the material, equipment, article, or systems to be used in the project. The Contractor is responsible to use materials, equipment, articles or systems that meet the project requirements. Unless specifically provided otherwise in the contract documents, the Contractor may, at its option, use any material, equipment, article or system that, in the judgment of the Contracting Officer, is equal to that required by the contract documents.

**6.3.1.1** If, after installing a material, equipment, article or system, a variance is discovered, the Contractor shall immediately replace the material, equipment, article or system with one that meets the requirements of the contract documents.

**6.3.2 Substitution After Contract Award** – Subject to the Contracting Officer's determination, material, equipment, article or system with a variant feature(s) may be allowed as a substitution, provided it is in the State's best interest. The State may deny a substitution; and if a substitution is denied, the Contractor is not entitled to any additional compensation or time extension.

6.3.2.1 The Contractor shall include with the submittal a notification that identifies all deviations or variances from the contract documents. The notice shall be in written form separate from the submittal. The variances shall be clearly shown on the shop drawing, descriptive sheet, and material sample or color sample, and the Contractor shall certify that the substitution has no other variant features. Failures to identify the variances are grounds to reject the related work or materials, notwithstanding that the Contracting Officer accepted the submittal. If the variances are not acceptable to the Contracting Officer, the Contractor will be required to furnish the item as specified on the contract documents at no additional cost or time.

6.3.2.2 Acceptance of a variance shall not justify a contract price or time adjustment unless the Contractor requests an adjustment at the time of submittal and the adjustments are explicitly agreed to in writing by the Contracting Officer. Any request shall include price details and proposed scheduling modifications. Acceptance of a variance is subject to all contract terms, and is without prejudice to all rights under the surety bond.

6.3.2.3 The Contractor can recommend improvements to the project, for materials, equipment, articles, or systems by means of substitution request, even if the improvements are at an additional cost. The Contracting Officer shall make the final determination to accept or reject the Contractor's proposed improvements. If the proposed material, equipment, article or system costs less than the specified item, the Department will require a sharing of cost similar to value engineering be implemented. State reserves its right to deny a substitution; and if a substitution is denied, the Contractor is not entitled to additional compensation or time extension.

**6.3.3** A substitution request after Contract Award shall be fully explained in writing. Contractor shall provide brochures showing that the substitute material and/or equipment is equal or better in essential features and also provide a matrix showing comparison of the essential features. Contractor shall justify its request and include quantities and unit prices involved, respective supplier's price quotations and such other documents necessary to fully support the request. Any savings in cost will be credited to the Department. Contractor shall absorb any additional cost for the substitute item(s) or for its installation. Submitting a substitution request, does not imply that substitutions, for brand name specified materials and equipment, will be allowed. The Engineer may reject and deny any request deemed irregular or not in the best interest of the Department. A request for substitution shall not in any way be grounds for an extension of contract time. At the discretion of the Engineer, a time extension may be granted for an approved substitution.

## **6.4 ASBESTOS CONTAINING MATERIAL**

The use of materials or equipment containing asbestos is prohibited under this contract. Contractor warrants that all materials and equipment incorporated in the project are asbestos-free.

## **6.5 TEST SAMPLES**

**6.5.1** The Engineer may require any or all materials to be tested by means of samples or otherwise. Contractor shall collect and forward samples requested by the Engineer. Contractor shall not use or incorporate any material represented by the samples until all required tests have been made and the material has been accepted. In all cases, the Contractor shall furnish the required samples without charge. Where samples are required from the completed work, the Contractor shall cut and furnish samples from the completed work. Samples so removed shall be replaced with identical material and refinished. No additional compensation will be allowed for furnishing test samples and their replacement with new materials.

**6.5.2** Tests of the material samples will be made in accordance with the latest standards of the American Society for Testing and Materials (ASTM), as amended, prior to the contract date unless otherwise provided. In cases where a particular test method is necessary or specifications and serial numbers are stipulated, the test shall be made by the method stated in the above-mentioned publication. Where the test reference is the American Association of State and Highway Transportation Officials (AASHTO), it means the specifications and serial numbers of the latest edition and amendments prior to the bid date.

**6.5.3** The Engineer may retest any materials which have been tested and accepted at the source of supply after the same has been delivered to the work site. The Engineer shall reject all materials which, when retested, do not meet the requirements of the contract.

## **6.6 MATERIAL SAMPLES**

**6.6.1** The Contractor shall furnish all samples required by the drawings and specifications or that may be requested by the Engineer of any and all materials or equipment it proposes to use. Unless specifically required, samples are not to be submitted with the bid.

**6.6.2** No materials or equipment of which samples are required shall be used on the Work until the Engineer has received and accepted the samples. If the Contractor proceeds to use such materials before the Engineer accepts the samples, the Contractor shall bear the risk.

**6.6.3** Contractor shall furnish two (2) copies of a transmittal letter with each shipment of samples. The letter shall provide a list of the samples, the name of the building or work for which the materials are intended and the brands of the materials and names of the manufacturers. Also, each sample submitted shall have a label indicating the material represented, its place of origin, the name of the producer, the Contractor and the building or work for which the material is intended. Samples of finished materials shall be marked to indicate where the materials represented are required by the drawings or specifications.

**6.6.4** Acceptance of any sample(s) shall be only for the characteristics or for the uses named in such acceptance and for no other purpose. Acceptance of samples shall not change or modify any contract requirement. All samples will be provided by the Contractor at no extra cost to the Department. See also Section 5.4 SHOP DRAWINGS AND OTHER SUBMITTALS.

**6.7 NON-CONFORMING MATERIALS** – All materials not conforming to the requirements of these contract documents, whether in place or not, shall be rejected and removed immediately from the site of work unless otherwise permitted by the Engineer in writing. No rejected material which has subsequently been made to conform shall be used unless and until written acceptance has been given by the Engineer. If the Contractor fails to comply forthwith with any order of the Engineer made under the provisions of this Section 6.7, the Engineer shall have the authority to remove and replace non-conforming materials and charge the cost of removal and replacement to the Contractor.

**6.8 HANDLING MATERIALS** – Contractor shall handle all materials to preserve their quality and fitness for work. Transport aggregates from the source or storage site to the work in tight vehicles to prevent loss or segregation of materials after loading and measuring.

**6.9 STORAGE OF MATERIALS** – Contractor shall store all materials to preserve their quality and fitness for the work. Unless otherwise provided, any portion of the project site within the Project Contract Limit not required for public travel, may be used for storage purposes and for the Contractor's plant and equipment. Any additional space required shall be provided by the Contractor at its expense subject to the Engineer's acceptance. Contractor shall store materials on wooden platforms or other hard, clean surfaces and covered to protect it from the weather and damage. Stored material shall be located to allow prompt inspections.

**6.10 PROPERTY RIGHTS IN MATERIALS** – Nothing in the contract shall be construed to vest in the Contractor any right to any materials and equipment after such materials and equipment have been attached, affixed to, or placed in the work.

**6.11 ASSIGNMENT OF ANTITRUST CLAIMS FOR OVERCHARGES FOR GOODS PURCHASED** – Contractor (or Vendor) and the Department recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Department. Therefore, Contractor hereby assigns to the Department any and all claims for such overcharges as to goods purchased in connection with this order or contract, except as to overcharges which result from antitrust violations commencing after the price is established under this order or contract and any change order. In addition, Contractor warrants and represents that each of its first tier suppliers and subcontractors shall assign any and all such claims to the Department, subject to the aforementioned exception.

## **ARTICLE 7 – Prosecution and Progress (Including Legal Relations and Responsibility)**

### **7.1 PROSECUTION OF THE WORK**

**7.1.1** After approval of the contract by the Administrative Director of the Courts, a Notice to Proceed will be given to the Contractor as described in Section 3.10 NOTICE TO PROCEED. The Notice to Proceed will indicate the date the Contractor is expected to begin the construction and from which date contract time will be charged.

**7.1.2** The Contractor shall begin work no later than ten (10) working days from the date in the Notice to Proceed and shall diligently prosecute the same to completion within the contract time allowed. The Contractor shall notify the Engineer at least three (3) working days before beginning work.

**7.1.3** If any subsequent suspension and resumption of work occurs, the Contractor shall notify the Engineer at least twenty-four (24) hours before stopping or restarting actual field operations.

**7.1.4 Working Prior to Notice to Proceed** – The Contractor shall not begin work before the date in the Notice to Proceed. Should the Contractor begin work before receiving the Notice to Proceed, any work performed in advance of the specified date will be considered as having been done at the Contractor's risk and as a volunteer and subject to the following conditions:

7.1.4.1 Under no circumstances shall the Contractor commence work on site until it has notified the Engineer of its intentions and has been advised by the Engineer in writing that the project site is available to the Contractor. The project site will not be

made available until the Contractor has complied with commencement requirements under Section 7.2 COMMENCEMENT REQUIREMENTS.

7.1.4.2 In the event the contract is not executed, the Contractor shall, at its own expense, do such work as is necessary to leave the site in a neat condition to the satisfaction of the Engineer. The Contractor shall not be reimbursed for any work performed.

7.1.4.3 All work done prior to the Notice to Proceed shall be performed in accordance with the contract documents, but will only be considered authorized work and be paid for as provided in the contract after the Notice to Proceed is issued.

**7.1.5** For repairs and/or renovations of existing buildings, unless otherwise permitted by the Engineer, the Contractor shall not commence with the physical construction unless all or sufficient amount of materials are available for either continuous construction or completion of a specified portion of the work. When construction is started, the Contractor shall work expeditiously and pursue the work diligently until it is complete. If only a portion of the work is to be done in stages, the Contractor shall leave the area safe and usable for the user agency at the end of each stage.

**7.2 COMMENCEMENT REQUIREMENTS** – Prior to beginning work on site, the Contractor shall submit the following to the Engineer:

**7.2.1 Identification of the Superintendent** or authorized representative on the job site. Refer to Section 5.8 COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT.

**7.2.2 Proposed Working Hours** on the job. Refer to Section 7.5 NORMAL WORKING HOURS.

**7.2.3 Permits and Licenses.** Refer to Section 7.4 PERMITS AND LICENSES.

**7.2.4 Schedule of Prices** to be accepted for the agreed Monthly Payment Application. Unless the proposal provides unit price bids on all items in this project, the successful Bidder will be required, after award of contract, to submit a schedule of prices for the various items of construction included in the contract. For projects involving more than a single building and/or facility, the breakdown cost shall reflect a separate schedule of prices for the various items of work for each building and/or facility. The sum of the prices submitted for the various items must equal the lump sum bid in the Bidder's proposal. This schedule will be subject to acceptance by the Engineer who may reject same and require the bidder to submit another or several other schedules if in the Engineer's opinion the prices are unbalanced or not sufficiently detailed. This schedule of prices shall be used for the purpose of determining the value of monthly payments due the Contractor for work installed complete in place; and may be used as the basis for determining cost and credit of added or deleted items of work, respectively.



7.2.4.1 The Contractor shall estimate at the close of each month the percentage of work completed under each of the various construction items during such month and submit the Monthly Payment Application to the Engineer for review and approval. The Contractor shall be paid the approved percentage of the price established for each item less the retention provided in Section 8.4 PROGRESS PAYMENTS.

**7.2.4A Subcontracts.** Upon award of a contract and prior to starting any construction work, the Contractor shall submit to the Contracting Officer a list of all subcontractors and the actual subcontracted dollar amount for each of its subcontractors regardless of the amount of the subcontract. See section 7.39 – Employment of State Residents Requirements.

**7.2.5 Proof of Insurance Coverage.** Certificate of Insurance or other documentary evidence satisfactory to the Contracting Officer that the Contractor has in place all insurance required by the contract. The Certificate of Insurance shall contain wording which identifies the Project number and Project title for which the certificate of insurance is issued. Refer to Section 7.3 INSURANCE REQUIREMENTS.

**7.2.6** Safety and Health Plan for this project. Refer to HRS Section 396-18.

**7.2.7** Until such time as the above items are processed and receipt is confirmed, the Contractor shall not be allowed to commence on any operations unless authorized by the Engineer.

### **7.3 INSURANCE REQUIREMENTS**

**7.3.1 Obligation of Contractor** – Contractor shall not commence any work until it obtains, at its own expense, all required herein insurance. Such insurance shall be provided by an insurance company authorized by the laws of the State to issue such insurance in the State of Hawaii. Coverage by a “Non-Admitted” carrier is permissible provided the carrier has a Best’s Rating of “A-VII” or better.

**7.3.2** All insurance described herein will be maintained by the Contractor for the full period of the contract and in no event will be terminated or otherwise allowed to lapse prior to written certification of final acceptance of the work by the State.

**7.3.3** Certificate(s) of Insurance acceptable to the State shall be filed with the Contracting Officer prior to commencement of the work. Certificates shall identify if the insurance company is a “captive” insurance company or a “Non-Admitted” carrier to the State of Hawaii. The Best’s rating must be stated for the “Non-Admitted” carrier. Certificates shall contain a provision that coverages being certified will not be cancelled or materially changed without giving the Contracting Officer at least thirty (30) days prior written notice. Should any policy be cancelled before final acceptance of the work by the State, and the Contractor fails to immediately procure replacement insurance as

specified, the State, in addition to all other remedies it may have for such breach, reserves the right to procure such insurance and deduct the cost thereof from any money due to the Contractor.

**7.3.4** Nothing contained in these insurance requirements is to be construed as limiting the extent of Contractor's responsibility for payment of damages resulting from its operations under this contract, including the Contractor's obligation to pay liquidated damages, nor shall it affect the Contractor's separate and independent duty to defend, indemnify and hold the State harmless pursuant to other provisions of this contract. In no instance will the State's exercise of an option to occupy and use completed portions of the work relieve the Contractor of its obligations to maintain the required insurance until the date of final acceptance of the work.

**7.3.5** All insurance described herein shall be primary and cover the insured for all work to be performed under the contract, all work performed incidental thereto or directly or indirectly connected therewith, including traffic detour work or other work performed outside the work area and all change order work.

**7.3.6** The Contractor shall, from time to time, furnish the Engineer, when requested, satisfactory proof of coverage of each type of insurance required covering the work. Failure to comply with the Engineer's request may result in suspension of the work, and shall be sufficient grounds to withhold future payments due the Contractor and to terminate the contract for Contractor's default.

**7.3.7 Types of Insurance** – Contractor shall purchase and maintain insurance described below which shall provide coverage against claims arising out of Contractor's operations under the contract, whether such operations be by the Contractor itself or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

**7.3.7.1 Worker's Compensation** – The Contractor shall obtain worker's compensation insurance for all persons whom they employ in carrying out the work under this contract. This insurance shall be in strict conformity with the requirements of the most current and applicable State of Hawaii Worker's Compensation Insurance laws in effect on the date of the execution of this contract and as modified during the duration of the contract.

**7.3.7.2 General Liability** – The Contractor shall obtain General Liability insurance with a limit of not less than \$2,000,000 per occurrence and in the Aggregates. The insurance policy shall contain the following clauses: 1) "The Judiciary - State of Hawaii is added as an additional insured as respects to operations performed for the The Judiciary - State of Hawaii."; and 2) "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contributed with, insurance provided by this policy." The required limit of insurance may be provided by a single policy or with a combination of primary and excess policies. Refer to SPECIAL CONDITIONS for any additional requirements.

7.3.7.3 Auto Liability – The Contractor shall obtain Auto Liability Insurance covering all owned, non-owned and hired autos with a combined single limit of not less than \$1,000,000 per occurrence. The required limit of insurance may be provided by a single policy or with a combination of primary and excess policies. The insurance policy shall contain the following clauses: 1) “The Judiciary - State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii.”; and 2) “It is agreed that any insurance maintained by The Judiciary - State of Hawaii will apply in excess of, and not contributed with, insurance provided by this policy.” Refer to SPECIAL CONDITIONS for any additional requirements.

#### 7.3.7.4 Property Insurance (Builders Risk)

- (a) New Building(s) – The Contractor shall obtain Property Insurance covering building(s) being constructed under this Contract. The limit shall be equal to the completed value of the building(s) and shall insure against all loss excluding earthquakes and floods. The coverage shall be provided by a company authorized to write insurance in the State of Hawaii as an insurer. The insurance policy shall contain the following clauses: 1) “The State of Hawaii is added as an additional insured as respects to operations performed for The Judiciary - State of Hawaii.”; and 2) “It is agreed that any insurance maintained by the The Judiciary - State of Hawaii will apply in excess of, and not contributed with, insurance provided by this policy. Refer to SPECIAL CONDITIONS for any additional requirements.
- (b) Building Renovation and/or Installation Contract – The Contractor shall obtain Property Insurance with a limit equal to the completed value of the work or property being installed and shall insure against all loss excluding earthquakes and floods. The coverage shall be provided by a company authorized to write insurance in the State of Hawaii as an insurer. The insurance policy shall contain the following clauses: 1) “The Judiciary - State of Hawaii is added as an additional insured as respects to operations performed for The Judiciary - State of Hawaii.”; and 2) “It is agreed that any insurance maintained by The Judiciary - State of Hawaii will apply in excess of, and not contributed with, insurance provided by this policy. Refer to SPECIAL CONDITIONS for any additional requirements.
- (c) The Contractor is not required to obtain property insurance for contracts limited to site development.

## 7.4 PERMITS AND LICENSES

7.4.1 The State or its representative may process Federal (e.g. Corps of Engineers), State and County permit applications. The Contractor shall pick up the pre-processed permits at the appropriate government agency and pay the required fees. Other permits

necessary for the proper execution of the work such as utility connection permits, elevator installation permits, etc., unless processed by the State and paid for by the Contractor, shall be obtained and paid for by the Contractor.

**7.4.2** Until such time as the above permits are approved, the Contractor shall not be allowed to commence any operations without written approval of the Engineer.

**7.4.3** The Engineer reserves the right to waive application and processing of the building permit.

**7.5 NORMAL WORKING HOURS** – Prior to beginning operations, unless otherwise established by the State, the Contractor shall notify the Engineer in writing of the time in hours and minutes, A.M. and P.M. respectively, at which it desires to begin and end the day's work. If the Contractor desires to change the working hours, it shall request the Engineer's approval three (3) consecutive working days prior to the date of change.

## **7.6 HOURS OF LABOR** (Section 104-2 Hawaii Revised Statutes)

**7.6.1** No laborer or mechanic employed on the job site of any public work of the Department or any political subdivision thereof shall be permitted or required to work on Saturday, Sunday, or a legal holiday of the State or in excess of eight hours on any other day unless the laborer or mechanic receives overtime compensation for all hours worked on Saturday, Sunday, and a legal holiday of the State or in excess of eight hours on any other day. For the purposes of determining overtime compensation under this Section 7.6, the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined by the Department of Labor and Industrial Relations to be the prevailing basic hourly rate for corresponding classes of laborers and mechanics on projects of similar character in the Department.

**7.6.2** Overtime compensation means, compensation based on one and a half times the laborers or mechanics basic hourly rate of pay plus the cost to an employer of furnishing a laborer or mechanic with fringe benefits.

## **7.7 PREVALING WAGES** – (§104-2 HRS)

**7.7.1** The Contractor shall at all times observe and comply with all provisions of Chapter 104, HRS, the significant requirements of which are emphasized in the Department of Labor and Industrial Relations Publication No. H104-3 entitled "Requirements of Chapter 104, HRS Wages and Hours of Employees on Public Works Law".

**7.7.2 Wage Rate Schedule** – The wage rate schedule is not physically enclosed in the bid documents. However, the wage rate schedule is incorporated herein by reference

and made a part of the Bid and Contract Documents. Said wage rate schedule may be obtained from periodic bulletins posted online at:  
<https://labor.hawaii.gov/rs/home/wages/72-2/> .

**7.7.3** The Contractor or its subcontractor(s) shall pay all laborers and mechanics employed on the job site, unconditionally and not less often than once a week, and without deduction or rebate on any account except as allowed by law, the full amount of their wages including overtime, accrued to not more than five (5) working days prior to the time of payment, at wage rates not less than those stated in the contract, regardless of any contractual relationship which may be alleged to exist between the Contractor and subcontractor and such laborers and mechanics. The wages stated in the contract shall not be less than the minimum prevailing wages (basic hourly rate plus fringe benefits), as determined by the Director of Labor and Industrial Relations and published in the wage rate schedules. Any increase in wage rates, as determined by the Director of Labor and Industrial Relations and issued in the wage rate schedule, shall be applicable during the performance of the contract, in accordance with 104-2(a) and (b), Hawaii Revised Statutes. Notwithstanding the provisions the original contract, if the Director of Labor and Industrial Relations determines that prevailing wages have increased during the performance of the contract, the rate of pay of laborers and mechanics shall be raised accordingly.

**7.7.4** The applicable wage rate schedule shall be physically included in the Contract Documents executed by the successful Bidder.

**7.7.5 Posting Wage Rate Schedule** – The rates of wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the job site and a copy of such wages required to be posted shall be given to each laborer and mechanic employed under the contract by the Contractor at the time the person is employed thereunder, provided that where there is a collective bargaining agreement, the Contractor does not have to provide its employees the wage rate schedules. Any revisions to the schedule of wages issued by the Department of Labor and Industrial Relations during the course of the contract shall also be posted by the Contractor and a copy provided to each laborer and mechanic employed under the contract as required above.

**7.7.6** The Administrative Director of the Courts may withhold from the Contractor so much of the accrued payments as the Administrative Director of the Courts may consider necessary to pay to laborers and mechanics employed by the Contractor or any subcontractor on the job site. The accrued payments withheld shall be the difference between the wages required by this contract and the wages actually received by such laborers or mechanics.

**7.8 FAILURE TO PAY REQUIRED WAGES** (§104-4,HRS) – If the Department finds that any laborer or mechanic employed on the job site by the Contractor or any subcontractor has been or is being paid wages at a rate less than the required rate by

the contract, or has not received their full overtime compensation, the Department may, by written notice to the Contractor, terminate its right, or the right of any subcontractor, to proceed with the work or with the part of the work on which the required wages or overtime compensation have not been paid and may complete such work or part by contract or otherwise, and the Contractor and its sureties shall be liable to the Department for any excess costs occasioned thereby.

## **7.9 PAYROLLS AND PAYROLL RECORDS (§104-3, HRS)**

**7.9.1** A certified copy of each weekly payroll shall be submitted to the Contractor within seven (7) calendar days after the end of each weekly payroll period. Failure to do so on a timely basis shall be cause for disqualification from bidding in accordance with provisions of Section 2.12 DISQUALIFICATION OF BIDDERS. The Contractor shall be responsible for the timely submission of certified copies of payrolls of all subcontractors. The certification shall affirm that payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision, any amendments thereto during the period of the contract, and that the classifications set forth for each laborer and mechanics conform with the work they performed.

