COUNTY OF HAWAIʻI
PURCHASING DIVISION

25 Aupuni Street, Suite 1101, Hilo, HI 96720
(808) 961-8231 • Fax (808) 961-8248

1. REQUEST FOR QUOTATIONS

REQUEST FOR QUOTATION
(Chapter 103D, HRS)

DATE: Saturday, November 7, 2026

RFQ TITLE: MOTOROLA IMPRES MICROPHONES

RFQ NO: R2701662

RESPONSE SUBMISSION DEADLINE: Thursday, November 12, 2026, 2:00 pm

DEPARTMENT(S)/DIVISION(S): Hawaii Police Department, County of Hawai'i

BUYER/SPECIALIST: Tina Louise DeMello (808) 961-8977
tinalouise.demello@hawaiicounty.gov

PLEASE PROVIDE A QUOTATION for MOTOROLA IMPRES MICROPHONES. Award will be by lot, unless otherwise noted.

SEE APPLICABLE TERMS AND CONDITIONS FOR PROCUREMENT.

QUOTATION must be received by 2:00 pm HST, on Thursday, November 12, 2026.

VENDOR RESPONSE SHALL BE COMPLETED THROUGH OPENGOV.

2. ADDITIONAL INFORMATION

Unit price shall not exceed 2 decimal places.

ALL QUOTATIONS MUST **BE F.O.B. DESTINATION, FREIGHT PREPAID AND ALLOWED, AND INCLUSIVE OF ALL APPLICABLE TAXES, INCLUDING HAWAI`I GENERAL EXCISE TAX AND USE TAXES**. The County of Hawai`i is exempt from federal taxes.

Hawaiʻi County is an Equal Opportunity Provider and Employer

Effective January 1, 2020 – December 31, 2030, the maximum General Excise Tax rate and surcharge that may be charged to the County of Hawaii will be 4.7120%.

DELIVER TO: 349 Kapiolani St, Hilo, HI 96720

TIMELINE:

Release Project Date:	November 7, 2026
Question Submission Deadline:	November 10, 2026, 2:00pm
Response Submission Deadline:	November 12, 2026, 2:00pm

3. PRICING

*UNIT PRICE SHALL NOT EXCEED 2 DECIMAL PLACES.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
1	Motorola Remote Speaker Microphone Part number PMMN4065AL ANY APPLICABLE SHIPPING AND TAX (NOT TO EXCEED 4.7120%) MUST BE INCLUDED IN UNIT PRICE.	50	EACH		
TOTAL					

4. APPLICABLE TERMS AND CONDITIONS FOR PROCUREMENT OF GOODS

1. The County of Hawai`i (“County”) reserves the right to cancel, delete, decrease or increase any individual item based on the availability of funds.
2. The County reserves the right to call for additional quotations after closing date without revealing responses. Results shall be public only after award.
3. Please indicate any exceptions to, or variations from, the bid specifications. All vendors are cautioned that any exceptions to any bid specification or variations from any term or condition set forth in the County of Hawai‘i Department of Finance General Terms and Conditions for Goods and Services dated May 10, 2023, may result in the bid being rejected in accordance with applicable Hawai‘i procurement laws.
4. Whenever an item’s description refers to specific manufacture, make, model, or trade name, it shall be understood “similar or equal” will be considered, unless the item is

qualified as “NO SUBSTITUTE”. The burden of proof of equality shall be the responsibility of the contractor. Please send a catalog cut or specifications sheet along with quote if substituting.