**7.9.2** Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the General Contractor and its subcontractors, if any, during the course of the work and preserved for a period of four (4) years thereafter. Such records shall contain the name of each employee, their correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. Such records shall be made available for inspection at a place designated by the Administrative Director of the Courts, the Director of Labor and any authorized persons who may also interview employees during working hours on the job site.

**7.9.3** Note that the falsification of certifications noted in this Section 7.9 may subject the Contractor or subcontractor to penalties and debarment under the laws referenced in Section 7.14 LAWS TO BE OBSERVED and/or criminal prosecution.

## **7.9A APPRENTICESHIP AGREEMENT CERTIFICATION (HRS §103-55.6)**

**7.9A.1** For the duration of a contract awarded and executed utilizing the apprenticeship agreement preference the Contractor shall certify, for each month, that work is being conducted on the project, that it continues to be a participant in the relevant registered apprenticeship program for each trade it employs.

**7.9A.2** Monthly certification shall be made by completing the *Monthly Report of Contractor's Participation – Form 2* made available by the State Department of Labor and Industrial Relations, the original to be signed by the respective apprenticeship program sponsors authorized official, and submitted by the Contractor to the Engineer

with its monthly pay requests. The *Monthly Report of Contractor's Participation – Form 2* is available on the DLIR website at: <http://labor.hawaii.gov/wdd/files/2012/12/Form-2-Monthly-Report-of-Contractors-Participation.pdf>.

**7.9A.3** Should the Contractor fail or refuse to submit its *Monthly Report of Contractor's Participation – Form 2*, or at any time during the duration of the contract, cease to be a party to a registered apprenticeship agreement for any of the apprenticeable trades the Contractor employs, or will employ, the Contractor will be subject to the following sanctions:

7.9A.3.1 Withholding of the requested payment until all of the required *Monthly Report of Contractor's Participation – Form 2*'s are properly completed and submitted.

7.9A.3.2 Temporary or permanent cessation of work on the project, without recourse to breach of contract claims by the Contractor; provided the Department shall be entitled to restitution for nonperformance or liquidated damages claims; or

7.9A.3.3 Proceedings to debar or suspend pursuant to HRS §103D-702.

## **7.10 OVERTIME AND NIGHT WORK**

**7.10.1** Overtime work shall be considered as work performed in excess of eight (8) hours in any one day or work performed on Saturday, Sunday or legal holiday of the State. Overtime and night work are permissible when approved by the Engineer in writing or as called for elsewhere within these GENERAL CONDITIONS.

**7.10.2** Contractor shall notify the Contracting Officer two (2) working days prior to doing overtime and night work to insure that proper inspection will be available. The notification shall address the specific work to be done. A notification is not required when overtime work and night work are included as normal working hours in the contract and in the Contractor's construction schedule.

**7.10.3** In the event that work other than that contained in the above notification is performed and for which the Engineer determines State inspection services were necessary but not available because of the lack of notification, the Contractor may be required to remove all such work and perform the work over again in the presence of State inspection personnel.

**7.10.4** Any hours worked in excess of the normal eight (8) working hours per day or on Saturdays, Sundays or legal State holidays will not be considered a working day.

**7.10.5** The State hereby reserves the right to cancel the overtime, night, Saturday, Sunday, or legal State holiday work when it is found that work during these periods is detrimental to the public welfare or the user agency.

## **7.11 OVERTIME AND NIGHT PAYMENT FOR STATE INSPECTION SERVICE**

**7.11.1** The Department is responsible for overtime or night time payments for Department's inspection services, including Department's inspector, State staff personnel and the Department's Consultant(s) engaged on the project, when overtime and night work are included as normal working hours in the contract and in the contractor's construction schedule.

**7.11.2** Whenever the Contractor's operations require the State's inspection and staff personnel to work overtime or at night, the Contractor shall reimburse the State for the cost of such services unless otherwise instructed in the Contract. The Engineer will notify the Contractor of the minimum number of required Department employees and other personnel engaged by the Department prior to the start of any such work. The costs chargeable to the Contractor shall include but not be limited to the following:

7.11.2.1 The cost of salaries which are determined by the State and includes overtime and night time differential for the Department's staff and inspection personnel. In addition to the cost of salaries, the Contractor shall reimburse the State's share of contributions to the employee's retirement, medical plan, social security, vacation, sick leave, worker's compensation funds, per diem, and other applicable fringe benefits and overhead expenses.

7.11.2.2 The transportation cost incurred by the Department's staff and inspection personnel which are based on established rental rates or mileage allowance in use by the Department for the particular equipment or vehicle.

7.11.2.3 Fees and other costs billed the State by Consultants engaged on the project for overtime and/or night time work.

**7.11.3 Payment for Inspection Services** – The monies due the Department for staff and inspection work and use of vehicles and equipment as determined in subsection 7.11.2 shall be deducted from the monies due or to become due the Contractor. In any and all events, the Contractor shall not pay the Department's employees directly.

## **7.12 LIMITATION OF OPERATIONS**

**7.12.1** Contractor shall at all times conduct the work in such manner and in such sequence as will insure the least practicable interference with pedestrian and motor traffic passageways. Contractor shall furnish convenient detours and provide and plan all other appropriate signs, flashers, personnel, warnings, barricades and other devices for handling pedestrian and motor traffic.

**7.12.2** In the event that other contractors are also employed on the job site, the Contractor shall arrange its work and dispose of materials so as not to interfere with the



operations of the other contractors engaged upon adjacent work. The Contractor shall join its work to that of others and existing buildings in a proper manner, and in accordance with the drawings, and specifications, and perform its work in the proper sequence in relation to that of others, as all may be directed by the Engineer.

**7.12.3** Each contractor shall be responsible for any damage done by it to work performed by another contractor. Each Contractor shall so conduct its operations and maintain the work in such condition that adequate drainage shall be in effect at all times.

**7.12.4** In the event that the Contractor fails to prosecute its work as provided in this Section 7.12 or disregards the directions of the Engineer, the Engineer may suspend the work until such time as the Contractor provides for the prosecution of the work with minimum interference to traffic and passageways or other contractors, adequate drainage, the repair of damage and complies with the direction of the Engineer. No payment will be made for the costs of such suspension.

### **7.13 ASSIGNMENT OR CHANGE OF NAME §3-125-14 HAR**

**7.13.1 Assignment** – The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of this contract or any part hereof or any right, title or interest herein or any monies due or to become due hereunder without the prior written consent of the Administrative Director of the Courts.

**7.13.2** The Contractor may assign money due or to become due it under the contract and such assignment will be recognized by the Department, if given proper notice thereof, to the extent permitted by law; but any assignment of monies shall be subject to all proper set-offs in favor of the State and to all deductions provided in the contract and particularly all monies withheld or unpaid, whether assigned or not, shall be to use by the Department for the completion of the work in the event that the Contractors should be in default therein.

**7.13.3 Recognition of a Successor in Interest; Assignment** – When in the best interest of the State, a successor in interest may be recognized in an assignment agreement in which the transferor and the transferee and the State shall agree that:

7.13.3.1 The transferee assumes all of the transferor's obligations;

7.13.3.2 Transferor remains liable for all obligations under the contract but waives all rights under the contract against the State; and

7.13.3.3 The transferor shall continue to furnish, and the transferee shall also furnish, all required bonds.

**7.13.4 Change of Name** – When a Contractor requests to change the name in which it holds a contract with the State, the Administrative Director of the Courts shall, upon

receipt of a document indicating such change of name (for example: an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting Contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.

**7.13.5** All change of name or novation agreements effected hereunder other than by the Administrative Director of the Courts shall be reported to the Administrative Director of the Courts within thirty (30) days of the date that the agreement becomes effective.

**7.13.6** Notwithstanding the provisions of paragraphs 7.13.3.1 through 7.13.3.3 above, when a Contractor holds contracts with more than one purchasing agency of the State, the novation or change of name agreement herein authorized shall be processed only through the Administrative Director of the Courts.

## **7.14 LAWS TO BE OBSERVED**

**7.14.1** The Contractor at all times shall observe and comply with all Federal, State and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, and the conduct of the work. The Contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto before and after the date of this contract.

**7.14.2** The Contractor shall defend, protect, hold harmless and indemnify the State and its Departments and Agencies and all their officers, representatives, employees or agents against any claim or liability arising from or based on the violation of any such laws, ordinances, rules and regulations, orders or decrees, whether such violation is committed by the Contractor or its Subcontractor(s) or any employee of either or both. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the Contractor shall forthwith report the same to the Engineer in writing.

**7.14.3** While the Contractor must comply with all applicable laws, attention is directed to: Wage and Hours of Employees on Public Works, Chapter 104, Hawaii Revised Statutes (HRS); Hawaii Public Procurement Code, Authority to debar or suspend, Section 103D-702, HRS; Hawaii Employment Relations Act, Chapter 377, HRS; Hawaii Employment Security Law, Chapter 383, HRS; Worker's Compensation Law, Chapter 386, HRS; Wage and Hour Law, Chapter 387, HRS; Occupational Safety and Health, Chapter 396, HRS; and Authority to Debar and Suspend, Chapter 126, subchapter 2, Hawaii Administrative Rules (HAR).

**7.15 PATENTED DEVICES, MATERIALS, AND PROCESSES** – If the Contractor desires to use any design, device, material, or process covered by letters of patent or copyright, the right for such use shall be procured by the Contractor from the patentee or owner. The Contractor shall defend, protect, indemnify and hold harmless the State and its Departments and Agencies, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright in connection with the work to be performed under the contract, shall defend, protect, indemnify and hold harmless the State and its Departments and Agencies for any costs, expenses and damages which it may be obligated to pay by reason of any such infringement at any time during the prosecution or after the completion of the work. This section shall not apply to any design, device, material or process covered by letters of patent or copyright, which the Contractor is required to use by the drawings or specifications.

## **7.16 SANITARY, HEALTH AND SAFETY PROVISIONS**

**7.16.1** The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements of the State and local Boards of Health, or other bodies or tribunals having jurisdiction. Unless otherwise stated in the drawings and specifications, the Contractor shall install toilet facilities conveniently located at the job site and maintain same in a neat and sanitary condition for the use of the employees on the job site for the duration of the contract. The toilet facilities shall conform to the requirements of the State Department of Health. The cost of installing, maintaining and removing the toilet facilities shall be considered incidental to and paid for under various contract pay items for work or under the lump sum bids as the case may be, and no additional compensation will be made therefor. These requirements shall not modify or abrogate in any way the requirements or regulations of the State Department of Health.

**7.16.2** Attention is directed to Federal, State and local laws, rules and regulations concerning construction safety and health standards. The Contractor shall not require any worker to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to their health or safety.

## **7.17 PROTECTION OF PERSONS AND PROPERTY**

**7.17.1 Safety Precautions and Programs** – The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for the safety of, and provide reasonable protection to prevent damage, injury, or loss to:

7.17.1.1 All persons on the Work site or who may be affected by the Work;

7.17.1.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor and its subcontractors; and

7.17.1.3 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

**7.17.2** Contractor shall give notices and comply with applicable laws, ordinances, regulations, rules, and lawful orders of any public body having jurisdiction for the safety of persons or property or their protection from damage, injury or loss; and the Contractor shall erect and maintain reasonable safeguards for safety and protection, including posting danger signs, or other warnings against hazards.

**7.17.3** The Contractor shall notify owners of adjacent properties and of underground (or overhead) utilities when performing work which may affect the Owners; and shall cooperate with the Owners in the protection, removal, and replacement of their property.

**7.17.4** All damage, injury or loss to any property referred to in paragraphs 7.17.1,2 and 7.17.1.3 caused by the fault or negligence or damage or loss attributable to the acts or omissions directly or indirectly in whole or part by the Contractor, a subcontractor or any one directly or indirectly employed by them, or by anyone for whose acts they might be liable, shall be remedied promptly by the Contractor.

**7.17.5** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the protection of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor.

**7.17.6** The Contractor shall not load or permit any part of the construction to be loaded so as to endanger safety. The Contractor shall not injure or destroy trees or shrubs nor remove or cut them without permission of the Engineer. Contractor shall protect all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed.

**7.17.7** In the event the Contractor encounters on the site, material reasonably believed to be asbestos or other hazardous material that has not been rendered harmless, the Contractor shall stop work in the area and notify the Engineer promptly. The work in the affected area shall be resumed in the absence of hazardous materials or when the hazard has been rendered harmless.

**7.17.8 Emergencies** – In an emergency affecting the safety and protection of persons or the Work or property at the site or adjacent thereto, Contractor without special instructions or authorization from the Engineer, shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Contractor shall give the Engineer prompt written notice of the emergency and actions taken. Additional compensation or

extension of time claimed by the Contractor on account of an emergency shall be determined under the provisions of Section 7.25 DISPUTES AND CLAIMS.

## **7.18 ARCHAEOLOGICAL SITES**

**7.18.1** Should historic sites such as walls, platforms, pavements and mounds, or remains such as artifacts, burials, concentration of charcoal or shells be encountered during construction, work shall cease in the immediate vicinity of the find and the find shall be protected from further damage. The Contractor shall immediately notify the Engineer and contact the State Historic Preservation Division which will assess the significance of the find and recommend the appropriate mitigation measures, if necessary.

**7.18.2** When required, the Contractor shall provide and install any temporary fencing as shown on the drawings to protect archaeological sites within the project. The fencing shall be installed prior to any construction activity and shall be maintained by the Contractor for the duration of the project. Fence installation and maintenance shall be to the satisfaction of the Engineer. The Contractor shall remove the fencing upon completion of construction, or as directed by the Engineer.

**7.18.3** No work shall be done within the temporary fencing area. If any construction work is done within the temporary fencing, the Contractor shall notify the Engineer immediately; and if Contractor entered the archaeological site area without permission, it shall stop work in this area immediately. The Engineer shall notify the archaeologist to assess any damage to the area. The Contractor shall allow the archaeologist sufficient time to perform the field investigation.

**7.18.4** Any site requiring data recovery within the project shall not be disturbed until data recovery is completed.

## **7.19 RESPONSIBILITY FOR DAMAGE CLAIMS; INDEMNITY**

**7.19.1** The Contractor shall indemnify the State and the Department against all loss of or damage to the State's or the Department's existing property and facilities arising out of any act or omission committed in the performance of the work by the Contractor, any subcontractor or their employees and agents. Contractor shall defend, hold harmless, and indemnify the Department and the State, their employees, officers and agents against all losses, claims, suits, liabilities and expense, including but not limited to attorneys' fees, arising out of injury to or death of persons (including employees of the State and the Department, the Contractor or any subcontractor) or damage to property resulting from or in connection with the performance of the work and not caused solely by the negligence of the State or Department, their agents, officers and employees. The State or the Department may participate in the defense of any claim or suit without relieving the Contractor of any obligation hereunder. The purchase of liability insurance shall not relieve the Contractor of the obligations described herein.

**7.19.2** The Contractor agrees that it will not attempt to hold the State and its Departments and Agencies and their officers, representatives, employees, or agents liable or responsible for any losses or damages to third parties from the action of the elements, the nature of the work to be done under these GENERAL CONDITIONS or from any unforeseen obstructions, acts of God, vandalism, fires or encumbrances which may be encountered in the prosecution of the work.

**7.19.3** The Contractor shall pay all just claims for materials, supplies, tools, labor and other just claims against the Contractor or any subcontractor in connection with this contract and the surety bond will not be released by final acceptance and payment by the Department unless all such claims are paid or released. The Department may, but is not obligated to, withhold or retain as much of the monies due the Contractor under this contract considered necessary by the Engineer to cover such just claims until satisfactory proof of payment or the establishment of payment plan is presented.

**7.19.4** The Contractor shall defend, indemnify and hold harmless the State and its Departments and Agencies and their officers, representatives, employees or agents from all suits, actions or claims of any character brought on account of any claims or amounts arising out of or recovered under the Workers' Compensation Laws or violation of any other law, by-law, ordinance, order or decree.

## **7.20 CHARACTER OF WORKERS OR EQUIPMENT**

**7.20.1** The Contractor shall at all times provide adequate supervision and sufficient labor and equipment for prosecuting the work to full completion in the manner and within the time required by the contract.

**7.20.2 Character and Proficiency of Workers** – All workers shall possess the proper license and/or certification, job classification, skill and experience necessary to properly perform the work assigned to them. All workmen engaged in special work or skilled work such as bituminous courses or mixtures, concrete pavement or structures, electrical installation, plumbing installation, or in any trade shall have sufficient experience in such work and in the operation of the equipment required to properly and satisfactorily perform all work. All workers shall make due and proper effort to execute the work in the manner prescribed in these GENERAL CONDITIONS, otherwise, the Engineer may take action as prescribed herein.

**7.20.2.1** Any worker employed on the project by the Contractor or by any subcontractor who, in the opinion of the Engineer, is not careful and competent, does not perform its work in a proper and skillful manner or is disrespectful, intemperate, disorderly or neglects or refuses to comply with directions given, or is otherwise objectionable shall at the written request of the Engineer, be removed forthwith by the Contractor or subcontractor employing such worker and shall not be employed again in any portion of the work without the written consent of the Engineer. Should the

Contractor or subcontractor continue to employ, or again employ such person or persons on the project, the Engineer may withhold all payments which are or may become due, or the Engineer may suspend the work until the Engineer's orders are followed, or both.

**7.20.3 Insufficient Workers** – A sufficient number of workers shall be present to ensure the work is accomplished at an acceptable rate. In addition, the proper ratio of apprentice to journey worker shall be maintained to ensure the work is properly supervised and performed. In the event that the Engineer finds insufficient workers are present to accomplish the work at an acceptable rate of progress or if an adequate number of journey workers are not present and no corrective action is taken by the Contractor after being informed in writing, the Engineer may terminate the contract as provided for under Section 7.27 TERMINATION OF CONTRACT FOR CAUSE.

**7.20.4 Equipment Requirements** – All equipment furnished by the Contractor and used on the work shall be of such size and of such mechanical condition that the work can be performed in an acceptable manner at a satisfactory rate of progress and the quality of work produced will be satisfactory.

7.20.4.1 Equipment used on any portion of the project shall be such that no injury to the work, persons at or near the site, adjacent property or other objects will result from its use.

7.20.4.2 If the Contractor fails to provide adequate equipment for the work, the contract may be terminated as provided for under Section 7.27 TERMINATION OF CONTRACT FOR CAUSE.

7.20.4.3 In the event that the Contractor furnishes and operates equipment on a force-account basis, it shall be operated to obtain maximum production under the prevailing conditions.

## **7.21 CONTRACT TIME**

**7.21.1** Time is of the essence for this contract.

**7.21.2 Calculation of Contract Time** – When the contract time is on a working day basis, the total contract time allowed for the performance of the work shall be the number of working days shown in the contract plus any additional working days authorized in writing as provided hereinafter. Refer to Article 1 DEFINITIONS for the definition of Working Day. The count of elapsed working days to be charged against contract time, shall begin from the date of the Notice to Proceed and shall continue consecutively to the date of Project Acceptance determined by the Engineer. When the contract completion time is a fixed calendar date, it shall be the date on which all work on the project shall be completed. Maintenance periods are not included within the contract time unless specifically noted in the Contract Documents.

### **7.21.3 Modifications of Contract Time §3-125-4 HAR**

7.21.3.1 Extensions – For increases in the scope for work caused by alterations and additional work made under Section 4.2 CHANGES, the Contractor will be granted a time extension only if the changes increase the time of performance for the Contract. If the Contractor believes that an extension of time is justified and is not adequately provided for in a Field Order, it must request the additional time sought in writing when the detailed cost breakdown required by Section 4.2 CHANGES, is submitted. The Contractor must show how the time of performance for the critical path will be affected and must also support the time extension request with schedules and statements from its subcontractors, suppliers, and/or manufacturers. Compensation for any altered or additional work will be paid as provided in Section 4.2 CHANGES.

7.21.3.2 The Department may direct changes to the work at any time until the work is finally accepted. The issuance of a Field Order at any time may alter or modify the contract duration only by the days specified therein; or if not specified therein, for the days the critical path must be extended for the change. Additional time to perform the extra work will be added to the time allowed in the contract without regard to the date the change directive was issued, even if the contract completion date has passed. A change requiring time will not constitute a waiver of pre-existing Contract delay.

**7.21.4 Delay for Permits** – For delays beyond the control of the Contractor in obtaining necessary permits, one day extension for each day delay may be granted by the Engineer, provided the Contractor notifies the Engineer that the permits are not available, as soon as the delay occurs. Time extensions shall be the exclusive relief granted on account of such delays. No additional compensation will be paid for these time extensions.

**7.21.5 Delays Beyond Contractor's Control §3-125-18(4)** – For delays affecting the critical path caused by acts of God, or the public enemy, fire, unusually severe weather, earthquakes, floods, epidemics, quarantine restrictions, labor disputes, freight embargoes and other reasons beyond the Contractor's control, the Contractor may be granted an extension of time provided that:

7.21.5.1 The Contractor notifies the Engineer in writing within five (5) work days after the occurrence of the circumstances described above and states the possible effects on the completion date of the contract.

7.21.5.2 No time extension will be granted for weather conditions other than unusually severe weather occurrences, and floods.

7.21.5.3 The Contractor, if requested, submits to the Engineer within ten (10) work days after the request, a written statement describing the delay to the project. The extent of the delay must be substantiated as follows:



- (a) State specifically the reason or reasons for the delay and fully explain in a detailed chronology the effect of this delay to the work and/or the completion date.
- (b) Submit copies of purchase order, delivery tag, and any other pertinent documentation to support the time extension request.
- (c) Cite the period of delay and the time extension requested.
- (d) A statement either that the above circumstances have been cleared and normal working conditions restored as of a certain day or that the above circumstances will continue to prevent completion of the project.

7.21.5.4 Time extensions shall be the exclusive relief granted and no additional compensation will be paid the Contractor for such delays.

**7.21.6 Delays in Delivery of Materials** – For delays in delivery of materials and/or equipment which occur as a result of unforeseeable causes beyond the control and without fault or negligence of both the Contractor, its subcontractor(s) or supplier(s), the Contractor may be granted an extension of time provided that it complies with the following procedures.

7.21.6.1 The Contractor must notify the Engineer within five (5) consecutive working days after it first has any knowledge of delays or anticipated delays and state the effects such delays may have on the completion date of the contract.

7.21.6.2 The Contractor, if requested, must submit to the Engineer within ten (10) working days after a firm delivery date for the material and equipment is established, a written statement as to the delay to the progress of the project. The delay must be substantiated as follows:

- (a) State specifically the reason or reasons for the delay. Explain in a detailed chronology the effect of this delay to the other work and/or completion date.
- (b) Submit copies of purchase order(s), factory invoice(s), bill(s) of lading, shipping manifest(s), delivery tag(s) and any other pertinent correspondence to support the time extension request.
- (c) Cite the start and end date of the delay and the days requested therefore. The delay shall not exceed the difference between the originally scheduled delivery date versus the actual delivery date.

7.21.6.3 Time extensions shall be the exclusive relief granted and no additional compensation will be paid the Contractor on account of such delay.

**7.21.7 Delays for Suspension of Work** – Delay during periods of suspension of work by the Engineer shall be computed as follows:

7.21.7.1 When the performance of the work is totally suspended for one or more days (calendar or working days, as appropriate) by order of the Engineer in accordance with paragraphs 7.24.1.1, 7.24.1.2, 7.24.1.4 or 7.24.1.6 the number of days from the

effective date of the Engineer's order to suspend operations to the effective date of the Engineer's order to resume operations shall not be counted as contract time and the contract completion date will be adjusted. Should the Contractor claim for additional days in excess of the suspension period, Contractor shall provide evidence justifying the additional time. During periods of partial suspension of the work, the Contractor will be granted a time extension only if the partial suspension affects the critical path. If the Contractor believes that an extension of time is justified for a partial suspension of work, it must request the extension in writing at least five (5) working days before the partial suspension will affect the critical operation(s) in progress. The Contractor must show how the critical path was increased based on the status of the work and must also support its claim, if requested, with statements from its subcontractors. A suspension of work will not constitute a waiver of pre-existing Contractor delay.

**7.21.8 Contractor Caused Delays** – No time extension will be considered for the following:

7.21.8.1 Delays in performing the work caused by the Contractor, subcontractor and/or supplier.

7.21.8.2 Delays in arrival of materials and equipment caused by the Contractor, subcontractor and/or supplier in ordering, fabricating, delivery, etc.

7.21.8.3 Delays requested for changes which the Engineer determines unjustifiable due to the lack of supporting evidence or because the change is not on the critical path.

7.21.8.4 Delays caused by the failure of the Contractor to submit for review and acceptance by the Engineer, on a timely basis, shop drawings, descriptive sheets, material samples, color samples, etc. except as covered In subsection 7.21.5 and 7.21.6.

7.21.8.5 Failure to follow the procedure within the time allowed to qualify for a time extension.

7.21.8.6 Days the Contractor is unable to work due to normal rainfall or other normal bad weather day conditions.

**7.21.9 Reduction in Time** – If the Department deletes any portion of the work, an appropriate reduction of contract time may be made in accordance with Section 4.2 CHANGES.

## **7.22 CONSTRUCTION SCHEDULE**

**7.22.1** The Contractor shall submit its detailed construction schedule to the Engineer prior to the start of the work. The purpose of the schedule is to allow the Engineer to monitor the Contractor's progress on the work. The schedule shall account for normal inclement weather, unusual soil or other conditions that may influence the progress of

the work, schedules and coordination required by any utility, off or on site fabrications, and all other pertinent factors that relate to progress.

**7.22.2** Submittal of and the Engineer's receipt of the construction schedule shall not imply the Department's approval of the schedule's breakdown, its individual elements, and any critical path that may be shown. Any acceptance or approval of the schedule 1) shall be for general format only and not for sequences or durations thereon, and 2) shall not be deemed an agreement by the Department that the construction means, methods and resources shown on the schedule will result in work that conforms to the contract requirements. The Contractor has the risk of all elements (whether or not shown) of the schedule and its execution. Additional compensation shall not be due the Contractor in the event that deviations from the Contractor's schedule, caused by any design revisions required to resolve site conditions or State, County, or utility requirements, affects the efficiency of its operations.

**7.22.3** In the event the Contractor submits and the Department receives an accelerated schedule (shorter than the contract time), such will not constitute an agreement to modify the contract time or completion date, nor will the receipt, acceptance or approval of such a schedule incur any obligation by the Department.

**7.22.4 Caution** – The Department will not be responsible if the Contractor does not meet its accelerated schedule.

**7.22.5** The requirements of this Section 7.22 CONSTRUCTION SCHEDULE may be waived by the Engineer.

**7.23 STATEMENT OF WORKING DAYS** – For all contracts on a working day basis,, the Contractor will submit a statement of the number of working days for each month together with the Monthly Payment Application. The Monthly Payment Application will not be processed without the statement of working days.

## **7.24 SUSPENSION OF WORK §3-125-7 HAR**

**7.24.1 Procedures to be followed** – The Engineer may, by written order, suspend the performance of the Work up to thirty (30) days and the Administrative Director of the Courts for an unlimited number of days, either in whole or in part for any cause, including but not limited to:

7.24.1.1 Weather or excess bad weather days considered unsuitable by the Engineer for prosecution of the work; or

7.24.1.2 Soil conditions considered unsuitable by the Engineer for prosecution of the work; or

#### 7.24.1.3 Failure of the Contractor to:

- (a) Correct conditions unsafe for the general public or for the workers;
- (b) Carry out orders given by the Engineer;
- (c) Perform the work in strict compliance with the provisions of the contract; or
- (d) Provide a qualified Superintendent on the jobsite as described under Section 5.8 COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT.

#### 7.24.1.4 When any redesign is deemed necessary by the Engineer; or

7.24.1.5 Disturbance due to noise, odors or dust arising from the construction even if such disturbance does not violate the section on Environmental Protection contained in the specifications; or

#### 7.24.1.6 The convenience of the State.

**7.24.2 Partial, Total Suspension of Work** – Suspension of work on some but not all items of work shall be considered a partial suspension. Suspension of work on the entire work at the job site shall be considered total suspension. The period of suspension shall be computed as set forth in subsection 7.21.7 – Delays for Suspension of Work.

#### **7.24.3 Payment §3-125-7 HAR**

7.24.3.1 In the event that the Contractor is ordered by the Engineer in writing as provided herein to suspend all work under the contract in accordance with paragraphs 7.24.1.4 or 7.24.1.6, the Contractor may be reimbursed for actual direct costs incurred on work at the jobsite, as authorized in writing by the Engineer, including costs expended for the protection of the work. Payment for equipment which must standby during such suspension of work shall be made as described in clause 8.3.4.5.(e). No payment will be made for profit on any suspension costs. An allowance of five percent (5%) will be paid on any reimbursed actual costs for indirect categories of delay costs, including extended branch and home-office overhead and delay impact costs.

7.24.3.2 However, no adjustment to the contract amount or time shall be made under this Section 7.24 for any suspension, delay, or interruption:

- (a) To the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or
- (b) For which an adjustment is provided for or excluded under any other provision of this Contract.

7.24.3.3 Any adjustment in contract price made pursuant to this subsection shall be determined in accordance with this Section 7.24 and Section 4.2 CHANGES.

7.24.3.4 Claims for such compensation shall be filed with the Engineer within ten (10) calendar days after the date of the order to resume work or such claims will be waived by the Contractor. Together with the claim, the Contractor shall submit substantiating documents supporting the entire amount shown on the claim. The Engineer may make such investigations as are deemed necessary and shall be the sole judge of the claim and the Engineer's decision shall be final.

**7.24.4 Claims Not Allowed** – No claim under this Section 7.24 shall be allowed:

7.24.4.1 For any direct costs incurred more than twenty (20) days before the Contractor shall have notified the Engineer in writing of any suspension that the Contractor considered compensable. This requirement shall not apply as to a claim resulting from a suspension order under paragraphs 7.24.1.4 or 7.24.1.6, and

7.24.4.2 Unless the claim is asserted in writing within ten (10) calendar days after the termination of such suspension, delay, or interruption, but in no case not later than the date of final payment under the contract.

7.24.4.3 No provision of this Section 7.24 shall be construed as entitling the Contractor to compensation for delays due to failure of surety, for suspensions made at the request of the Contractor, for any delay required under the Contract, for partial suspension of work or for suspensions made by the Engineer under the provisions of paragraphs 7.24.1.1, 7.24.1.2, 7.24.1.3 and 7.24.1.5.

**7.25 DISPUTES AND CLAIMS §3-126-31 HAR**

**7.25.1 Required Notification** – As a condition precedent for any claim, the Contractor must give notice in writing to the Engineer in the manner and within the time periods stated in Section 4.2 CHANGES for claims for extra compensation, damages, or an extension of time due for one or more of the following reasons:

7.25.1.1 Requirements not clearly covered in the contract, or not ordered by the Engineer as an extra;

7.25.1.2 Failure by the State and Contractor to agree to an Oral Order or an adjustment in price or contract time for a Field Order or a Change Order issued by the State;

7.25.1.3 An action or omission by the Engineer requiring performance changes beyond the scope of the contract;

7.25.1.4 Failure of the State to issue a Field Order for controversies within the scope of Section 4.2 CHANGES.

7.25.1.5 For any other type of claim, the Contractor shall give notice within the time periods set forth in the contract provisions pertaining to that event. If no specific contract provisions pertain to the claim, then the written notice of claim must be submitted within fifteen (15) days of the event giving rise to the claim.

**7.25.2 Continued Performance of Work** – The Contractor shall at all times continue with performance of the contract in full compliance with the directions of the Engineer. Continued performance by the Contractor shall not be deemed a waiver of any claim for additional compensation, damages, or an extension of time for completion, provided that the written notice of claim is submitted in accordance with subsection 7.25.1.

**7.25.3** The requirement for timely written notice shall be a condition precedent to the assertion of a claim.

**7.25.4 Requirements for Notice of Claim** – The notice of claim shall clearly state the Contractor's intention to make claim and the reasons why the Contractor believes that additional compensation, changes, or an extension of time may be remedies to which it is entitled. At a minimum, it shall provide the following:

7.25.4.1 Date of the protested order, decision or action;

7.25.4.2 The nature and circumstances which caused the claim;

7.25.4.3 The contract provisions that support the claim;

7.25.4.4 The estimated dollar cost, if any, of the protested work and how that estimate was determined; and

7.25.4.5 An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

**7.25.5** If the protest or claim is continuing, the information required in subsection 7.25.4 above shall be supplemented as requested by the Engineer.

**7.25.6 Final Statement for Claim** – The Contractor shall provide a final written statement of the actual adjustment in contract price and/or contract time requested for each notice of claim. Such statement shall clearly set forth that it is the final statement for that notice of claim. All such final statements shall be submitted within thirty (30) days after completion of the work that is the subject of the claim, but in no event no later than thirty (30) days after the Project Acceptance Date or the date of termination of the Contractor, whichever comes first.

**7.25.7** All claims of any nature are barred if asserted after final payment under this contract has been made, except as provided under Section 8.9 CLAIMS ARISING OUT OF PAYMENT FOR REQUIRED WORK.

**7.25.8** Contractor may protest the assessment or determination by the Engineer of amounts due the State from the Contractor by providing a written notice to the Engineer within thirty (30) days of the date of the Engineer's written assessment or determination. Said notice shall comply with all requirements of subsections 7.25.4 and 7.25.6 above. The requirement of such notice cannot be waived and it is a condition precedent to any claim by the Contractor. Failure to comply with these notice provisions constitutes a waiver of any claim.

**7.25.9** In addition to the requirements of subsections 7.25.4, 7.25.6, and 7.25.8, all final written statements of claim shall be certified. This certification requirement applies to the Contractor without exception, including, but not limited to, situations involving "pass through" claims of subcontractors or suppliers. The certification must be executed by a person duly authorized to bind the Contractor with respect to the claim. The certification shall state as follows:

7.25.9.1 "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the State is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

**7.25.10 Decision on Claim or Appeal** – The Contracting Officer shall decide all controversies between the State and the Contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement. The decision of the Contracting Officer on the claim shall be final and conclusive, unless fraudulent, or unless the Contractor delivers to the Administrative Director of the Courts a written appeal of the Contracting Officer's decision no later than 30 days after the date of the Contracting Officer's decision. The Administrative Director of the Court's decision shall be final and conclusive, unless fraudulent or unless the Contractor brings an action seeking judicial review of the Administrative Director of the Court's decision in an appropriate circuit court of this State within six months from the date of the Administrative Director of the Court's decision.

7.25.10.1 If the Contractor delivers a written request for a final decision concerning the controversy, the Administrative Director of the Courts shall issue a final decision within 90 days after receipt of such a request; provided that if the Administrative Director of the Courts does not issue a written decision within 90 days, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if an adverse decision had been received. Both parties to this contract agree that the period of up to 30 days to appeal the Contracting Officer's decision to the Administrative Director of the Courts shall not be included in the 90 day period to issue a final decision.

**7.25.11 Payment and Interest** – The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting Contractor action concerning appeal. Such payments shall be without prejudice to the rights of either party. Interest on amounts ultimately determined to be due to a

Contractor shall be payable at the Statutory rate applicable to judgments against the State under Chapter 662, HRS from the date of receipt of a properly certified final written statement of actual adjustment required until the date of decision; except, however, that if an action is initiated in circuit court, interest under this Section 7.25 shall only be calculated until the time such action is initiated. Interest on amounts due from the State from the Contractor shall be payable at the same rate from the date of issuance of the Engineer's notice to the Contractor. Where such payments are required to be returned by a subsequent decision, interest on such payments shall be paid at the statutory rate from the date of payment.

**7.25.12** Contractor shall comply with any decision of the Engineer and proceed diligently with performance of this contract pending final resolution by a circuit court of this State of any controversy arising under, or by virtue of, this contract, except where there has been a material breach of contract by the State; provided that in any event the Contractor shall proceed diligently with the performance of the contract where the Engineer has made a written determination that continuation of work under the contract is essential to the public health and safety.

## **7.26 FAILURE TO COMPLETE THE WORK ON TIME**

**7.26.1** Completion of the work within the required time is important because delay in the prosecution of the work will inconvenience the public and interfere with the State's business. In addition, the State will be damaged by the inability to obtain full use of the completed work and by increased engineering, inspection, superintendence, and administrative services in connection with the work. Furthermore, delay may detrimentally impact the financing, planning, or completion of other State projects because of the need to devote State resources to the project after the required completion date. The monetary amount of such public inconvenience, interference with State business, and damages, is difficult, if not impossible, to accurately determine and precisely prove. Therefore, it is hereby agreed that the amount of such damages shall be the appropriate sum of liquidated damages as set forth below.

7.26.1.1 When the Contractor fails to complete the Work or any portion of the Work within the time or times fixed in the contract or any extension thereof, it is agreed the Contractor shall pay liquidated damages to the Department based upon the amount stated in the Specification Section 00800 SPECIAL CONDITIONS.

7.26.1.2 If the Contractor fails to correct Punchlist deficiencies as required by Section 7.32 PROJECT ACCEPTANCE DATE, the State will be inconvenienced and damaged, therefore, it is agreed that the Contractor shall pay liquidated damages to the Department based upon the amount stated in the Specification Section 00800 SPECIAL CONDITIONS. Liquidated damages shall accrue for all days after the Contract Completion Date or any extension thereof, until the date the Punchlist items are corrected and accepted by the Engineer.



7.26.1.3 If the Contractor fails to submit final documents as required by Section 7.33 FINAL SETTLEMENT OF THE CONTRACT, the State will be inconvenienced and damaged, therefore, it is agreed that the Contractor shall pay liquidated damages to the Department based upon the amount stated in the Specification Section 00800 SPECIAL CONDITIONS. Liquidated damages shall accrue for all days after the Contract Completion Date or any extension thereof, until the date the final documents are received by the Engineer.

7.26.1.4 The Engineer shall assess the total amount of liquidated damages in accordance with the amount stated in the Specification Section 00800 SPECIAL CONDITIONS and provide written notice of such assessment to the Contractor.

**7.26.2 Acceptance of Liquidated Damages** – The assessment of liquidated damages by the Engineer shall be accepted by the parties hereto as final, unless the Contractor delivers a written appeal of the Engineer's decision in accordance with subsection 7.25.10 requirements. Any allowance of time or remission of charges or liquidated damages shall in no other manner affect the rights or obligations of the parties under this contract nor be construed to prevent action under Section 7.27 TERMINATION OF CONTRACT FOR CAUSE. If the Contractor terminates the Contractor's right to proceed, the resulting damage will include such liquidated damages for such time as may be required for final completion of the work after the required contract completion date.

**7.26.3 Payments for Liquidated Damages** – Liquidated damages shall be deducted from monies due or that may become due to the Contractor under the contract or from other monies that may be due or become due to the Contractor from the State.

## **7.27 TERMINATION OF CONTRACT FOR CAUSE §3-125-18 HAR**

**7.27.1 Default** – If the Contractor refuses or fails to perform the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in the contract, or any extension thereof, fails to complete the work within such time, or commits any other material breach of this contract, and further fails within seven (7) days after receipt of written notice from the Engineer to commence and continue correction of the refusal or failure with diligence and promptness, the Administrative Director of the Courts may, by written notice to the Contractor, declare the Contractor in breach and terminate the Contractor's right to proceed with the work or the part of the work as to which there has been delay or other breach of contract. In such event, the Department may take over the work and perform the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, the materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, the Contractor and the Contractor's sureties shall be liable for any damage to the Department resulting from the Contractor's refusal or failure to complete the work within the specified time.

**7.27.2 Additional Rights and Remedies** – The rights and remedies of the Department provided in this contract are in addition to any other rights and remedies provided by law.

### **7.27.3 Costs and Charges**

7.27.3.1 All costs and charges incurred by the Department, together with the cost of completing the work under the contract, will be deducted from any monies due or which would or might have become due to the Contractor had it been allowed to complete the work under the contract. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay the Department the amount of the excess.

7.27.3.2 In case of termination, the Administrative Director of the Courts shall limit any payment to the Contractor to the part of the contract satisfactorily completed at the time of termination. Payment will not be made until the work has satisfactorily been completed and the tax clearance required by Section 8.8 FINAL PAYMENT is submitted by the Contractor. Termination shall not relieve the Contractor or Surety from liability or liquidated damages.

**7.27.4 Erroneous Termination for Cause** – If, after notice of termination of the Contractor's right to proceed under this Section 7.27, it is determined for any reason that good cause did not exist to allow the Department to terminate as provided herein, the rights and obligations of the parties shall be the same as, and the relief afforded the Contractor shall be limited to, the provisions contained in Section 7.28 TERMINATION FOR CONVENIENCE.

## **7.28 TERMINATION FOR CONVENIENCE §3-125-22 HAR**

**7.28.1 Termination** – The Administrative Director of the Courts may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Administrative Director of the Courts shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

**7.28.2 Contractor's Obligations** – The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the State's approval. The Administrative Director of the Courts 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 work not terminated by the notice of termination.

**7.28.3 Right to Construction and Goods** – The Administrative Director of the Courts may require the Contractor to transfer title and delivery to the State in the manner and to the extent directed by the Administrative Director of the Courts, the following:

7.28.3.1 Any completed work; and

7.28.3.2 Any partially completed construction, goods, materials, parts, tools, dies, jigs, fixtures, drawings, information, and contract rights (hereinafter called “construction material”) that the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

7.28.3.3 The Contractor shall protect and preserve all property in the possession of the Contractor in which the State has an interest. If the Administrative Director of the Courts does not elect to retain any such property, the Contractor shall use its best efforts to sell such property and construction material for the Department’s account in accordance with the standards of section 490:2-706, HRS.

#### **7.28.4 Compensation**

7.28.4.1 Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by subchapter 15, chapter 3-122, HAR. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Administrative Director of the Courts may pay the Contractor, if at all, an amount set in accordance with paragraph 7.28.4.3.

7.28.4.2 The Administrative Director of the Courts 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 sale of construction, supplies, and construction materials under paragraph 7.28.3.3 of this Section, and the contract price of the work not terminated.

7.28.4.3 Absent complete agreement, the Administrative Director of the Courts shall pay the Contractor the following amounts, less any payments previously made under the contract:

- (a) The cost of all contract work performed prior to the effective date of the notice of termination work plus five percent (5%) markup on the actual direct costs, including amounts paid to the subcontractor, less amounts previously paid or to be paid for completed portions of such work, provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss. No anticipated profit or consequential damage will be due or paid.

- (b) Subcontractors shall be paid a markup of ten percent (10%) on their direct job costs incurred to the date of termination. No anticipated profit or consequential damage will be due or paid to any subcontractor. These costs must not include payments made to the Contractor for subcontract work during the contract period.
- (c) In any case, the total sum to be paid the Contractor shall not exceed the total contract price reduced by the amount of any sales of construction supplies and construction materials.

7,28.4.4 Costs claimed, agreed to, or established by the State shall be in accordance with chapter 3-123, HAR.

**7.29 CORRECTING DEFECTS** – If the Contractor fails to commence to correct any defects of any nature, within ten (10) working days after the correction thereof has been requested in writing by the State, and thereafter to expeditiously complete the correction of said defects, the Engineer may without further notice to the Contractor or surety and without termination of contract, correct the defects and deduct the cost thereof from the contract price.

**7.30 FINAL CLEANING** – Before final inspection of the work, the Contractor shall clean all ground occupied by the Contractor in connection with the Work of all rubbish, excess materials, temporary structures and equipment, and all parts of the work must be left in a neat and presentable condition to the satisfaction of the Engineer. However, the Contractor shall not remove any warning and directional signs prior to the formal acceptance by the Engineer. Full compensation for final cleaning will be included in the prices paid for the various items of work or lump sum bid, as the case may be, and no separate payment will be made therefor.

**7.31 SUBSTANTIAL COMPLETION AND FINAL INSPECTION** – Before the Department accepts the project as being completed, unless otherwise stipulated by the Engineer, the following procedure shall be followed:

**7.31.1 Substantial Completion:**

7.31.1.1 The Contractor and its subcontractors shall inspect the project to confirm whether the Project is substantially complete. This inspection effort shall include the testing of all equipment and providing a Punchlist that identifies deficiencies which must be corrected. Contractor shall make the corrections and if so required repeat the procedure. Also, the Contractor shall schedule final Building, Plumbing, Electrical, Elevator, Fire and other required inspections and obtain final approvals.

- (a) When in compliance with the above requirements, the Contractor shall notify the Engineer in writing that project is Substantially Complete and ready for a

Final Inspection. Along with the Substantial Completion notification, the Contractor shall provide its Punchlist(s) with the status of the deficiencies and dates when the deficiencies were corrected. The Project Inspector and/or the Engineer shall make a preliminary determination whether the project is Substantially Complete.

- (b) If the project is not Substantially Complete, the Engineer shall inform the Contractor. The Contractor shall identify deficiencies which must be corrected, update its Punchlist, make the necessary corrections and repeat the previous step. After completing the necessary work, the Contractor shall notify the Engineer in writing that Punchlist deficiencies have been corrected and the project is ready for Final Inspection.
- (c) If the Project is Substantially Complete, the Engineer shall schedule a Final Inspection within fifteen (15) days of the Contractor's notification letter or as otherwise determined by the Engineer.

7.31.1.2 In addition, and to facilitate closing of the project, the Contractor shall also proceed to obtain the following closing documents (where applicable) prior to the Final Inspection:

- (a) Field-Posted As-Built Drawings.
- (b) Maintenance Service Contract and two (2) copies of a list of all equipment.
- (c) Operating and maintenance manuals.
- (d) Air conditioning test and balance reports.
- (e) Any other final submittal required by the technical sections of the contract.

**7.31.2 Final Inspection.** If at the Final Inspection the Engineer determines that all work is completed, the Engineer shall notify the Contractor in accordance with Section 7.32 PROJECT ACCEPTANCE DATE. Should there be remaining deficiencies which must be corrected, the Contractor shall provide an updated Punchlist to the Engineer, within five (5) days from the Final Inspection Date. The Contractor shall make the necessary corrections.

7.31.2.1 The Contracting Officer shall confirm the list of deficiencies noted by the Contractor's punchlist(s) and will notify the Contractor of any other deficiencies that must be corrected.

**7.31.3** The Engineer may add to or otherwise modify the Punchlist from time to time. The Contractor shall take immediate action to correct the deficiencies.

**7.31.4 Revoking Substantial Completion** – At any time before final Project Acceptance is issued, the Engineer may revoke the determination of Substantial Completion if the Engineer finds it was not warranted. The Engineer shall notify the Contractor in writing with the reasons and outstanding deficiencies negating the declaration. Once notified, the Contractor shall make the necessary corrections and repeat the required steps noted in subsections 7.31.1 and 7.31.2.

## **7.32 PROJECT ACCEPTANCE DATE**

**7.32.1** If upon Final Inspection, the Engineer finds that the project has been satisfactorily completed in compliance with the contract, the Engineer shall declare the project completed and accepted and will notify the Contractor in writing of the acceptance by way of the Project Acceptance Notice.

**7.32.2 Protection and Maintenance** – After the Project Acceptance Date, the Contractor shall be relieved of maintaining and protecting the work EXCEPT that this does not hold true for those portions of the work which have not been accepted, including Punchlist deficiencies. The State shall be responsible for the protection and maintenance of the accepted facility.

**7.32.3** The date of the Project Acceptance shall determine:

7.32.3.1 End of Contract Time.

7.32.3.2 Commencement of all guaranty periods except as noted in Section 7.34  
CONTRACTOR'S RESPONSIBILITY FOR WORK: RISK OF LOSS.

7.32.3.3 Commencement of all maintenance services except as noted in Section 7.34  
CONTRACTOR'S RESPONSIBILITY FOR WORK: RISK OF LOSS.

**7.32.4 Punchlist Requirements** – If a Punchlist is required under Section 7.31 SUBSTANTIAL COMPLETION AND FINAL INSPECTION, the Project Acceptance Notice will include the Engineer's Punchlist and the date when correction of the deficiencies must be completed.

7.32.4.1 Punchlist corrective work shall be completed prior to Contract Completion Date, or extension thereof.

**7.32.5** Upon receiving the Punchlist, the Contractor shall promptly devote the required time, labor, equipment, materials and incidentals necessary to correct the deficiencies expeditiously.

**7.32.6** For those items of work that cannot be completed by established date, the Contractor shall submit a schedule in writing to the Engineer for approval along with documentation to justify the time required, no later than five (5) working days before the date stipulated for completion of the Punchlist work. A Proposed schedule submitted after the five (5) day period will not be considered.

**7.32.7** If the Contractor fails to correct the deficiencies within the time established in paragraph 7.32.4.1, The Contracting Officer shall assess liquidated damages as required by Section 7.26 – FAILURE TO COMPLETE THE WORK ON TIME.

**7.32.8** If the Contractor fails to correct the deficiencies and complete the work by the established or agreed to date, the State also reserves the right to correct the deficiencies by whatever method it deems necessary and deduct the cost from the final payment due the contractor.

**7.32.9** The Contractor may further be prohibited from bidding in accordance with Section 2.12 – DISQUALIFICATION OF BIDDERS. In addition, assessment of damages shall not prevent action under Section 7.27 – TERMINATION OF CONTRACT FOR CAUSE.

**7.33 FINAL SETTLEMENT OF CONTRACT** – The contract will be considered settled after the project acceptance date and when the following items have been satisfactorily submitted, where applicable:

**7.33.1 Necessary Submissions** in addition to the items noted under paragraph 7.31.1.2.

7.33.1.1 All written guarantees required by the contract.

7.33.1.2 Complete and certified weekly payrolls for the Contractor and its Subcontractor(s).

7.33.1.3 Certificate of Plumbing and Electrical Inspection.

7.33.1.4 Certificate of Building Occupancy.

7.33.1.5 Certificates for Soil Treatment and Wood Treatment.

7.33.1.6 Certificate of Water System Chlorination.

7.33.1.7 Certificate of Elevator Inspection, Boiler and Pressure Pipe Installation.

7.33.1.8 All other documents required by the Contract.

**7.33.2 Failure to Submit Closing Documents** – The Contractor shall submit the final Payment Application and the above applicable closing documents within sixty (60) days from the date of Project Acceptance or the agreed to Punchlist completion date. Should the Contractor fail to comply with these requirements, the Administrative Director of the Courts may terminate the Contract for cause. The pertinent provisions of Section 7.27 TERMINATION OF CONTRACT FOR CAUSE shall be applicable.

**7.33.3** In addition, should the Contractor fail to furnish final closing documents within the required time period, the Engineer shall assess the liquidated damages as required by Section 7.26 FAILURE TO COMPLETE THE WORK ON TIME.

## **7.34 CONTRACTOR'S RESPONSIBILITY FOR WORK; RISK OF LOSS**

**7.34.1** Until the establishment of the Project Acceptance Date or Beneficial Occupancy, whichever is sooner, the Contractor shall take every necessary precaution against injury or damage to any part of the work caused by the perils insured by an All Risk policy excluding earthquakes and floods, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore and make good all injuries or damage to any portion of the work occasioned by the perils insured by an All Risk policy before the date of final acceptance and shall bear the risk and expense thereof.

**7.34.2** After the Project Acceptance Date or Beneficial Occupancy whichever is sooner, the Contractor shall be relieved of maintaining and protecting the work except for those portions of the work which have not been accepted including Punchlist deficiencies.

**7.34.3** The risk of damage to the work from any hazard or occurrence may be covered by a required Property Insurance policy is that of the Contractor, unless such risk of loss is placed elsewhere by express language in the contract documents. No claims for any loss or damage shall be recognized by the Department, nor will any such loss or damage excuse the complete and satisfactory performance of the contract by the Contractor.

## **7.35 GUARANTEE OF WORK**

**7.35.1** In addition to any required manufacturers warranties, all work and equipment shall be guaranteed by the Contractor against defects in materials, equipment or workmanship for one year from the Project Acceptance Date or as otherwise specified in the Contract Documents, whichever is earlier.

**7.35.2 Repair of Work** – If, within any guarantee period, repairs or changes are required in connection with the guaranteed work, which in the opinion of the Engineer is necessary due to materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the Contract, the Contractor shall within five (5) working days and without expense to the Department commence to:

7.35.2.1 Place in satisfactory condition in every instance all such guaranteed work and correct all deficiencies therein; and

7.35.2.2 Make good and repair or replace to new or pre-existing condition all damages to the building, facility, work or equipment or contents thereof, resulting from such defective materials, equipment or installation thereof.

**7.35.3 Manufacturer's and Installer's Guarantee** – Whenever a manufacturer's or installer's guarantee on any product specified in the respective Specification sections, exceeds one year, this guarantee shall become part of this contract in addition to the Contractor's guarantee. Contractor shall complete the guarantee forms in the name of



the Department and submit such forms to the manufacturer within such time required to validate the guarantee. Contractor shall submit to the Department a photocopy of the completed guarantee form for the Department's record as evidence that such guarantee form was executed by the manufacturer.

**7.35.4** If a defect is discovered during a guarantee period, all repairs and corrections to the defective items when corrected shall again be guaranteed for the original full guarantee period. The guarantee period shall be tolled and suspended for all work affected by the defect. The guarantee period for work affected by the defect shall restart for its remaining duration upon confirmation by the Engineer that the deficiencies have been repaired or remedied.

**7.35.5** If guarantee is specified for greater than two (2) years, two (2) years shall prevail except for manufacturer's warranties. Manufacturer's warranties shall remain as specified in their respective Specification sections.

7.35.5.1 However, the number of years specified in the technical specifications shall prevail only if it is stated that the number of years for guarantee supercedes this provision.

## **7.36 WORK OF AND CHARGES BY UTILITIES**

**7.36.1** The Contractor shall be responsible for scheduling and coordinating the work with the utility companies and applicable Governmental agencies for permanent service installation and connections or modifications to existing utilities. The Contractor shall make available all portions of the work necessary for the utility companies to do their work. The Department shall not bear the risk of any damage to the contract work caused by any utility company, and work of repairing such damage and delay costs must be resolved between the Contractor and the utility company and their insurers.

**7.36.2** Unless stated as an allowance item to be paid by the Contractor, the Department will pay the utility companies and applicable governmental agencies directly for necessary modifications and connections. Contractor charges for overhead, supervision, coordination, profit, insurance and any other incidental expenses shall be included in the Contractor's bid whether the utility is paid directly by the Department or by an allowance item in the contract.

## **7.37 RIGHT TO AUDIT RECORDS**

**7.37.1** Pursuant to Section 103D-317, HRS the State, at reasonable times and places, may audit the books and records of a Contractor, prospective contractor, subcontractor and prospective subcontractor relating to the Contractor's or subcontractor's cost or pricing data. The books and records shall be maintained by the Contractor and

subcontractor(s) for a period of four (4) years from the date of final payment under the contract.

**7.37.2** The Contractor shall insure that its subcontractors comply with this requirement and shall bear all costs (including attorney's fees) of enforcement in the event of its subcontractor's failure or refusal to fully cooperate.

**7.37.3** Additionally, Sections 231-7, 235-108, 237-39 and other HRS chapters through reference authorizes the Department of Taxation to audit all taxpayers conducting business within the State. Contractors must make available to the Department of Taxation all books and records necessary to verify compliance with the tax laws.

## **7.38 RECORDS MAINTENANCE, RETENTION AND ACCESS**

**7.38.1** The Contractor and any subcontractor whose contract for services is valued at \$25,000 or more shall, in accordance with generally acceptable accounting practices, maintain fiscal records and supporting documents and related files, papers, and reports that adequately reflect all direct and indirect expenditures and management and fiscal practices related to the Contractor and subcontractor's performance of services under this Agreement.

**7.38.2** The representative of the Department, the Administrative Director of the Courts, the Attorney General, (the Federal granting agency, the Comptroller General of the United States, and any of their authorized representatives when federal funds are utilized), and the Legislative Auditor of the State of Hawaii shall have the right of access to any book, document, paper, file, or other record of the Contractor and any subcontractor that is related to the performance of services under this Agreement in order to conduct an audit or other examination and/or make copies, excerpts and transcripts for the purposes of monitoring and evaluating the Contractor and subcontractor's performance of services and the Contractor and subcontractor's program, management, and fiscal practices to assure the proper and effective expenditure of funds and to verify all costs associated with any claims made under this Agreement.

**7.38.3** The right of access shall not be limited to the required retention period but shall last as long as the records are retained. The Contractor and subcontractor shall retain all records related to the Contractor and subcontractor's performance of services under this Agreement for four (4) years from the date of final payment, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the four (4) year period, the Contractor and subcontractors shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the four (4) year retention period, whichever occurs later. Furthermore, it shall be the Contractor's responsibility to enforce compliance with this provision by any subcontractor.

## **7.39 EMPLOYMENT OF STATE RESIDENTS REQUIREMENTS HRS 103B**

**7.39.1** A Contractor awarded a contract shall ensure that Hawaii residents comprise not less than 80% of the workforce employed to perform the contract. The 80% requirement shall be determined by dividing the total number of hours worked on the contract by Hawaii residents, by the total number of hours work on the contract by all employees of the Contractor in the performance of the contract. The hours worked by any subcontractor of the Contractor shall count towards the calculation for purposes of this section. The hours worked by employees within shortage trades, as determined by the Department of Labor and Industrial Relations (DLIR), shall not be included in the calculation for this section.

**7.39.2** The requirements of this section shall apply to any subcontract of \$50,000 or more in connection with the Contractor, that is, such subcontractors must also ensure that Hawaii residents comprise not less than 80% of the subcontractor's workforce used to perform the subcontract. See also, section 7.2 – Commencement Requirements.

**7.39.3** The Contractor, and any subcontractor whose subcontract is \$50,000 or more, shall comply with the requirements of this section.

7.39.3.1 Certification of compliance shall be made in writing under oath by an officer of the Contractor and applicable subcontractors and submitted with the final payment request.

7.39.3.2 The certification of compliance shall be made under oath by an officer of the company by completing a Certification of Compliance for Employment of State Residents form and executing the Certificate before a licensed notary public. See attached form at the end of Section 00700 – General Conditions.

7.39.3.3 In addition to the certification of compliance as indicated above, the Contractor and any subcontractors shall maintain records such as certified payrolls for laborers and mechanics who performed work at the site and timesheets for all other employees who performed work on the project. These records shall include the names, addresses and number of hours worked on the project by all employees of the Contractor and subcontractors who performed work on the project to validate compliance with this section. The Contractor and subcontractors shall maintain, retain and provide access to these records in accordance with Section 7.38 – RECORDS MAINTENANCE, RETENTION AND ACCESS, except that these provisions shall apply to all contracts, regardless of the value of the contract.

**7.39.4** A Contractor or applicable subcontractor who fails to comply with this section shall be subject to any of the following sanctions:

7.39.4.1 With respect to the General Contractor, withholding of payment on the contract until the Contractor or its subcontractor complies with this section; or

7.39.4.2 Proceedings for debarment or suspension of the Contractor or subcontractor under Hawaii Revised Statutes §103D-702.

**7.39.5 Conflict with Federal Law** – This section shall not apply if the application of this section is in conflict with any federal law, or if the application of this section will disqualify the State from receiving Federal funds or aid. See Section 00800 – Special Conditions to determine if this section does not apply.

## **ARTICLE 8 – Measurement and Payment**

### **8.1 MEASUREMENT OF QUANTITIES**

**8.1.1** All work completed under the Contract shall be measured by the Engineer according to the United States standard measures, or as stated in the Contract. The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the contract shall conform to good engineering practice. These measurements shall be considered correct and final unless the Contractor has protested same to the Engineer and has demonstrated the existence of an error by actual physical measurement before the work has progressed in a manner which would prohibit a proper check.

**8.1.2** All measurements of the area of the various surface, pavement and base courses will be made in the horizontal projection of the actual surface and no deductions will be made for fixtures or structures having an area of nine (9) square feet or less. All measurements of headers, curbs, fences and any other type of construction which is to be paid for by its length, will be made in the horizontal projection of the actual driven length from toe to top of cutoff, except where slope exceeds ten percent (10%) and for piles, which will be by actual length. All materials which are specified for measurement by the cubic yard “Loose Measurement” or “Measured in the Vehicle” shall be hauled in approved vehicles and measured therein at the point of delivery. Approved vehicles for this purpose may be of any type or size satisfactory to the Engineer, provided that the body is of such type that the actual contents may be readily and accurately determined. Unless all vehicles on a job are of a uniform capacity each approved vehicle must bear a plainly legible identification mark indicating the specific approved capacity. The Inspector may reject all loads not hauled in such approved vehicles.

**8.2 NO WAIVER OF LEGAL RIGHTS** – The Engineer shall not be precluded or estopped by any measurements, estimate or certificate made either before or after the completion and acceptance of the work and payment therefor, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement estimate or certificate is untrue or incorrectly made, or rejecting the work or materials that do not conform in fact to the contract. The Engineer shall not be precluded or estopped, notwithstanding any such

measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor and its sureties such damages as the Department may sustain by reason of the Contractor's failure to comply with the terms of the contract. Neither the acceptance by the Engineer or any representative of the Engineer, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, or any possession taken by the Engineer, shall operate as a waiver of any portion of the contract, or of any power herein reserved, or any right to damage herein provided. A waiver of any notice requirement or breach of the contract shall not be held to be a waiver of any other notice requirement or subsequent breach.

### **8.3 PAYMENT FOR ADDITIONAL WORK**

**8.3.1** Payment for Changed Conditions – A contract modification or change order complying with section 4.4 PRICE ADJUSTMENT and section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT shall be issued for all changes that are directed under Section 4.2 CHANGES. No payment for any change including work performed under the force account provisions will be made until a change order is issued or contract modification is executed.

8.3.1.1 At the completion of the force account work or at an intermediate interval approved by the Contracting Officer, the Contractor shall submit its force account cost proposal, including approved daily force account records with any attached invoices or receipt, to the Department for processing a contract modification or change order.

**8.3.2** On credit proposals and proposals covering both increases and decreases, the application of overhead and profit shall be on the net change in direct costs for the performance of the work.

**8.3.3** When payment is to be made for additional work directed by a field order, the total price adjustment as specified in the field order or if not specified therein for the work contained in the related change order shall be considered full compensation for all materials, labor, insurance, taxes, equipment use or rental and overheads, both field and home office including extended home and branch office overhead and other related delay impact costs.

**8.3.4 Force Account Method** – When, for the convenience of the Department, payment is to be made by the Force Account method, all work performed or labor and materials and equipment furnished shall be paid for as described below. Payment by the Force Account method will not alter any rights, duties and obligations under the contract.

8.3.4.1 Labor – For all hourly workers, the Contractor will receive the rate of wage including fringe benefits when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work, which shall be agreed upon in writing before beginning work for each and every hour that said labor is actually engaged in said work.

(a) All markups for overhead and profit shall be added subject to limitations established in Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.

(b) No allowance for overtime compensation will be given without the written approval of the Engineer prior to performance of such work.

8.3.4.2 Insurance and Taxes – The Contractor and subcontractor(s) will also receive the actual additional costs paid for property damage, liability, workers compensation insurance premiums, State unemployment contributions, Federal unemployment taxes, social security and Medicare taxes to which a markup of up to six percent (6%) may be added.

8.3.4.3 Materials – For materials accepted by the Engineer and used, the Contractor and subcontractor(s) shall receive the actual cost of such materials delivered and incorporated into work, plus a markup allowed under Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.

8.3.4.4 Subcontractors – Subcontractor costs shall be actual costs of the subcontractor marked up as defined in this Section 8.3 plus a markup allowed under 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.

#### 8.3.4.5 Equipment

(a) For machinery or special equipment (other than small tools as herein defined in clause 8.3.4.5.(h)) owned or leased by the Contractor or a related entity, the use of which has been authorized by the Engineer:

(a.1) The Contractor will be paid at the per-hour rental rates based on the monthly rate established for said machinery or equipment in the then-current edition of the Rental Rate Blue Book for Construction Equipment including the estimated operating cost per hour and regional correction provided therein.

(a.2) If no rate is listed for a particular kind, type or size of machinery or equipment, then the monthly, hourly rates shall be as agreed upon in writing by the Contractor and the Engineer prior to the use of said machinery or equipment. If there is no agreement, the Engineer will set a rate. The Contractor may contest the rate pursuant to Section 7.25 DISPUTES AND CLAIMS.

(a.3) Rental rates which are higher than those specified in the aforesaid Rental Rate Blue Book publication may be allowed where such higher rates can be justified by job conditions such as work in water and work on lava, etc. Request for such higher rates shall be submitted in writing to the Engineer for approval prior to the use of the machinery or equipment in question.

(b) For machinery or special equipment (other than small tools as herein defined in clause 8.3.4.5(h)) rented by the Contractor or a related entity specifically for the Force Account work, the use of which has been authorized by the Engineer; the Contractor will be paid the actual rental cost for the machinery and equipment, including mobilization

and demobilization costs. A receipt from the equipment supplier shall be submitted to the Engineer.

(c) For machinery or special equipment (other than small tools as herein defined in clause 8.3.4.5(h)) rented by the Contractor or a related entity for use on the project, but which will also be used for the Force Account work, the use of which has been authorized by the Engineer; the Contractor will be paid the actual rental cost for the machinery and equipment. No additional mobilization and demobilization costs will be paid. A receipt from the equipment supplier shall be submitted to the Engineer.

(d) The rental rate for trucks not owned by the Contractor shall be those as established under the Hawaii State Public Utilities Commission, which will be paid for as an equipment item pursuant to paragraph 8.3.4.5. Rental rates for Contractor-owned trucks not listed in the Rental Rate Blue Book shall be agreed upon in writing by the Contractor and Engineer prior to the use of said trucks. If there is no agreement, the Engineer shall set the rate. The Contractor may contest the rate pursuant to Section 7.25 DISPUTES AND CLAIMS.

(e) The rental period shall begin at the time equipment reaches the site of work, shall include each day that the machinery or equipment is at the site of the work and shall terminate at the end of the day on which the equipment is no longer needed. In the event the equipment must standby due to work being delayed or halted by reason of design, traffic, or other related problems uncontrollable by the Contractor, excluding Saturdays, Sundays and Legal Holidays, unless the equipment is used to perform work on such days, the rental shall be two hours per day until the equipment is no longer needed.

(e.1) The rental time to be paid will be for the time actually used. Any hours of operation in excess of 8 hours in any one day must be approved by the Engineer prior to the performance of such work.

(e.2) Rental time will not be allowed or credited for any day on which machinery or equipment is inoperative due to its breakdown. On such days, the Contractor will be paid only for the actual hours, if any, that the machinery or equipment was in operation.

(e.3) In the event the Force Account work is completed in less than 8 hours, equipment rental shall nevertheless be paid for a minimum 8 hours.

(e.4) For the purpose of determining the rental period the continuous and consecutive days shall be the normal 8-hour shift work day, Monday through Friday excluding legal holidays. Any work day to be paid less than 8 hours shall not be considered as continuous, except for equipment removed from rental for fuel and lubrication.

(e.5.) No additional premium beyond the normal rates used will be paid for equipment over 8 hours per day or 40 hours per week.

(f) All rental rates for machinery and equipment shall include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs, maintenance, tire wear, depreciation, storage, and all other incidentals.

(g) All machinery and equipment shall be in good working condition and suitable for the purpose for which the machinery and equipment is to be used.

(h) Individual pieces of equipment or tools having a replacement value of \$1000 or less, whether or not consumed by use, shall be considered to be small tools and included in the allowed markup for overhead and profit and no separate payment will be made therefor.

(i) The total of all Force Account rental charges accrued over the duration of the contract for a specific item of equipment shall not exceed the replacement cost of that equipment.

(i.1) The Contractor shall provide the cost of replacement to the Engineer prior to using the equipment. If the Engineer does not agree with the replacement cost, the Engineer shall set the replacement cost. The Contractor may contest the replacement cost pursuant to Section 7.25 DISPUTES AND CLAIMS.

(j) Should the item of equipment be rented from an unrelated entity, the rental cost will be treated as an equipment cost under paragraph 8.3.4.5.

(k) Transportation and/or Mobilization: The following provisions shall govern in determining the compensation to be paid to the Contractor for use of equipment or machinery on the Force Account method:

(k.1) The location from which the equipment is to be moved or transported shall be approved by the Engineer.

(k.2) Where the equipment must be transported to the site of the force account work, the Department will pay the reasonable cost of mobilizing and transporting the equipment, including its loading and unloading, from its original location to the site of the force account work. Upon completion of the work the Department will pay the reasonable cost of mobilizing and transporting the equipment back to its original location or to another location, whichever cost is less.

(k.3) The cost of transporting the equipment shall not exceed the rates established by the Hawaii State Public Utilities Commission. If such rates are nonexistent, then the rates will be determined by the Engineer based upon the prevailing rates charged by established haulers within the locale.

(k.4) Where the equipment is self-propelled, the Department will pay the cost of moving the equipment by its own power from its original location to the site of the force account work. Upon completion of the work the Department will pay the reasonable cost of moving of the Equipment back to its original or another location, whichever cost is less.



(k.5) At the discretion of the Engineer, when the Contractor desires to use such equipment for other than Force Account work, the costs of mobilization and transportation shall be prorated between the Force Account and non Force Account work.

(l) Pickup trucks, vans, storage trailers, unless specifically rented for the Force Account work, shall be considered incidental to the Force Account work and the costs therefor are included in the markup allowed under Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.

8.3.4.6 State Excise (Gross Income) Tax and Bond – A sum equal to the current percentage rate for the State excise (Gross Income) tax on the total sum determined in paragraphs 8.3.4.1, 8.3.4.2, 8.3.4.3 and 8.3.4.4 above, and the bond premium shall be added as compensation to the Contractor. The actual bond premium not to exceed one percent (1%) shall be added to items covered by paragraphs 8.3.4.1, 8.3.4.2, 8.3.4.3 and 8.3.4.4 when applicable.

(a) The compensation as determined in paragraphs 8.3.4.1, 8.3.4.2, 8.3.4.3, 8.3.4.4, and 8.3.4.5 above shall be deemed to be payment in full for work paid on a force account basis.

8.3.4.7 Records – The Contractor and the Engineer shall compare records of the labor, materials and equipment rentals paid by the Force Account basis at the end of each day. These daily records, if signed by both parties, shall thereafter be the basis for the quantities to be paid for by the Force Account method. The Contractor shall not be entitled to payment for Force Account records not signed by the Engineer.

8.3.4.8 Statements – No payment will be made for work on a Force Account basis until the Contractor has submitted to the Engineer, duplicate itemized statements of the cost of such Force Account work detailed as follows:

(a) Laborers – Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman and also the amount of fringe benefits payable if any.

(b) Equipment – Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.

(c) Materials

(c.1) Quantities of materials, prices and extensions.

(c.2) Costs of transporting materials, if such cost is not reflected in the prices of the materials.

(c.3) Statements shall be accompanied and supported by receipted invoices for all materials used and transportation charges. However, if materials used on the Force Account work are not specifically purchased for such work but are taken from the

Contractor's stock, then in lieu of the invoices the Contractors shall submit an affidavit certifying that such materials were taken from stock and that the amount claimed represents the actual cost to the Contractor.

(d) Insurance – Cost of property damage, liability and worker's compensation insurance premiums, unemployment insurance contributions, and social security tax.

## **8.4 PROGRESS PAYMENTS**

**8.4.1 Progress Payments** – The Contractor will be allowed progress payments on a monthly basis upon preparing the Monthly Payment Application forms and submitting them to the Contracting Officer. The monthly payment shall be based on the items of work satisfactorily completed and the value thereof at unit prices and/or lump sum prices set forth in the contract as determined by the Contracting Officer and will be subject to compliance with Section 7.9 PAYROLLS AND PAYROLL RECORDS.

**8.4.2** In the event the Contractor or any Subcontractor fails to submit certified copies of payrolls in accordance with the requirements of Section 7.9 PAYROLLS AND PAYROLL RECORDS, the Contracting Officer may retain the amount due for items of work for which payroll affidavits have not been submitted on a timely basis notwithstanding satisfactory completion of the work until such records have been duly submitted. The Contractor shall not be due any interest payment for any amount thus withheld.

**8.4.3 Payment for Materials** – The Contractor will also be allowed payments of the manufacturer's, supplier's, distributor's or fabricator's invoice cost of accepted materials to be incorporated in the work on the following conditions:

8.4.3.1 The materials are delivered and properly stored at the site of Work; or

8.4.3.2 For special items of materials accepted by the Contracting Officer, the materials are delivered to the Contractor or subcontractor(s) and properly stored in an acceptable location within a reasonable distance to the site of Work.

**8.4.4** Partial payments shall be made only if the Contracting Officer finds that:

8.4.4.1 The Contractor has submitted bills of sale for the materials or otherwise demonstrates clear title to such materials.

8.4.4.2 The materials are insured for their full replacement value to the benefit of the Department against theft, fire, damages incurred in transportation to the site, and other hazards.

8.4.4.3 The materials are not subject to deterioration.

8.4.4.4 In case of materials stored off the project site, the materials are not commingled with other materials not to be incorporated into the project.

## **8.5 PROMPT PAYMENT §3-125-23 HAR**

**8.5.1** Any money paid to a Contractor for work performed by a subcontractor shall be disbursed to such subcontractor 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 on which the Contracting Officer has withheld payment.

**8.5.2** Upon final payment to the Contractor, full payment to all subcontractors shall be made within ten (10) days after receipt of the money, provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

**8.5.3** All sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the Contracting Officer to the Contractor and subsequently, upon receipt from the Contracting Officer, by the Contractor to the subcontractor within the applicable time periods specified in subsection 8.5.2 and section 103-10 HRS:

8.5.3.1 Where a subcontractor has provided evidence to the Contractor of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in subsection (8.5.5) of this section, and:

8.5.3.1.a Has provided to the Contractor an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 8.6 RETAINAGE; or

8.5.3.1.b The following has occurred:

8.5.3.1.b.1 A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to Contractor and the surety, as provided for in section 103D-324 HRS; and

8.5.3.1.b.2 The subcontractor has provided to the Contractor:

8.5.3.1.b.2.1 An acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the Contractor;

8.5.3.1.b.2.2 Any other bond acceptable to the Contractor; or

8.5.3.1.b.2.3 Any other form of mutually acceptable collateral.

**8.5.4** If the Contracting Officer or the Contractor fails to pay in accordance with this section, a penalty of one and one-half per cent per month shall be imposed upon the outstanding amounts due that we not timely paid by the responsible party. The penalty may be withheld from future payment due the the Contractor, if the Contractor was the responsible party. If a Contractor has violated subsection 8.5.2 three or more times within two years of the first violation, the Contractor shall be referred by the Contracting Officer to the Contractor License Board for action under 444-17(14) HRS.

**8.5.5 Final Payment Request** - A properly documented final payment request from a subcontractor, as required by subsection 8.5.3, shall include:

8.5.5.1 Substantiation of the amounts requested;

8.5.5.2 A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:

8.5.5.2.a The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

8.5.5.2.b The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

8.5.5.2.c The payment request does not include any amounts that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and

8.5.5.2.d The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

**8.5.6** The Contracting Officer shall return any final payment request that is defective to the Contractor with seven days after receipt, with a statement identifying the defect.

**8.5.7** A payment request made by the Contractor to the Contracting Officer that includes a request for sums that were withheld or retained from a subcontractor and are due to a subcontractor may not be approved under subsection 8.5.3 unless the payment request includes:

8.5.7.1 Substantiation of the amounts requested; and

8.5.7.2 A certification by the Contractor, to the best of the Contractor's knowledge and belief; that:

8.5.7.2.a The amounts requested are only for performance in accordance with the specifications, terms and conditions of the contract;

8.5.7.2.b The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the contract and will make timely payments from the proceeds of the payment covered by the certification in accordance with their subcontract agreements and the requirements of this sections; and

8.5.7.2.c The payment request does not include any amounts that the Contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

**8.5.8** This section shall not be construed to impair the right of a Contractor or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under subsection 8.5.3 of this section; provided that any such payments withheld shall be withheld by the Contracting Officer.

**8.6 RETAINAGE** – The Department will retain a portion of the amount due under the contract to the Contractor, to ensure the proper performance of the contract.

**8.6.1** The sum withheld by the Department from the Contractor shall not exceed five percent (5%) of the total amount due the Contractor and that after fifty percent (50%) of the contract is completed, and progress is satisfactory, no additional sum shall be withheld; provided that if progress is not satisfactory, the Contracting Officer may continue to withhold as retainage, sums not exceeding five percent (5%) of the amount due the Contractor.

**8.6.2** The retainage shall not include sums deducted as liquidated damages from moneys due or that may become due the contractor under the contract.

**8.6.3** General Obligation Bonds – The Contractor may withdraw retainage monies in whole or in part by providing a general obligation bond of the State or its political subdivisions suitable to the Department. The Contractor shall endorse over to the Department and deposit with the Department any general obligation bond suitable to the Department, but in no case with a face value less than the value established by law, of the amount to be withdrawn. The Department may sell the bond and use the proceeds in the same way as it may use monies directly retained from progress payments or the final payment.

**8.6.4** Any retainage provided for in this section or requested to be withheld by the Contractor shall be held by the Contracting Officer.

**8.6.5** A dispute between a Contractor and subcontractor of any tier shall not constitute a dispute to which the State or any county is a party, and there is no right of action against

the State or any county. The State and a county may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

**8.6.6** The retention amount withheld by the Contractor from its subcontractor shall not be more than the same percentage of retainage as that of the Contractor (also applies to subcontractors who subcontract work to other subcontractors) where a subcontractor has provided evidence to the Contractor of:

8.6.6.1 A valid performance and payment bond for the project that is acceptable to the Contractor and executed by a surety company authorized to do business in this State;

8.6.6.2 Any other bond acceptable to the Contractor; or

8.6.6.3 Any other form of collateral acceptable to the Contractor.

**8.6.7** A written notice of any withholding shall be issued to a subcontractor, with a copy to the procurement officer, specifying the following:

8.6.7.1 The amount to be withheld;

8.6.7.2 The specific causes for the withholding under the terms of the subcontract; and

8.6.7.3 The remedial actions to be taken by the subcontractor to receive payment of the amounts withheld.

**8.6.8** The provisions of this section shall not be construed to require payment to subcontractors of retainage released to a Contractor pursuant to an agreement entered into with the Contracting Officer meeting the requirements of subsection 8.6.3.

**8.7 WARRANTY OF CLEAR TITLE** – The Contractor warrants and guarantees that all work and materials covered by progress or partial payments made thereon shall be free and clear of all liens, claims, security interests or encumbrances, and shall become the sole property of the Department. This provision shall not, however, be construed as an acceptance of the work nor shall it be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Department to require the fulfillment of all the items of the contract.

## **8.8 FINAL PAYMENT**

**8.8.1** Upon final settlement, the final payment amount, less all previous payments and less any sums that may have been deducted in accordance with the provisions of the

contract, will be paid to the Contractor, provided the Contractor has submitted the following documents with the request for final payment: a) a current "Certificate of Vendor Compliance" issued by the Hawaii Compliance Express (HCE); and b) an originally notarized Certificate of Compliance for Employment of State Residents signed under oath by an officer of the Contractor and applicable subcontractors pursuant to chapter 103B HRS. The Certificate of Vendor Compliance is used to certify the Contractor's compliance with: a) Section 103D-328, HRS (for all contracts \$25,000 or more) which requires a current tax clearance certificate issued by the Hawaii State Department of Taxation and the Internal Revenue Service; b) Chapters 383, 386, 392, and 393, HRS; and c) Subsection 103D-310(c), HRS. The State reserves the right to verify that compliance is current prior to the issuance of final payment. Contractors are advised that non-compliance status will result in final payment being withheld until compliance is attained.

**8.8.2** Sums necessary to meet any claims of any kind by the State may be retained from the sums due the Contractor until said claims have been fully and completely discharged or otherwise satisfied.

**8.9 CLAIMS ARISING OUT OF PAYMENT FOR REQUIRED WORK** – If the Contractor disputes any determination made by the Contracting Officer regarding the amount of work satisfactorily completed, or the value thereof, or the manner in which payment therefore is made or calculated, it shall notify the Contracting Officer in writing of the specific facts supporting the Contractor's position. Such notice shall be delivered to the Contracting Officer no later than thirty (30) days after the Contractor has been tendered payment for the subject work, or, if no payment has been tendered, not later than fifty (50) days after it has submitted the Monthly Payment Application required under Section 8.4 PROGRESS PAYMENTS herein to the Contracting Officer for the work that is the subject of the dispute. The delivery of the written notice cannot be waived and shall be a condition precedent to the filing of the claim. No claim for additional compensation for extra work or change work shall be allowed under this provision, unless the notice requirements of Article 4 SCOPE OF WORK have been followed. Acceptance of partial payment of a Monthly Payment Application amount shall not be deemed a waiver of the right to make a claim described herein provided the notice provisions are followed. The existence of or filing of a payment claim herein shall not relieve the Contractor of its duty to continue with the performance of the contract in full compliance with the directions of the Contracting Officer. Any notice of claim disputing the final payment made pursuant to Section 8.8 FINAL PAYMENT must be submitted in writing not later than thirty (30) days after final payment that is identified as such has been tendered to the Contractor.

**APPENDIX A**  
**(SUBSTITUTION REQUEST)**

DATE:

Contracting Officer:  
The Judiciary:

SUBJECT: SUBSTITUTION REQUEST  
PROJECT TITLE:

JUDICIARY PROJECT I.D.:

In accordance with the requirements of Section 00800 SPECIAL CONDITIONS, enclosed/attached are three (3) sets of technical brochures and statement of variances for your review and approval for the item(s) shown below.

SECTION / ITEM	SPECIFIED BRAND	SUBSTITUTE OR ALTERNATE BRAND	VARIANT FEATURES <sup>3</sup>
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[I / Company certify/certifies]<sup>4</sup> that the substitution request of the above item(s) has no other variant features.

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SIGNATURE

NOTE:

1. Use own letterhead
2. Submit one (1) original and two (2) copies
3. If no variant features indicate "None"
4. Fill in appropriate entity



**APPENDIX B**

**(NAME OF CORPORATION)**

I, \_\_\_\_\_, Secretary of \_\_\_\_\_ Corporation, a corporation, do hereby certify that the following is a full, true and correct copy of a resolution duly adopted by the Board of Directors of said Corporation, at its meeting duly called and held at the office of the Corporation, \_\_\_\_\_ Street, \_\_\_\_\_, \_\_\_\_\_, on the day of \_\_\_\_\_, at which a quorum was present and acting throughout; and that said resolution has not been modified, amended or rescinded and continues in full force and effect:

“RESOLVED that any individual at the time holding the position of President or Vice President, be, and each of them hereby is, authorized to execute on behalf of the Corporation any bid, proposal or contract for the sale or rental of the products of the Corporation or for services to be performed by the Corporation, and to execute any bond required by any such bid, proposal or contract with the United States Government or the State of Hawaii or the City and County of Honolulu, or any County or Municipal Government of said State, or any department or subdivision of any of them.”

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said \_\_\_\_\_ Corporation this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Secretary

(Names and Addresses of: )

President

Vice President

Secretary

## APPENDIX C

### (CONTRACT)

THIS CONTRACT, made as of the \_\_\_\_\_ day \_\_\_\_\_, 20XX, by and between The Judiciary - State of Hawaii, hereinafter referred to as the "Judiciary", acting by and through the Administrative Director of the Courts, and \_\_\_\_\_ of \_\_\_\_\_ a duly licensed contractor in the State of Hawaii, hereinafter referred to as the "Contractor",

#### WITNESSETH THAT:

WHEREAS, the written proposal of the Contractor has been accepted by the Judiciary as the lowest responsible bid submitted pursuant to a call for bids for the work herein described;

NOW THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties agree as follows:

**A. Scope of Work.** The Contractor shall furnish, in accordance with the Contract Documents, all the labor, materials, machinery, tools, superintendence, transportation, and other construction accessories, services and facilities necessary to construct and complete, at its own risk and expense, the following described work or so much of said work as shall be required by the Administrative Director of the Courts.

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JUDICIARY PROJECT IDENTIFIER: \_\_\_\_\_

**B. Time of Completion.** The work under this Contract shall be fully completed by the Contractor within \_\_\_\_\_ working days after receipt of the Notice to Proceed from the Administrative Director of the Courts.

Liquidated damages in the sum stated in the SPECIAL CONDITIONS will be deducted from the Contractor's final payment if the work is not completed prior to the expiration of the time limit specified above or of any time extension granted to the Contractor by the State.

**C. Compensation.** The Judiciary shall pay the Contractor for the performance of the work specified under this Contract, the Maximum sum of \$\_\_\_\_\_, this figure being the amount set forth in the Contractor's proposal, subject to such additions and deductions as provided in the GENERAL CONDITIONS of this contract. Extras may be allowed in addition to said sum, but shall not exceed \$\_\_\_\_\_. All payments shall be made in the manner and at the times indicated in the Contract Documents.

It is understood and agreed that the compensation paid by the Judiciary to the Contractor shall include all expenses incurred by the Contractor for all loss or damage arising out

of the nature of the work, from the action of the elements, or from any delay or unforeseen obstruction or difficulty encountered in the prosecution of the Work; for all risks of every description connected with the Work; and for all expenses incurred by or in consequence of the suspension or discontinuance of the work, except as set forth in the GENERAL CONTITIONS.

It is further agreed by the parties that any portion of the Contract price payable to the Contractor out of federal funds shall be paid to the Contractor only when such federal funds are so received, and this Contract shall not be construed as binding the State to pay said portion out of any fund other than those which are received from the Federal government.

**D. Guaranty of Work.** The Contractor agrees to guarantee all work under this Contract for the period(s) stipulated in the Contract Documents from the Project Acceptance Date.

If any unsatisfactory condition or damage develops within the time of this guaranty due to materials or workmanship that are defective, inferior, or not in accordance with the Contract, the Contractor shall, when notified by the State, immediately place such guaranteed work in a condition satisfactory to the State and make repairs of all damage to the buildings, equipment and grounds made necessary in fulfillment of the guaranty. Everything necessary for the fulfillment of any guaranty shall be done without any expense to the State. It is understood that the performance and payment bond furnished by the Contractor under this Contract may be used to secure performance of Contractor's guaranty.

**E. Contract Documents.** It is understood and agreed that the following documents, and any amendments or addenda thereto, comprise this Contract and are fully a part of this Contract as though attached hereto or set forth at length herein: (1) Contractor's accepted proposal; (2) GENERAL CONDITIONS; (3) Drawings; (4) Specifications, including the Notice to Contractors, Special Notice to Bidders and SPECIAL CONDITIONS, if any; (5) Combination Performance and Labor and Material Payment Bond; and (6) This Contract agreement.

**F. Entire Agreement.** This contract is the entire agreement between the parties, and no alterations, changes or additions thereto shall be made, except in writing approved by the parties.

IN WITNESS WHEREOF, the parties have executed this Contract the day and year first above written.

THE JUDICIARY - STATE OF HAWAII

By \_\_\_\_\_  
Administrative Director of the Courts

CONTRACTOR

APPROVED AS TO FORM

By \_\_\_\_\_

\_\_\_\_\_  
Judiciary Staff Attorney

Its \_\_\_\_\_

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
\_\_\_\_\_ COUNTY OF \_\_\_\_\_ ) : SS

On this \_\_\_\_\_ day of \_\_\_\_\_, before me appeared  
\_\_\_\_\_ described in and, who, being by me duly sworn, did  
say that he/she/they is/are \_\_\_\_\_ and \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_ the Contractor named in the forgoing  
instrument, and that he/she/they is/are authorized to sign said instrument in behalf of the  
Contractor, and acknowledges that he/she/they executed said instrument as the free act and  
deed of the Contractor.

(Notary Seal)

Notary Public

\_\_\_\_\_  
State of \_\_\_\_\_

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

APPROVAL CONTIGENT UPON  
CERTIFICATION OF FUNDS

**APPENDIX D**  
**(SURETY [BID] [PROPOSAL] BOND)**

Bond No. \_\_\_\_\_

**KNOW TO ALL BY THESE PRESENTS:**

That we, \_\_\_\_\_ (full name or legal title of offeror),  
as Offeror, hereinafter called Principal, and \_\_\_\_\_ (name of bonding company),  
as Surety, hereinafter called Surety, a corporation authorized to transact business as a Surety in  
the State of Hawaii, are held and firmly bound unto the State of Hawaii, as owner, hereinafter  
called Owner, in the penal sum of \_\_\_\_\_ (Required amount of bid security) DOLLARS (\$  
\_\_\_\_\_), lawful money of the United States of America, for the payment of  
which sum well and truly to be made, the said Principal and the said Surety bind ourselves, our  
heirs, executors, administrators, successors and assign, jointly and severally, firmly by these  
presents.

**WHEREAS:**

The Principal has submitted an offer for \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (project by number and brief description)

**NOW, THEREFORE:**

The condition of this obligation is such that if the Owner shall reject said offer, or in the  
alternate, accept the offer of the Principal and the Principal shall enter into a Contract with the  
Owner in accordance with the terms of such offer, and give such bond or bonds as may be  
specified in the solicitation of Contract Documents with good and sufficient surety for the faithful  
performance of such Contract and for the prompt payment of labor and material furnished in the  
prosecution thereof as specified in the solicitation then this obligation shall be null and void,  
otherwise to remain in full force and effect.

Signed this \_\_\_\_\_ Day of \_\_\_\_\_ .

(Seal)

[Name of Principal (Contractor)]

Signature \_\_\_\_\_  
Title \_\_\_\_\_

[Name of Surety]

Signature \_\_\_\_\_  
Title \_\_\_\_\_

**APPENDIX E  
(PERFORMANCE BOND – SURETY)**

**KNOW TO ALL BY THESE PRESENTS:**

That \_\_\_\_\_  
(Full Legal Name and Street Address of Contractor)

as Contractor, hereinafter called Principal, and \_\_\_\_\_

\_\_\_\_\_  
(Name and Street Address of Bonding Company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a surety in the State of Hawaii, are held and firmly bound unto the \_\_\_\_\_,  
(State/County Entity)

its successors and assigns, hereinafter called Obligee, in the amount of \_\_\_\_\_

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_),  
to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the above-bound Principal has entered into a contract with Obligee dated

\_\_\_\_\_ for: \_\_\_\_\_

**Judiciary Project Identifier:** \_\_\_\_\_ hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

**NOW THEREFORE**, the condition of this obligation is such that:

If the Principal shall promptly and faithfully perform, and fully complete the Contract in strict accordance with the terms of the Contract as said Contract may be modified or amended from time to time; then this obligation shall be void; otherwise to remain in full force and effect.

Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid to the Principal shall automatically increase the obligation of the Surety on this bond by the amount of the increase and notice to Surety is not required for such increased obligation.

In the event of Default by the Principal, of the obligations under the Contract, then after written Notice of Default from the Obligee to the Surety and the Principal and subject to the limitation of the penal sum of this bond, Surety shall remedy the Default, or take over the work to

be performed under the Contract and complete such work, or pay moneys to the Obligee in satisfaction of the surety's performance obligation on this bond.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Name of Principal (Contractor)

\*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

(Seal)

\_\_\_\_\_  
Name of Surety

\*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

APPROVED AS TO FORM:

\_\_\_\_\_  
Judiciary Staff Attorney

\*ALL SIGNATURES MUST BE ACKNOWLEDGED  
BY A NOTARY PUBLIC

**APPENDIX F  
(PERFORMANCE BOND – CONTRACTOR)**

**KNOW TO ALL BY THESE PRESENTS:**

That we \_\_\_\_\_ (full legal name and street address of Contractor) ,  
as Contractor, hereinafter called Contractor, is held and firmly bound unto The Judiciary - State of  
Hawaii its successors and assigns, as Obligee, hereinafter called Obligee, in the amount of  
\_\_\_\_\_ (Dollar amount of contract) , DOLLARS (\$ \_\_\_\_\_), lawful money  
of the United States of America, for the payment of which to the said Obligee, well and truly to be  
made, Contractor binds itself, its heirs, executors, administrators, successors and assigns, firmly  
by these presents. Said amount as evidenced by:

- ☐ Legal tender;
- ☐ Share Certificate unconditionally assigned to or made payable at sight to  
\_\_\_\_\_  
Description \_\_\_\_\_;
- ☐ Certificate of Deposit, No. \_\_\_\_\_ ,  
dated \_\_\_\_\_ , issued by \_\_\_\_\_ ,  
drawn on \_\_\_\_\_ , a bank, savings institution or credit union  
insured by the Federal Deposit Insurance Corporation or the National  
Credit Union Administration, payable at sight or conditionally assigned to  
\_\_\_\_\_;
- ☐ Cashier's Check No. \_\_\_\_\_ ,  
dated \_\_\_\_\_ , issued by \_\_\_\_\_ ,  
drawn on \_\_\_\_\_ , a bank, savings institution or credit union  
insured by the Federal Deposit Insurance Corporation or the National  
Credit Union Administration, payable at sight or conditionally assigned to  
\_\_\_\_\_;
- ☐ Teller's Check No. \_\_\_\_\_ ,  
dated \_\_\_\_\_ , issued by \_\_\_\_\_ ,  
drawn on \_\_\_\_\_ , a bank, savings institution or credit union  
insured by the Federal Deposit Insurance Corporation or the National  
Credit Union Administration, payable at sight or conditionally assigned to  
\_\_\_\_\_;
- ☐ Treasurer's Check No. \_\_\_\_\_ ,  
dated \_\_\_\_\_ , issued by \_\_\_\_\_ ,  
drawn on \_\_\_\_\_ , a bank, savings institution or credit union  
insured by the Federal Deposit Insurance Corporation or the National  
Credit Union Administration, payable at sight or conditionally assigned to  
\_\_\_\_\_;
- ☐ Official Check No. \_\_\_\_\_ ,  
dated \_\_\_\_\_ , issued by \_\_\_\_\_ ,  
drawn on \_\_\_\_\_ , a bank, savings institution or credit union  
insured by the Federal Deposit Insurance Corporation or the National  
Credit Union Administration, payable at sight or conditionally assigned to  
\_\_\_\_\_;
- ☐ Certified Check No. \_\_\_\_\_ ,  
dated \_\_\_\_\_ , accepted by a bank, savings institution or credit



union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or conditionally assigned to \_\_\_\_\_ ;

**WHEREAS:**

The Contractor has by written agreement dated \_\_\_\_\_ entered into a contract with Obligee for the following Project:

\_\_\_\_\_  
Hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

**NOW THEREFORE,**

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, and shall deliver the Project to the Obligee, or to its successors or assigns, fully completed as in the Contract specified and free from all liens and claims and without further costs, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants of the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

**AND IT IS HEREBY STIPULATED AND AGREED** that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ .

(Seal)

[Name of Principal (Contractor)]

Signature \_\_\_\_\_

Title \_\_\_\_\_

\*ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

**APPENDIX G  
(LABOR AND MATERIAL PAYMENT BOND – SURETY)**

**KNOW TO ALL BY THESE PRESENTS:**

That \_\_\_\_\_ ,  
(Full Legal Name and Street Address of Contractor)  
as Contractor, hereinafter called Principal, and \_\_\_\_\_  
\_\_\_\_\_, as Surety,  
(Name and Street Address of Bonding Company)  
hereinafter called Surety, a corporation(s) authorized to transact business as a surety in the  
State of Hawaii, are held and firmly bonded unto the \_\_\_\_\_,  
(State/County Entity)  
its successors and assigns, hereinafter called Oblige, in the amount of \_\_\_\_\_  
\_\_\_\_\_ DOLLARS (\$\_\_\_\_\_),  
to which payment Principal and Surety bind themselves, their heirs, executors, administrators,  
successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the above-bound Principal has entered into a Contract with Oblige dated  
\_\_\_\_\_ for: \_\_\_\_\_  
\_\_\_\_\_

**JUDICIARY PROJECT ID:** \_\_\_\_\_, hereinafter called Contract,  
which Contract is incorporated herein by reference and made a part hereof.

**NOW, THEREFORE**, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor and materials supplied to the Principal for use in the performance of the Contract, then this Obligation shall be void; otherwise to remain in full force and effect.

1. Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid to the Principal shall automatically increase the obligation of the Surety on this bond by the amount of the increase and notice to Surety is not required for such increased obligation.

2. A "Claimant" shall be defined herein as any person who has furnished labor or materials to the Principal for the work provided in the Contract.

Every Claimant who has not be paid amounts due for the labor and materials furnished for work provided in the Contract may institute an action against the Principal and its Surety on this bond at the time and in the manner prescribed in Section 103D-324, Hawaii Revised Statutes, and have the rights and claims adjudicated in the action, and judgment rendered thereon, subject to the Obligee's priority on this bond. If the full amount of the liability of the Surety on the bond is insufficient to pay the full amount of the claims, then after paying the full amount due the Obligee, the remainder shall be distributed pro rata among the claimants.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Name of Principal (Contractor)

\*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

(Seal)

\_\_\_\_\_  
Name of Surety

\*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

APPROVED AS TO FORM:

\_\_\_\_\_  
Judiciary Staff Attorney

\*ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC.

**APPENDIX H  
(LABOR AND MATERIAL PAYMENT BOND – CONTRACTOR)**

**KNOW TO ALL BY THESE PRESENTS:**

That we \_\_\_\_\_ (full legal name and street address of Contractor) \_\_\_\_\_ ,  
as Contractor, hereinafter called Contractor, is held and firmly bound unto the State of Hawaii  
its successors and assigns, as Obligee, hereinafter called Obligee, in the amount of  
\_\_\_\_\_ (Dollar amount of contract) \_\_\_\_\_ , DOLLARS (\$ \_\_\_\_\_ ), lawful money  
of the United States of America, for the payment of which to the said Obligee, well and truly to be  
made, Contractor binds itself, its heirs, executors, administrators, successors and assigns, firmly  
by these presents. Said amount as evidenced by:

- ☐ Legal tender;
- ☐ Share Certificate unconditionally assigned to or made payable at sight to  
\_\_\_\_\_  
Description \_\_\_\_\_ ;
- ☐ Certificate of Deposit, No. \_\_\_\_\_ ,  
dated \_\_\_\_\_ , issued by \_\_\_\_\_ ,  
drawn on \_\_\_\_\_ , a bank, savings institution or credit union  
insured by the Federal Deposit Insurance Corporation or the National  
Credit Union Administration, payable at sight or conditionally assigned to  
\_\_\_\_\_ ;
- ☐ Cashier's Check No. \_\_\_\_\_ ,  
dated \_\_\_\_\_ , issued by \_\_\_\_\_ ,  
drawn on \_\_\_\_\_ , a bank, savings institution or credit union  
insured by the Federal Deposit Insurance Corporation or the National  
Credit Union Administration, payable at sight or conditionally assigned to  
\_\_\_\_\_ ;
- ☐ Teller's Check No. \_\_\_\_\_ ,  
dated \_\_\_\_\_ , issued by \_\_\_\_\_ ,  
drawn on \_\_\_\_\_ , a bank, savings institution or credit union  
insured by the Federal Deposit Insurance Corporation or the National  
Credit Union Administration, payable at sight or conditionally assigned to  
\_\_\_\_\_ ;
- ☐ Treasurer's Check No. \_\_\_\_\_ ,  
dated \_\_\_\_\_ , issued by \_\_\_\_\_ ,  
drawn on \_\_\_\_\_ , a bank, savings institution or credit union  
insured by the Federal Deposit Insurance Corporation or the National  
Credit Union Administration, payable at sight or conditionally assigned to  
\_\_\_\_\_ ;
- ☐ Official Check No. \_\_\_\_\_ ,  
dated \_\_\_\_\_ , issued by \_\_\_\_\_ ,  
drawn on \_\_\_\_\_ , a bank, savings institution or credit union  
insured by the Federal Deposit Insurance Corporation or the National  
Credit Union Administration, payable at sight or conditionally assigned to  
\_\_\_\_\_ ;
- ☐ Certified Check No. \_\_\_\_\_ ,  
dated \_\_\_\_\_ , accepted by a bank, savings institution or credit  
union insured by the Federal Deposit Insurance Corporation or the National  
Credit Union Administration, payable at sight or conditionally assigned to  
\_\_\_\_\_ ;

**WHEREAS:**

The Contractor has by written agreement dated \_\_\_\_\_ entered into a contract with Obligee for the following Project:

---

Hereinafter call Contract, which Contract is incorporated herein by reference and made a part hereof.

**NOW THEREFORE,**

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, and shall deliver the Project to the Obligee, or to its successors or assigns, fully completed as in the Contract specified and free from all liens and claims and without further costs, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants of the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

**AND IT IS HEREBY STIPULATED AND AGREED** that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

**AND IT IS HEREBY STIPULATED AND AGREED** that this bond shall inure to the benefit of any all persons entitled to file claims for labor performed or materials furnished in said work so as to give any and all such persons a right of action as contemplated by Sections 103D-324(d) and 103D-324(e), Hawaii Revised Statutes.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment of mechanics; liens which may be filed of record against the Project, whether or not claim for the amount of such lien be presented under and against this bond.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ .

(Seal)

[Name of Principal (Contractor)]

Signature \_\_\_\_\_

Title \_\_\_\_\_

\*ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

**APPENDIX I**  
**CONTRACTOR ACKNOWLEDGMENT**  
**(FOR USE WITH PERFORMANCE AND PAYMENT BONDS)**

STATE OF \_\_\_\_\_ )  
 : SS  
\_\_\_\_\_ COUNTY OF \_\_\_\_\_ )

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

(Notary Seal) Notary Public

\_\_\_\_\_  
State of \_\_\_\_\_

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

**SURETY ACKNOWLEDGMENT**  
**(FOR USE WITH PERFORMANCE AND PAYMENT BONDS)**

INDIVIDUAL ATTORNEY-IN-FACT  
ACTING FOR CORPORATION

STATE OF \_\_\_\_\_ )  
 : SS  
\_\_\_\_\_ COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, before me personally came \_\_\_\_\_ to me personally known to be the person described in and, who, being by me, did depose and say that \_\_\_\_\_ resides in \_\_\_\_\_; that \_\_\_\_\_ is the Attorney-in-fact of \_\_\_\_\_, the corporation described in and which executed the attached instrument; that \_\_\_\_\_ knows the corporate seal of the Board of Directors of the said corporation; and that \_\_\_\_\_ signed \_\_\_\_\_ name thereto by like order

(Notary Seal) Notary Public

\_\_\_\_\_  
State of \_\_\_\_\_

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

**APPENDIX J**  
**[STATE PROCUREMENT OFFICE]**

**(CERTIFICATION OF RECYCLED CONTENT)**

Solicitation No.: \_\_\_\_\_

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

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

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

Item No.	Product Name	Product Description	Manufacturer	Post-Consumer Recovered Material Content*	Recovered Material Content*
----------	--------------	---------------------	--------------	---	-----------------------------

\*Post-consumer recovered material and recovered material content, as defined in §3-124-21, HAR, measured as percentage of total product weight. Attach manufacturer's specifications or certification, as required by §3-124-24(d), HAR. Recycled content measurements to be used for bid evaluation. If more space is required for product information, additional sheets may be attached.

I DECLARE THAT THE RECYCLED CONTENT HAS BEEN EXAMINED BY ME AND IS TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE AND CORRECT.

Authorized Representative

Company: \_\_\_\_\_ Name: \_\_\_\_\_

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

Address: \_\_\_\_\_ Signature: \_\_\_\_\_

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

**APPENDIX K  
(VALUE ENGINEERING CHANGE PROPOSAL)**

"STATE" OR "NAME OF COUNTY"	VECP NO.	DATE:
PROJECT TITLE:	PROJECT NO.	CONTRACT NO.
	CONTRACTOR:	

**A. CHANGES:**

The following changes are to be performed in accordance with all contract stipulations and covenants (Specifications, Drawings, SPECIAL CONDITIONS, etc.):

---

**B. CONTRACTOR'S QUOTATION:**

The changes included under Part A above will be performed at a contract price decrease of \$\_\_\_\_\_ in accordance with all terms of the contract documents. Six copies of our cost breakdowns are attached herewith. We are aware that this value engineering change proposal must be approved by The Judiciary – State of Hawaii in the designated space below and that no work is to be performed until an approved change order has been given us. In case of rejection of this proposal by The Judiciary - State of Hawaii, we will continue all work in accordance with the existing contract terms.

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

---

**C. STATEMENT OF FUNDS:**

Original Contract Price.....\$ \_\_\_\_\_  
Amended Contract Price.....\$ \_\_\_\_\_  
New Contingency.....\$ \_\_\_\_\_

---

**D. SUMMARY DESCRIPTION AND POTENTIAL IMPACTS OF THE PROPOSED CHANGES:**



---

E. TIME EXTENSION:

---

F. VALIDATION OF CHANGE ORDER  
Recommend for Approval

---

CONSTRUCTION ENGINEER  
Approved:

---

CONTRACTING OFFICER

---

DATE

G. REJECTION OF CHANGE ORDER

---

CONSTRUCTION ENGINEER  
Disapproved:

---

CONTRACTING OFFICER

---

DATE

---

REASONS FOR REJECTION:

## VALUE ENGINEERING CHANGE PROPOSAL

### (Contractor Summary Sheet)

From	_____	Date	_____
To	_____	VECP No.	_____
Project	_____	Contract	_____
Location	_____		

Summary of Change (Description – compare advantages and disadvantages, include all information required by the contract clauses and section §3-132-4 for value engineering change proposals)

Before (sketch, when applicable)

After

ESTIMATED COST SUMMARY (Costs shall be estimated in accordance with the change provisions contained in the General Clause of the contract. Attach Cost Estimate form, for detailed estimate whenever applicable.)

		Qty	Unit Cost	Totals
A	Original			
B	Proposed			
C	Gross Savings (A-B)			
D	Contractor's Implementing Cost			
E	Total Estimated Decrease (C-D)			
F	State's Implementing Cost			
G	Difference (E-F)			
H	$\frac{1}{2}$ Difference ((E-F) * $\frac{1}{2}$ )			
I	Reduction in Contract Price (E-H)			

DATE BY WHICH A CHANGE ORDER MUST BE ISSUED  
SO AS TO OBTAIN MAXIMUM COST REDUCTION

\_\_\_\_\_  
Date

Contractor's Representative

Name	Signature	Date
------	-----------	------

Received by: THE JUDICIARY – STATE OF HAWAII

Name	Signature	Date
------	-----------	------

**VALUE ENGINEERING CHANGE PROPOSAL**  
(Contractor Required information)

From \_\_\_\_\_  
To \_\_\_\_\_  
Project \_\_\_\_\_  
Location \_\_\_\_\_

Date \_\_\_\_\_  
VECP No. \_\_\_\_\_  
Contract No. \_\_\_\_\_

INFORMATION REQUIRED OF THE CONTRACTOR (If answer to any of the following questions is "YES", explain in remarks below.)

		YES	NO
1	Does this proposal change affect the time of completion of the contract as stated in the General Conditions?		
2	Has the Contractor submitted this proposed change previously to this office or any other government agency?		
3	Does this change affect other costs to the government, such as government-furnished property or costs of contract-related items?		
4	Does this proposed change increase the maintenance or operation costs of original or proposed items?		
5	Is a subcontractor involved in this proposed change to the contract?		
6	Does the Contractor intend to restrict the government's right to use any data described in this proposed change?		
7	Does this proposed change involve the use of proprietary materials?		

CHANGES OR REVISIONS TO DRAWINGS AND SPECIFICATIONS (Attach applicable contract drawings and specifications, including Contractor's or shop drawings of literature with all changed marked on the drawings and specifications.)

REMARKS

Contractor's Representative

\_\_\_\_\_  
Name Signature Date

Received by: THE JUDICIARY – STATE OF HAWAII

\_\_\_\_\_  
Name Signature Date

**APPENDIX L  
ESTIMATE FOR FIELD ORDER OR BULLETIN**

CONTRACTOR'S ESTIMATE FOR CHANGE

Date \_\_\_\_\_

Project \_\_\_\_\_

Judiciary Project ID \_\_\_\_\_

Contractor/Sub \_\_\_\_\_

Reference: \_\_\_\_\_

Bulletin No. \_\_\_\_\_

Field Order No. \_\_\_\_\_

Description \_\_\_\_\_

**MATERIALS**

Description	Unit(s)	Unit Price	Subtotal	
_____	_____	_____	0.00	
_____	_____	_____	0.00	
_____	_____	_____	0.00	
_____	_____	_____	0.00	
_____	_____	_____	0.00	
<b>TOTAL FOR MATERIALS</b>			<b>0.00</b>	01

**LABOR**

Classification	WAGES		FRINGE	Fringe x Hrs	Wage x Hrs	
	Hrs	Hour Rate	Fringe Rate	Subtotal	Subtotal	
_____	0.0	0.00	0.00	0.00		
_____	0.0	0.00	0.00	0.00		
_____	0.0	0.00	0.00	0.00		
_____	0.0	0.00	0.00	0.00		
_____	0.0	0.00	0.00	0.00		
			<b>SUBTOTAL</b>		<b>0.00</b>	02
			<b>Fringe Rate x Hours</b>			
			<b>SUBTOTAL</b>		<b>0.00</b>	03
			<b>Wage Rate x Hours</b>			

**TOTAL FOR LABOR – Wages and Fringe (2 + 3)**

**SUBTOTAL – Materials and Labor (1 + 4)**

Overhead and Profit at 15% (maximum)

15 % of (5)

Insurance and Taxes

0 % of (3)

Overhead for Insurance and Taxes 6%

6 % of (7)

**TOTAL – MATERIALS and LABOR (5 + 6 + 7 + 8)**

**EQUIPMENT / REIMBURSABLE COSTS (per diem, air fare, etc.)**

Classification	Unit/Hours	Unit(s)	Rate	Subtotal	
_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
<b>TOTAL FOR EQUIPMENT / REIMBURSABLE COSTS</b>					10

**SUBCONTRACTORS**

NAME	Amount	7% Markup	Subtotal	
<b>TOTAL FOR SUBCONTRACTORS</b>				11

<b>TOTAL – MATLS, LABOR and EQUIP / REIMBURSABLES (9+10+11)</b>				12
Bond Fee (if applicable) 1% max	0	%	On (12)	13
Gross Income Tax (Less Subcon cost (11))	x	%	On (12+13)	14
<b>TOTAL FOR CHANGE ORDER (12+13+14)</b>				
<b>SAY</b>				

**APPENDIX M**  
**CERTIFICATION OF COMPLIANCE**  
**FOR**  
**EMPLOYMENT OF STATE RESIDENTS**  
**HRS 103B**

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

Judiciary Project Identifier: \_\_\_\_\_

Contract No.: \_\_\_\_\_

As required by Hawaii Revised Statutes 103B – Employment of State Residents on Construction Procurement Contracts, I hereby certify under oath, that I am an officer of

\_\_\_\_\_  
*(Name of Contractor or Subcontractor Company)*

and for the Project Contract indicated above,

\_\_\_\_\_  
*(Name of Contractor or Subcontractor Company)*

was in compliance with HRS 103B by employing a workforce of which not less than eighty percent are Hawaii residents, as calculated according to the formula in the solicitation, to perform this Contract.

- ☐ I am an officer of the Contractor for this contract
- ☐ I am an officer of a Subcontractor for this contract

*(Corporate Seal)*

\_\_\_\_\_  
(Name of Company)

\_\_\_\_\_  
(Signature \*)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)



**APPENDIX N  
(CHANGE ORDER FORM)**

<b>CHANGE ORDER NO.</b> _____	<b>DATE</b> _____
<b>JUDICIARY PROJECT ID</b> _____	<b>CONTRACT</b> _____
<b>PROJECT TITLE</b> _____	_____
<b>CONTRACTOR</b> _____	_____
<b>ISSUED BY THE JUDICIARY</b> _____	_____

**A. CHANGES**

THE FOLLOWING CHANGES ARE TO BE PERFORMED IN ACCORDANCE WITH ALL CONTRACT STIPULATIONS (SPECIFICATIONS, DRAWINGS, SPECIAL CONDITIONS, ETC.)

**B. CONTRACTOR'S QUOTATION**

THE CHANGES DESCRIBED IN A. ABOVE WILL BE PERFORMED AT

A CONTRACT PRICE	<input type="checkbox"/> INCREASE	OF \$ _____
AND	<input type="checkbox"/> DECREASE	
A CONTRACT TIME	<input type="checkbox"/> EXTENSION	OF _____ DAYS
	<input type="checkbox"/> REDUCTION	

NAME _____	TITLE _____	DATE _____
------------	-------------	------------

**C. STATEMENT OF CONTACT FUNDS AND CONTRACT TIME**

ORIGINAL CONTRACT PRICE		ORIGINAL EXTRAS		NOTICE TO PROCEED DATE		
PREVIOUS ADJUSTED CONTRACT PRICE		PREVIOUS BALANCE OF EXTRAS		ORIGINAL CONTRACT TIME		WD
AMOUNT THIS CHANGE		AMENDMENT		ORIGINAL COMPLETION DATE		
PLUS		PLUS		PREVIOUS TIME EXTENSIONS ALLOWED		WD
MINUS		MINUS		TIME EXTENSIONS ALLOWED THIS CHANGE		WD
NEW ADJUSTED CONTRACT PRICE				NEW CONTRACT COMPLETION DATE		



---

**D.      VALIDATION OF CHANGE ORDER**

APPROVAL RECOMMENDED:

APPROVED:

---

CONTRACTING OFFICER / DATE

---

ADMINISTRATIVE DIRECTOR OF THE COURTS / DATE

DISTRIBUTION:

PURCHASING - 1  
ADMINISTRATION FISCAL - 1  
CIP-1  
USER - 1  
CONTRACTOR -1

**APPENDIX O  
(FIELD ORDER FORM)**

**FIELD ORDER**

TO: _____ _____ _____	DATE _____ FILED ORDER NO. _____ JUD PROJECT ID _____ PROJECT _____ _____
-----------------------------	---

Work shall be performed in accordance with this FIELD ORDER and applicable provisions of the Contract Documents. To expedite the Work and avoid delays, proceed with this work promptly.

DESCRIPTION OF WORK TO BE PERFORMED OR DELETED:

ATTACHMENTS:

**CONDITIONS AND TERMS:**

- ☐ Work is considered a MINOR CHANGE and shall be performed at no additional cost or time to the Department.
- ☐ Provide a cost proposal for the Work. Submit the proposal in accordance with the General Conditions
- ☐ Perform the Work under the Force Account Provisions of the General Conditions
- ☐ Work is subject to an adjustment to contract price and/or contract time as follows:
  - ☐ Fixed    ☐ Estimated    ☐ Maximum    Change in Contract Sum.    Add / Deduct \$ \_\_\_\_\_
  - ☐ Fixed    ☐ Estimated    ☐ Maximum    Change in Contract Time.    Add \_\_\_\_\_ Working / Calendar Days

ISSUED

BY \_\_\_\_\_  
Contracting Officer / Date

RECEIVED

BY \_\_\_\_\_  
Contractor Authorized Representative / Date

cc:      Consultant  
          Administrative Director of the Courts

**PART 2 – PRODUCTS (Not Used)**

**PART 3 – EXECUTION (Not Used)**

**END OF SECTION**

## SECTION 00800 - SPECIAL CONDITIONS

### PART 1 - GENERAL

#### 1.01 GENERAL CONDITIONS

- A. As specified in SECTION 00700 - GENERAL CONDITIONS: The *GENERAL CONDITIONS* and these *SPECIAL CONDITIONS* shall govern all work specified in all Divisions and Sections.
- B. Revisions to the *GENERAL CONDITIONS*: The following conditions included in this paragraph 1.01 B. and subparagraphs shall govern respective items in the published *INTERIM GENERAL CONDITIONS 1999 Edition* as modified in SECTION 00700 - GENERAL CONDITIONS, paragraph entitled REVISIONS TO THE GENERAL CONDITIONS.

- 1. Under ARTICLE 2 - PROPOSAL REQUIREMENTS AND CONDITIONS, Modify Section 2.6 - SUBSTITUTION BEFORE CONTRACT AWARD by deleting subsections 2.6.1 through 2.6.3 and substituting the following four new subsections:

“2.6.1 For Substitutions after the Letter of Award is issued; refer to Section 6.3 SUBSTITUTION AFTER CONTRACT AWARD.

2.6.2 Unless specifically required otherwise in the contract documents or in subsection 2.6.4, Offerors shall not submit products, materials, equipment, articles or systems for review or approval prior to submitting their Offers.

2.6.3 Offerors shall prepare their Offer forms based on the performance requirements of the materials, equipment, articles or systems noted on the drawings and specifications. If trade names, makes, catalog numbers or brand names are specified, Offerors shall infer that these items indicate the quality, style, appearance or performance of the material, equipment, article, or systems to be used in the project.

2.6.4 Obtaining Approval for Products with Variant Features: Prior to the bid opening, Offerors may submit only product with variant features to qualify as equivalent products. Offerors shall comply with these procedures:

2.6.4.1 The written substitution request shall be submitted to the Department and received no later than the time and date shown in the *SPECIAL CONDITIONS*. Submit three sets of the request, technical information and the description of variances. Address the request to the Administrative Director of the Courts; refer to the appendix for a sample form. Deliver the request in a sealed envelope to The Judiciary - State of Hawaii, Financial Services Department, Kauikeaouli Hale, 1111 Alakea Street, Sixth Floor, Honolulu, Hawaii, 96813-2807. Label the envelope with the words “SUBSTITUTION REQUEST”. Offerors are responsible to assure their requests are received and time stamped at The Judiciary,

State of Hawaii, Financial Services Department, Kauikeaouli Hale, Sixth Floor Office prior to the submission deadline.

2.6.4.2 Offerors shall identify all deviations or variances of the proposed substituted product from the specified requirements of the bidding documents. Variances shall be clearly shown on technical information, descriptive sheets and other similar evidentiary item so that the Department may evaluate each variant feature listed.

2.6.4.3 Substitution requests that do not comply with the provisions of this subsection will be denied.”

2. Under ARTICLE 2 – PROPOSAL REQUIREMENTS AND CONDITIONS, modify section 2.13 – PROTEST, by renumbering existing subsection 2.13.4 to 2.13.5 and adding new subsection 2.13.4:

“2.13.4 All protests must be *addressed to Administrative Director of the Courts* and delivered in a sealed envelope labeled with the word “PROTEST” to The Judiciary - State of Hawaii, Office of the Administrative Director, 417 South King Street, Suite 206-A, Hawaii, 96813-2943 and received at The Judiciary, State of Hawaii, Office of the Administrative Director, 417 South King Street, Suite 206-A, Hawaii, 96813-2943 prior to the submission deadline.

The Protestor bears sole responsibility for ensuring that the protest letter / documentation is delivered by the appropriate deadline. Timely receipt shall be evidenced by the date and time stamped at The Judiciary - State of Hawaii, Office of the Administrative Director, 417 South King Street, Suite 206-A, Hawaii, 96813-2943 prior to the submission deadline.

If the bidder chooses to deliver its protest by the United States Postal Service (USPS), the documents should be sent to The Judiciary - State of Hawaii, Office of the Administrative Director, 417 South King Street, Suite 206-A, Hawaii, 96813-2943. USPS does not deliver directly to The Judiciary - State of Hawaii, Office of the Administrative Director, and mail must be processed through a mailroom. The may cause a delay in receipt by The Judiciary - State of Hawaii, Office of the Administrative Director.

The Protestor bears sole responsibility for ensuring that the protest documentation is delivered by the appropriate deadline.”

3. Under ARTICLE 3 - AWARD AND EXECUTION OF CONTRACTS, modify section 3.11 NOTICE TO PROCEED by deleting subsections 3.11.1 and 3.11.2 and substituting the following:

“3.11.1 After the contract is fully executed and signed by the Comptroller, the Contractor will be sent a letter allowing the ordering of approved materials before the formal Notice to Proceed letter is sent. Subsequently, the formal Notice to Proceed letter will be sent informing the Contractor of the date on which it shall proceed

with the designated work. The Contractor shall be allowed ten (10) consecutive working days from said date to begin its work. In the event that the Contractor refuses or neglects to start the work, the Comptroller may terminate the contract in accordance with Section 7.27 TERMINATION OF CONTRACT FOR CAUSE."

4. Under ARTICLE 3 – AWARD AND EXECUTION OF CONTRACT, modify section 3.11 NOTICE TO PROCEED, by deleting subsection 3.11.4 and substitute the following new paragraph 3.11.4:

"3.11.4 In the event the Notice to Proceed is not issued within one hundred and twenty (120) days after the date of the bid opening, the Contractor may submit a claim for increased labor and material costs (but not overhead costs) which are directly attributable to the delay beyond the first 120 days. Such claims shall be accompanied with the necessary documentation to justify the claim. No payment will be made for escalation costs that are not fully justified as determined by the State."

5. Under ARTICLE 7 - PROSECUTION AND PROGRESS, modify section 7.21 - CONTRACT TIME by adding new subsection 7.21.5.2(a) as follows:

"7.21.5.2(a) For contracts that have a contract time less than 60 days, time extensions for bad weather conditions may be granted by the Contracting Officer. The Contractor shall notify the Contracting Officer and submit documentation showing the magnitude and duration of the weather conditions; and shall justify how this weather condition affected the critical construction activities and the project completion date. Comply with the notification requirements of paragraphs 7.21.5.1 and 7.21.5.3."

#### **1.02 SUBMITTAL DATES FOR CLARIFICATIONS AND SUBSTITUTIONS**

- A. Written requests must be received no later than 4:30 p.m., fourteen calendar days prior to bid opening.
- B. For questions or clarifications on the plans and specifications during bidding, offerors must submit in writing through HlePRO, using the "QUESTIONS AND CLARIFICATIONS" form found at the end of this section. Be specific and list drawing/detail and specification section or paragraph that requires attention.
- C. For general questions on the solicitation requirements or processes, contact the Purchasing Specialist.
- D. HlePRO web site: <https://hiepro.ehawaii.gov/welcome.html>

#### **1.03 PROJECT CONTACTS**

- A. Project Contact – On-site  
NAME: Kelly Kimura  
POSITION OR TITLE: Contracts and Purchasing Manager  
TELEPHONE NUMBER: (808) 538-5805

- B. The Judiciary Contact - For questions or clarifications on the plans and specifications during bidding, offerors must submit in writing using "QUESTIONS AND CLARIFICATIONS" form found at the end of this section. For general questions on the procurement requirements or processes call by telephone.

Purchasing Specialist, Contracts and Purchasing  
NAME Kelly Kimura  
EMAIL Kelly.Y.Kimura@courts.hawaii.gov  
TELEPHONE NUMBER (808) 538-5805

C.1 Project Coordinator, Through Bidding: Capital Improvements Program

NAME Joanne Krippaehne  
TELEPHONE NUMBER (808) 539-4784

C.2 Project Coordinator, During Construction

NAME Annie Hallstein  
TELEPHONE NUMBER (808) 539-5800

D. Websites:

Judiciary web site: <http://www.courts.state.hi.us>  
HlePRO website: <https://hiepro.ehawaii.gov/welcome.html>

- E. Contacts During Construction: Address and process correspondence through the Capital Improvements Program Project Coordinator.

#### 1.04 LIQUIDATED DAMAGES

- A. In accordance with the *GENERAL CONDITIONS*, Article 7 - PROSECUTION AND PROGRESS, Section 7.26, FAILURE TO COMPLETE THE WORK ON TIME, upon failure to complete the work or any portion of the work within the time or times fixed in the contract or extension thereof, the Contractor shall pay liquidated damages to the State, in the amount of \$189, per calendar day of delay.
- B. In accordance with the *GENERAL CONDITIONS*, Article 7 - PROSECUTION AND PROGRESS, Section 7.32, PROJECT ACCEPTANCE DATE; upon failure to correct punch list deficiencies, within the time or times fixed in the contract or extension thereof, the Contractor shall pay liquidated damages to the State, in the amount equal to 10 percent of the liquidated damages, per calendar day of delay.
- C. In accordance with the *GENERAL CONDITIONS*, Article 7 - PROSECUTION AND PROGRESS, Section 7.33, FINAL SETTLEMENT OF CONTRACT; upon failure to submit closing documents within the time or times fixed in the contract or extension thereof, the Contractor shall pay liquidated damages to the State, in the amount equal to five percent of the liquidated damages, per calendar day of delay.

#### 1.05 SPECIALTY CONTRACTOR'S AND SUBCONTRACTOR'S LICENSE

- A. Contractor shall be solely responsible to assure that all the specialty licenses required to perform the work are covered by the Contractor or its Subcontractor(s) or joint Contractors.

#### **1.06 WORKING HOURS**

- A. The regular working hours for this project are from 7:45 AM to 4:30 PM Monday through Friday, excluding State Holidays, unless otherwise noted or restricted under SECTION 01100 - PROJECT REQUIREMENTS. In the event of conflict, the working hours provisions of specification SECTION 01100 - PROJECT REQUIREMENTS shall govern over this item 1.06.
- B. The Contractor may be given approval to work beyond the regular hours including Saturdays, Sundays, State Holidays, night work, or after hours under the provisions of the GENERAL CONDITIONS, Article 7 - PROSECUTION AND PROGRESS, Section 7.10, OVERTIME AND NIGHT WORK and under specifications SECTION 01100 - PROJECT REQUIREMENTS.

#### **1.07 SPECIFIC PROJECT REQUIREMENTS**

- A. Permits are not required for this project; therefore, the Contractor is not responsible to pay for or obtain these permits.
- B. Coordination with work by others
  - 1. Cooperate with scheduling and access to site for related work by others including but not limited to work by: Judiciary's own staff (ITCD and Facilities) as well as other vendors (vendors of systems furnishings and cabling).
    - a. In Phase One, following temporary relocation of Judiciary staff, disposal of select furnishings and relocation of other furnishings, demolition and disposal of existing carpeting, floor prep and installation of new carpet, Contractor shall suspend work for approximately 10 business days for coordination and performance of work by others before moving displaced Judiciary staff back.

#### **1.08 COMPREHENSIVE ANNUAL FINANCIAL REPORTING**

- A. For any project that involves work on multiple structures, including non-building structures, whether it be new work or renovation work, or when the project involves both site improvements and a structure, the Contractor shall provide the following information to the Contracting Officer for fixed asset allocation purposes:
  - 1. Within 30 calendar days of award as applicable to the project, the following shall be submitted:
    - a. The total cost of each individual structure;
    - b. The total cost of on-site improvement work; and
    - c. The total cost of off-site improvement work.
  - 2. After all work, including all change order work has been completed, and prior to a request for final payment, the following shall be submitted:
    - a. The total cost of each individual structure including any related change order cost;
    - b. The total cost of on-site improvement work including any related change order cost; and
    - c. The total cost of off-site improvement work including any related change order cost.



3. The sum total cost of each category noted above shall total to the contract amount awarded, plus all change order work issued.
  - a. The cost of each individual structure includes the cost of the structure and any work within five (5) feet of the structure or building line which may include, but is not limited to its foundation, foundation earthwork, and utility improvements within and immediately below the building line.
  - b. The on-site improvement cost includes all site improvement work from five (5) feet and beyond the building line and up to the project's property line, which may include but is not limited to clearing and grubbing, grading, drainage system, site utility, walkway, parking lot, and landscape improvements.
  - c. The off-site improvement cost includes all off-site improvement work outside the of the project's property line, which may include but is not limited to walkway, landscape, drainage, utility, and roadway improvements.

**PART 2 - PRODUCTS (Not Used)**

**PART 3 – EXECUTION (Not Used)**

END OF SECTION

## QUESTIONS AND CLARIFICATIONS (WRITTEN REQUESTS ONLY)

PROJECT NAME: Kauikeaouli Hale – Recarpet Sixth Floor  
Judiciary Project Identifier 2021-07-059  
PROJECT COORDINATOR: Joanne Krippaehne

.....  
BID OPENING DATE: \_\_\_\_\_ (This request must be received no less than  
14 days prior to bid opening)

PERSON MAKING REQUEST: \_\_\_\_\_

COMPANY: \_\_\_\_\_

TELEPHONE NO.: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

QUESTION OR CLARIFICATION (Be specific and list drawing/detail and specification section or paragraph that requires attention. Attach additional pages as necessary.

Submit questions and clarification in writing using this request form through HlePRO.

HlePRO website: <https://hiepro.ehawaii.gov/welcome.html>

## **DIVISION 1 - GENERAL REQUIREMENTS**

### **SECTION 01100 - PROJECT REQUIREMENTS**

#### **PART 1 - GENERAL**

##### **1.01 WORK COVERED BY CONTRACT DOCUMENTS**

- A. Project Identification
  - 1. Project Title:  
Kauikeaouli Hale - Recarpet Sixth Floor
  - 2. Project Location:  
Kauikeaouli Hale  
1111 Alakea Street, Sixth Floor  
Honolulu, HI 96813  
TMK: 2-1-017: 003
- B. The Work consists of carpet replacement and associated moves and setup of furnishings and furniture.
  - 1. The Work includes:
    - a. Move and set up furnishings in temporary locations
    - b. Demolition: carpet removal and disposal
    - c. Floor prep
    - d. Installation of new carpet tiles, resilient base and accessories
    - e. Move and re-install furnishings in original locations
    - f. Coordinate moves with Judiciary's temporary relocation of computers, phones
- C. Perform operations and furnish equipment, fixtures, appliances, tools, materials, related items and labor necessary to execute, complete and deliver the Work as required by the Contract Documents.
- D. The Division and Sections into which these specifications are divided shall not be considered an accurate or complete segregation of work by trades. This also applies to work specified within each section.
- E. Contractor shall not alter the Drawings and Specifications. If an error or discrepancy is found, notify the Contracting Officer.
- F. Specifying of interface and coordination in the various specification sections is provided for information and convenience only. These requirements in the various sections shall complement the requirements of this Section.

##### **1.02 SPECIFICATION FORMATS AND CONVENTIONS**

- A. Specification Content: The Specifications use certain conventions for the style of language and the intended meaning of certain terms, words, and phrases when used in particular situations. These conventions are as follows:

1. Abbreviated Language: Language used in the Specifications and other Contract Documents is abbreviated and include incomplete sentences. Omission of words or phrases such as “the Contractor shall”, “as shown on the drawings”, “a”, “an”, and “the” are intentional. Omitted words and phrases shall be provided by inference to form complete sentences. Words and meanings shall be interpreted as appropriate. Words implied, but not stated, shall be inferred, as the sense requires. Singular words shall be interpreted as plural, and plural words shall be interpreted as singular where applicable as the context of the Contract Documents indicates. Where devices, or items, or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items or parts as are required to properly complete the Work.
2. Imperative mood and streamlined language are generally used in the Specifications. Requirements expressed in the imperative mood are to be performed by Contractor. Occasionally, the indicative or subjunctive mood may be used in the Section Text for clarity to describe responsibilities that must be fulfilled indirectly by Contractor or by others when so noted.
  - a. The words “shall”, “shall be”, or “shall comply with”, depending on the context, are implied where a colon (:) is used within a sentence or phrase.
3. Abbreviations and Acronyms for Industry Organizations: Where abbreviations and acronyms are used in Specifications or other Contract Documents, they shall mean the recognized name of the entities indicated in Gale Research’s “Encyclopedia of Associations” or in Columbia Books’ “National Trade & Professional Associations of the U.S.”.

#### B. Terms

1. Directed: Terms such as “directed”, “requested”, “authorized”, “selected”, “approved”, “required”, and “permitted” mean directed by Contracting Officer, requested by Contracting Officer, and similar phrases.
2. Indicated: The term “indicated” refers to graphic representations, notes, or schedules on drawings or to other paragraphs or schedules in specifications and similar requirements in the Contract Documents. Terms such as “shown”, “noted”, “scheduled”, and “specified” are used to help the user locate the reference.
3. Furnish: The term “furnish” means to supply and deliver to project site, ready for unloading, unpacking, assembly, and similar operations.
4. Install: The term “install” describes operations at project site including unloading, temporarily storing, unpacking, assembling, erecting, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations.
5. Provide: The terms “provide” or “provides” means to furnish and install, complete and ready for the intended use.
6. Installer: An installer is the Contractor or another entity engaged by Contractor as an employee, Subcontractor, or Sub-Subcontractor, to perform

a particular construction operation, including installation, erection, application, and similar operations.

7. Submit: Terms such as “submit”, “furnish”, “provide”, and “prepare” and similar phrases in the context of a submittal, means to submit to the Contracting Officer.

C. Industry Standards

1. Applicability of Standards: Unless the Contract Documents include more stringent requirements, applicable construction industry standards have the same force and effect as if bound or copied directly into the Contract Documents to the extent referenced. Such standards are made a part of the Contract Documents by reference.
2. Publication Dates: Comply with standards in effect as of date of the Contract Documents, unless otherwise indicated.
3. Conflicting Requirements: If compliance with 2 or more standards is specified and the standards establish different or conflicting requirements for minimum quantities or quality levels, comply with the most stringent requirement. Refer uncertainties and requirements that are different, but apparently equal, to Contracting Officer for a decision before proceeding.

**1.03 CONTRACT**

- A. Refer to SECTION 00800 - SPECIAL CONDITIONS for other contract conditions.

B. Project Schedule:

- |                        |   |
|------------------------|---|
| 1. Project Start Date: | To be determined by Notice to Proceed (NTP) |
| 2. Jobsite Start Date: | Depending on NTP and product order time     |
| 3. Jobsite Duration:   | Estimated: 120 Days                         |

**1.04 WORK SEQUENCE**

- A. The Work shall be conducted in roughly 4 phases as generally identified on plan, provide schedule subject to approval, and coordinate with work of others.

1. Each phase – subject to adjustment by Judiciary, see other requirements for Phase 2 below
  - a. Relocate staff to temporary locations on 6th Floor
  - b. Demolish existing carpeting, prep for and install new carpet tiles
  - c. Relocate staff back to their designated areas
2. Phase 2 – subject to adjustment by Judiciary
  - a. Relocate Conference Room tables to temporary locations, 6th Floor
  - b. Relocate Phase 2 staff and furnishings to temporary locations, 6th Floor
  - c. Demolish existing carpeting, prep for and install new carpet tiles
  - d. Relocate Phase 2 staff and Conference Room furnishings back to designated areas

B. Special Requirements:

1. Minimum two weeks prior to start of work on-site, provide 300 “small” packing size cartons and adequate associated packing tape for use by occupants of Sixth floor for moves packing.
2. Programs must be kept in operation during the Work with limited temporary shutdowns during the moves and workstation set-ups at the beginning and end of each phase.
  - a. Cooperate with Judiciary’s ITCD staff members who will temporarily relocate IT equipment.
3. Adequately document original locations and configurations of systems and other furnishings to restore workstations to original locations at end of Contractor’s work.
  - a. Systems components (panels, tops, bins, pedestals) and other furnishings are identified by inventory tags and must be restored to and re-installed per original locations.
  - b. Coordinate with Judiciary’s Contracting Officer and/or Project Contact to set up temporary workspaces in appropriate and usable configurations.

#### **1.05 USE OF PREMISES AND WORK RESTRICTIONS**

- A. General: The Contractor is notified that the entire building will generally remain operational throughout the entire duration of the project.
- B. The Contractor shall schedule and perform his work and operations to conform to the requirements of The Judiciary (including requirements for the schedule and hours of the court, noise restrictions and security requirements described elsewhere), and in such a manner as to minimize inconvenience, hazards and disturbance upon the building’s occupants and to ensure their safety.
  1. Coordinate construction, shutdown and schedules with the Project Contact Person and Contracting Officer.
  2. All building areas (e.g. courtrooms, corridors, offices, etc.) shall be fully operational at the end of utility shutdown periods.
  3. As the building area will remain operational throughout the entire duration of the project, safe access and egress around the project site shall be maintained at all times.
  4. Disruptions of access, etc. shall be coordinated in writing with the Project Contact Person and Contracting Officer. Disruptions shall also be identified in the work schedule.
  5. The Contractor shall provide construction aids as necessary to maintain normal operations of the building and to protect the public and staff.
- C. As the building will be operational during the duration of the project, on-site storage and staging, etc. will be limited. There is no on-site parking provided for this project.
  1. Coordinate construction, shutdown and schedules with the Project Contact Person and Contracting Officer.

- D. Contractor's use of premises is restricted as follows:
1. Construction Times and Schedule:
    - a. Night, weekend and overtime work is allowed unless restricted elsewhere – all costs to be included in bid.
    - b. In order to insure that the courts continue to function and provide their services, no noise-generating work will be allowed on project site between 7:30 AM and 4:30 PM from Monday through Friday, excluding State and Federal holidays, except moves which must take place during normal business hours, 7:45 AM through 4:30 PM, Monday through Friday, excluding State and Federal holidays. **All areas under construction shall be clean prior to the start of the next business day at 7:45 AM.** Work that is not noise-generating and does not generate excessive dust may be allowed during normal business hours.
    - c. Work on-site to be restricted to a 12 week window, subject to change but expected to be between September 8 and December 1.
  2. Site Access and Parking:
    - a. Parking During Normal Business Hours: Parking at the Loading Dock during normal business hours is limited to 1 vehicle, not to exceed a van, and shall be directly coordinated with Assistant Facilities Manager Kevin Takahashi at 808-538-5495 or 808-754-9545. Parking during normal business hours for the Contractor's employees (or Subcontractors) will not be provided. Do not use parking stalls in regularly designated parking zones within the Facility grounds. Unauthorized vehicles parked in marked stalls and in any area outside of the designated project construction site will be subject to towing at the Contractor's expense.
    - b. Parking Outside of Normal Business Hours: Parking at the Loading Dock outside of normal business hours is limited to 2 vehicles and shall be directly coordinated with Assistant Facilities Manager Kevin Takahashi at 808-538-5495 or 808-754-9545. Parking outside of normal business hours for the Contractor's employees (or Subcontractors) will not be provided. Do not use parking stalls in regularly designated parking zones within the Facility grounds. Unauthorized vehicles parked in marked stalls and in any area outside of the designated project construction site will be subject to towing at the Contractor's expense.
  3. Sanitation:
    - a. Use of the building's toilet facilities will be restricted to: Sixth Floor, Mauka end. Failure to keep such facilities clean and neat will subject the Contractor to loss of privilege.
  4. Noise and Dust Control:
    - a. In adjacent locations surrounding the project site, excessive noise, dust, odor and other disrupting activities, resulting from construction operations, are detrimental to the conduct of Judiciary activities. Therefore, Contractor shall monitor its construction activities. Exercise precaution when using equipment and machinery to keep the noise and dust levels to a minimum.

- b. To reduce loud disruptive noise levels, ensure mufflers and other devices are provided on all equipment, engines and compressors.
  - c. The Contracting Officer will require any construction activity that produces excessiveness of noise, dust and odor to be performed during non-operational hours. The Contracting Officer shall make the final determination. Overtime costs for the Contractor's employees and work force are the Contractor's responsibility.
- 5. Other Conditions:
  - a. Arrange for construction debris and trash to be removed from the project site daily (including the "loading dock").
  - b. Operate machinery and equipment with discretion and with minimum interference to access routes. Do not leave equipment unattended.
  - c. No space for storage of material or equipment is provided on site. Contractor to transport to and from site as needed.
  - d. Keep access to the project site free of dirt and debris.
- E. Security Provisions:
  - 1. Security Checks:
    - a. After award and before commencement of any work on The Project, Contractor shall submit for a security check forms listing the full names, full dates of birth, and full Social Security Numbers of all workers planned to work on the site. One form will be required for each worker. A blank form will be provided to Contractor. Any worker who has a previous record of any felonious or any conviction for such offenses other than minor traffic offenses will not be permitted to work on this project. The forms for workers shall be kept current at all times. Workers shall not enter the jobsite until receipt of clearance is obtained from the Contracting Officer. Workers found on the site without proper clearance will be removed immediately. Workers shall wear clothing marked with company logo at all times on site. Worker forms may be transmitted Attn: Roland Lagareta via fax to (808) 539-4402 during normal operational hours. Note that it may take up to two weeks lead time before workers receive clearance.
  - 2. Sheriff Oversight:
    - a. All movements of the Contractor's employees into and within the building will be subject to control by the Sheriff's Division. The Contractors, his agents or employees shall be subject to personal search whenever the Sheriffs Division deems such action necessary for the safety of the building. This shall also include the inspection of lunch boxes, toolboxes, clothing and equipment. Introduction or possession of weapons, narcotics, alcoholic beverages, or contraband to the project site is prohibited.
    - b. When work is performed outside the normal operating hours of the Users operations, only a single entry to the building will be permitted and a Special Duty Officer (Deputy Sheriff) shall be stationed at this entrance



throughout the period that it is open. All construction workers must remain in line-of-sight of a Deputy Sheriff. The Contractor shall be restricted to the area of construction and shall at no time enter other areas unless granted permission by the Sheriff's Deputy on duty. Workers moving from one work area to another must be accompanied by a Sheriff in order to comply with this requirement. Contact and arrange with the Department of Public Safety, Sheriff's Division, Special Duty Coordinator Deputy Kurt Enos, facsimile (808) 587-3662, cellular (808) 285-6001 or email at [kurtland.d.enos@hawaii.gov](mailto:kurtland.d.enos@hawaii.gov) and provide the time, date and location where the project is to be constructed to provide the security personnel. Make arrangements at least 48 hours before security personnel are required. Special Duty Officer charges are \$45.00 per hour or fraction thereof (minimum of quarter hour increments), for a minimum of 4 hours. If the situation requires more Sheriffs, each additional Sheriff will be paid at the same hourly rate. A Sergeant at an hourly rate of \$50.00 will be required for every four Sheriffs and a Lieutenant at an hourly rate of \$55.00 will be required for every three Sergeants. If the Sheriff's office receives less than 12 hours notice for cancellation of scheduled security services, a minimum of four hours per Sheriff will be assessed to the requester. Pay for Sheriffs costs as part of the contract. Payment shall be made directly to each Special Duty Officer within 5 days of receipt of invoice(s) after the Officer fills out a W-9 form on the jobsite. A minimum of (2) Deputy Sheriffs will be required for work of this project.

- c. In addition to contacting the Special Duty Coordinator, contact the Sheriff's Office with local jurisdiction over the project building as follows:
    - 1. District Court: Lieutenant Jeffrey Pi'imauna at (808) 539-5676
  - d. Note that the Sheriff's Offices do not possess keys for access to the building such that arrangements must be made with Contracting Officer and/or the Project Contact to provide keys or the means for access to the building after normal working hours.
3. Tool, Material and Equipment Controls:
- a. All hand tools, cables, ropes and other implements shall be transported and retained, except when in use, in approved, locked tool boxes. At all times, tools shall be subject to inventory by the Sheriff's Deputies. During the progress of the work, care shall be taken that no tool is left unguarded or unattended at any time. It is an urgent matter that missing tools, equipment, etc. be reported immediately to those in authority. Material and equipment shall be brought into the work area through entrance as approved by those in authority and shall be carried to and stored in limited areas as approved. Introduction or possession of weapons, narcotics, alcoholic beverages, or contraband to the project site is prohibited.
  - b. Explosives, explosive devices or any equipment associated with a system that could be used as an explosive shall not be allowed.
4. Exterior Openings, Scaffolding, Ladders, Temporary Enclosures, Staging, Lifting and Safety Devices:

- a. Ensure that there are no openings in the walls/windows, roofs/doors of the building where unlawful entry in the building is possible. All exterior openings which have been opened for construction shall be securely closed at the end of the Contractor's workday, unless otherwise directed by the Judiciary. Scaffolding, ladders and other equipment used for vertical access may remain but must be properly secured to prevent unauthorized access at the end of each day's work provided that pedestrian access is not obstructed.

#### **1.06 WORK UNDER OTHER CONTRACTS**

##### **A. Cooperation with Other Work:**

1. The Judiciary reserves the right to contract for or otherwise perform certain other or additional construction work or services at the project site. The Contractor of this project shall conduct its work so as not to interfere with or hinder the progress or completion of the work performed by the Judiciary or other Contractors.

#### **PART 2 - PRODUCTS (Not Used)**

#### **PART 3 - EXECUTION (Not Used)**

END OF SECTION

## **SECTION 01230 - ALTERNATES**

### **PART 1 - GENERAL**

#### **1.01 SUMMARY**

- A. This Section includes administrative and procedural requirements for alternates.
- B. The description of alternates is not intended to give a detailed description of all additional or deductive work required by the alternate item(s), as only the principal features of such additional or deductive work are listed.
- C. Should any one or all of the alternates become a part of the contract, the cost of all additional or deductive work required by the alternate item(s), even though not specifically mentioned herein, are included in the lump sum bid price.

#### **1.02 DEFINITIONS**

- A. Alternate: An amount proposed by Bidders (Offerors) and stated on the Bid Form for certain work defined herein that may be added to or deducted from the Total Lump Sum Bid Price amount if State decides to accept a corresponding change either in the amount of construction to be completed or in the products, materials, equipment, systems, or installation methods described in the Contract Documents.
  - 1. The cost or credit for each alternate is the net addition to or deduction from the Contract Sum to incorporate alternate into the Work. No other adjustments are made to the Total Lump Sum Bid Price.

#### **1.03 PROCEDURES**

- A. Coordination: Modify or adjust affected adjacent work as necessary to completely integrate work of the alternate into the Project.
  - 1. Include as part of each alternate, miscellaneous devices, accessory objects, and similar items incidental to or required for a complete installation whether or not indicated as part of alternate.
- B. Notification: Immediately following award of the Contract, notify each party involved, in writing, of the status of each alternate. Indicate if alternates have been accepted, rejected, or deferred for later consideration.
- C. Execute accepted alternates under the same conditions as other work of the Contract.
- D. Schedule: A Schedule of Alternates is included at the end of this Section. Specification Sections referenced in schedule contain requirements for materials necessary to achieve the work described under each alternate.

### **PART 2 - PRODUCTS (Not Used)**

### **PART 3 - EXECUTION**

#### **3.01 SCHEDULE OF ALTERNATES**

- A. Alternate No. A-1, Additive: Provide carpet tile backing with attached cushion EcoFlex AIR in lieu of carpet tile backing EcoFlex NXT

END OF SECTION

## **DIVISION 9 - FINISHES**

### **SECTION 09681 – CARPET TILE, RESILIENT BASE AND TRANSITION STRIPS**

#### **PART 1 – GENERAL**

##### **1.01 SUMMARY**

- A. This Section includes carpet tile, resilient base, transition strips and accessories.

##### **1.02 RELATED DOCUMENTS**

- A. The General Conditions of the Contract apply to the work of this Section.

##### **1.03 SUBMITTALS**

- A. Product Data: Provide manufacturer's written data on physical characteristics, certifications, durability, and fade resistance. Include installation methods and replacement instruction.
- B. Samples: For each of the following products and for each color and texture required. Label each sample with manufacturer's name, material description, color, pattern and designation indicated on Drawings.
  - 1. Carpet tile: Three (3) each full size samples.
  - 2. Exposed transition stripping and accessories: three (3) each, minimum 12" long.
- C. Maintenance Data: For carpet tile, include the following:
  - 1. Methods for maintaining carpet tile, including cleaning and stain removal products and procedures and manufacturer's recommended maintenance schedule.
  - 2. Precautions for cleaning materials and methods that could be detrimental to carpet tile.
  - 3. MSDS Sheets.
- D. Warranties: Furnish two (2) copies of written warranties as required by Part 2, Item 2.02 A-16 and -17.
- E. Certifications: Furnish Manufacturer's written certifications that carpet passes Static, Flammability, and Smoke Density standards of Part 2, Item 2.02 A-13, 14 and 15.
- F. MSDS Sheets: Furnish MSDS sheets for all adhesives and sealers.
- G. Work Schedule: Submit 6 copies including date, time and activity for Project Contact's approval at least two weeks before any work on site is started.
  - 1. Judiciary will be responsible for packing and unpacking contents of furnishings.

#### **1.04 QUALITY ASSURANCE**

- A. Flooring Contractor's Qualifications: A firm with not less than 5 consecutive years of experience in installation of commercial carpeting of type, quantity and installation methods similar to work of this Section.
- B. Carpet Tile Manufacturer's Qualifications: Carpet mill with not less than 5 consecutive years of production experience with carpet similar to type specified in this Section; whose published product literature clearly indicates general compliance of products with requirements of this Section.
- C. Measurement Verification: Areas shown on drawings are approximate. It is the Flooring Contractor's responsibility to verify all dimensions and job site conditions. Order sufficient yardage to fully carpet areas as indicated and to fill overage requirements as specified. No substitutions will be permitted to make up for any shortage of material in overage or in carpet installed.
- D. Flooring Contractor shall be responsible for the accuracy of measurements.
- E. Dye Lots: All carpet in continuous areas shall be from the same dye lots.
- F. Material Testing: After delivery of carpet to the jobsite, Contracting Officer may require that the materials be tested by an independent agency to assure compliance. Contractor shall pay for testing.

#### **1.05 PROJECT CONDITIONS**

- A. Environmental Limitations: Do not install carpet tile over cementitious underlayment until cementitious underlayment has cured and is sufficiently dry to bond with adhesive and has pH range recommended by carpet tile manufacturer.

#### **1.06 EXTRA MATERIALS**

- A. Furnish extra materials described below, before installation begins, that match products installed and that are packaged with protective covering for storage and identified with labels describing contents. Deliver to a storage area designated by Project Contact.
  - 1. Carpet tile: Full-size units, not fewer than three dozen (36) full size tiles, of type and dye lot installed.

### **PART 2 - PRODUCTS**

#### **2.01 ASBESTOS PROHIBITION**

- A. No asbestos containing materials or equipment shall be used under this Section. The contractor shall ensure that all materials and equipment incorporated in the project are asbestos-free.

#### **2.02 CARPET MODULAR TILE**

- A. Materials:
  - 1. Face Yarn: Premium solution-dyed / yarn-dyed nylon, passing GSA requirements for permanent stain resistance carpet.

2. Construction: Tufted.
3. Surface Texture / Weave Type: Patterned Tip Shear.
4. Stitches per Inch: Minimum 11.4
5. Gauge: 1/12 (47.00 rows per 10 cm)
6. Pile thickness: Minimum 0.077"
7. Density: 58415 oz. per cubic yard, per ASTM D-418
8. Backing Material:
  - a. Base Bid: EcoFlex NXT
  - b. Additive Alternate A-1: Provide carpet tile backing with attached cushion EcoFlex AIR in lieu of carpet tile backing EcoFlex NXT"
9. Size: 24"x24"
10. Indoor Air Quality: Meets Green Label Plus GLP1171
11. Recycled Content: Minimum 55% pre-consumer recycled content by total weight
12. Protective Treatment / Soil Release Technology: Sentry Soil Protection or equal
13. Static Resistance: Meets AATCC-134 Under 3.5 KV
14. Flammability: Meets ASTM E 648 Class 1 (Glue Down)
15. Smoke Density: Meets ASTM E 662 Less than 450
16. General Warranty: Provide special warranty, signed by Flooring Contractor and Carpet Manufacturer, agreeing to repair or replace defective materials and workmanship of carpeting work during a minimum 10 year warranty period following date of Substantial Completions as required by Part 1, Item 1.03-D of this Section.
17. Carpet Tile Wear Warranty: Provide carpet tile wear warranty, as required by Part 1, Item 1.03-D of this Section, insuring that carpet tile is dimensionally stable (no cupping, dishing or dimensional changes), will not delaminate and that no less than 90% of the pile fiber will be retained when properly installed and maintained, and should wear exceed 10% in five years, the manufacturer shall furnish and install new replacement carpet meeting these specifications at no cost to the Judiciary.

B. Appearance: Basis for Design

1. Manufacturer: Mohawk
2. Pattern/Style: On The Scene Collection, GT308 Streetscapes Tile
3. Color: 566 Chic

#### 4. Installation Method: Quarter Turn

### **2.03 ADHESIVES / ACCESSORIES**

- A. Adhesive and Sealers: Low odor products as recommended and approved by carpet tile manufacturer in writing for compatibility with carpet tile backing.
  - 1. All adhesives and sealers shall contain no calculated solvents per OSHA Regulations 29 CFRE 1910.1200, have no calculated VOC's, be non-flammable and meet the criteria of the CRI Green Label Plus Certification Program.
- B. Miscellaneous Materials: As recommended and approved in writing by carpet tile manufacturer.
- C. Protection Paper: Heavy, reinforced, non-staining Kraft laminated paper as approved by carpet tile manufacturer.

### **2.04 COMMERCIAL GRADE RESILIENT BASE AND TRANSITION STRIPS**

- A. Resilient Base: Provide resilient base, rubber or vinyl, color as selected by Contracting Officer, from manufacturer's standard by Armstrong, Burke, Johnsonite or Roppe.
- B. Transition Strips: Provide resilient transition strips, rubber or vinyl, color as selected by Contracting Officer, from manufacturer's standard by Armstrong, Burke, Johnsonite or Roppe. Comply with ADA carpet edge trim requirements.

## **PART 3 - EXECUTION**

### **3.01 DEMOLITION**

- A. Examine all work areas to verify existing conditions prior to proceeding with work.
- B. If a condition that would prevent work is found or suspected, immediately notify the Project Contact and do not proceed until such conditions have been corrected.
- C. Completely and carefully remove existing carpeting in areas indicated to receive new carpet tiles. Carefully stack and return to Owner for future use carpet tiles from those areas indicated on the plans.

### **3.02 PREPARATION**

- A. Take field measurements to determine exact quantity of materials required for floor preparation.
- B. Examine surfaces on which the carpet tiles are to be installed. Correct conditions which will impair proper installation, including by not limited to trowel marks, pits, dents, protrusions, cracks or joints. Fill cracks, joints, depressions and other irregularities with leveling compound.
- C. Examine substrates, areas and conditions for compliance with requirements for maximum moisture content and alkalinity range per carpet tile manufacturer's printed instructions. Comply with carpet tile manufacturer's printed instructions for preparation of existing floor substrate.

1. Do not install carpet over concrete with either excessive moisture or dust producing surface which is not adequately sealed.

### **3.03 INSTALLATION**

- A. Prior to start of installation, check critical dimensions of spaces to receive carpet tile to ensure that planned use of materials will fulfill requirements, including locations for seams, joints and edgings. Take field measurements to determine exact quantity of materials required.
- B. Comply with carpet tile manufacturers printed instructions and recommendations for installation by glue down method. Ensure the proper amount of adhesive is applied to subfloor.
- C. Save excess carpet and scraps exceeding the size of ½ tile for Judiciary. Deliver selected pieces to on-site storage area as directed by Contracting Officer.
- D. Transition strips: Secure to floor in all transition areas in manner required to meet ADA requirements.

### **3.04 CLEANING AND PROTECTION**

- A. Remove and dispose of debris and unusable scraps.
- B. Vacuum using two-motor, top loading, upright commercial machine with brush-only element, utilizing a high filtration dust bag. Remove spits in accordance with carpet tile manufacturer's guidelines and replace carpet tiles where spots cannot be removed. Remove protruding face yarn using sharp scissors. Trim loose yarns or fibers at all cut edges.
- C. Protect carpet tile installation until final acceptance.
- D. Overage and maintenance materials: Deliver overage and useable and uncut carpet tiles, properly packages and identified, to Judiciary's designated on-site attic stock storage area.

### **3.05 TRAINING**

- A. Contractor shall provide training to enable Judiciary's maintenance staff to maintain the new carpet in proper condition and to minimize wear and deterioration. Training involving use of standard cleaning materials, tools and equipment, and procedures and frequencies shall be provided for up to six Judiciary employees including supervisors and workers.
  1. Training shall be provided prior to final acceptance of the project by the Judiciary.

END OF SECTION