5. Standard manufacture warranties shall be included for all items. All information related to such warranties shall be delivered to the County when the item(s) are delivered.
6. The County reserves the right to reject any and all bids or to waive any defects or informalities in the bids if in the best interest of the County.
7. No action or proceeding involving this quotation or resulting invoice/purchase order shall be commenced by either party except in the Circuit or District Courts of the Third Circuit, County of Hawaiʻi, State of Hawaiʻi; nor shall any action commenced in such court be removed or transferred to any other state or federal court.
8. No person performing work under any resulting contract or Purchase Order issued under this solicitation, including any subcontractor, employee, or agent of the contractor, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
9. This project is being procured pursuant to the requirements of Hawaiʻi Administrative Rules, Title 3, Chapter 122, Subchapter 8 – Small Purchases. Should the County receive no quotations less than the maximum dollar amount permitted for Small Purchases, then the project will be re-bid under the competitive sealed bidding requirements of Subchapter 5.
10. If awarded a resulting contract or issued a Purchaser Order in response to this solicitation, contractor agrees to comply with Hawaiʻi Revised Statutes § 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.
11. Awards exceeding $50,000.00 will require a formal contract be executed by both parties.
12. The contractor shall not be debarred by the State of Hawai`i or the United States Federal government at the time of bidding and shall immediately notify the County should its debarment status change anytime during the agreement period.
13. Proof of a contractor’s compliance shall be mandatory for all awards $2,500 or greater in accordance with the requirements of Hawai`i Revised Statutes 103D-310(c). Acceptable proof shall be provided to the County prior to award and for final payment through Hawai`i Compliance Express (HCE).

Hawai`i Compliance Express provides a contractor's proof of compliance for the following:

a. Certificate of Good Standing from the Department of Commerce and Consumer Affairs (DCCA)

b. Tax clearance (federal and state) from the Internal Revenue Service (IRS) and the Department of Taxation (DOTAX)

c. HRS Chapters 383 Hawai`i Employment Security Law, 386 Worker's Compensation law, 392 Temporary Disability Insurance and 393 Prepaid Healthcare Act from the Department of Labor and Industrial Relations (DLIR)

Contractors can register with Hawai`i Compliance Express at http://vendors.ehawaii.gov, which charges a nominal subscription fee and takes approximately two weeks to establish an account.

If a contractor is unable to obtain its "compliant" Hawai`i Compliance Express certificate within a reasonable amount of time, and there is an urgent need for the requested good or service, the County, upon written notification to the contractor, may proceed to the next lowest priced responsive and responsible vendor.

14. Upon written notice of delay or nonperformance beyond the delivery date specified in the contractor's quote, liquidated damages may be assessed at one-tenth of one percent (0.1%) of the purchase order amount per calendar day, from date set for cure in the written notice until the goods or services are received in accordance with the purchase order. If receipt of goods or services are not received by the date set for cure, the County reserves the right to cancel the purchase order and make the award to the next lowest responsive and responsible contractor.

15. Vendors may submit a bid in accordance with an active State of Hawai'i Price and Vendor List Contract (http://spo.hawaii.gov/for-vendors/contract-awards/price-vendor-lists/), and if an award is made, the terms and conditions contained in the applicable price and vendor list contract will replace the terms and conditions contained herein. Vendors must indicate the applicable price and vendor list contract number in its submitted bid.

16. The contractor represents that neither the contractor, nor any employee or agent of the contractor, presently has any interest, and promises that no such interest, direct or indirect,

shall be acquired, that would or might conflict in any manner or degree with the contractor's performance under any resulting contract or Purchase Order issued under this solicitation.

17. The County of Hawaiʻi Department of Finance General Terms and Conditions for Goods and Services dated May 10, 2023 are attached to and made a part of any resulting contract or Purchase Order issued under this solicitation. Where any term or condition in either this Exhibit A, any resulting contract of this RFQ, or Purchase. Order issued under this RFQ conflicts with a term or condition set forth in the County of Hawaiʻi Department of Finance General Terms and Conditions for Goods and Services dated May 10, 2023, the term or condition in either this Exhibit A, any resulting contract of this RFQ, or Purchase Order shall take precedence.

5. VENDOR QUESTIONNAIRE

1. Please provide any exceptions & remarks:*
*Response required

2. HCE Acknowledgement*
I acknowledge company's HCE Compliance for quotes $2,500 and above in accordance with Hawaii Revised Statutes 103D-310(C).

If not already registered or compliant, bidder must be actively addressing this issue to be considered for award at time of bid closing.

To register, go to https://vendors.ehawaii.gov and follow the steps to register. For questions regarding the registration process contact HCE technical support at (808) 695-4620.

☐ Please confirm

*Response required

3. Attach Certificate of Vendor Compliance if quote is $2,500.00 or greater.
4. PRICE(S) shall remain firm for ____ calendar days.*
*Response required

5. Delivery will be made within _____ calendar days.*
*Response required

6. Do you need to attach any documents? *
Example: Quote, spec sheet/brochure, etc.

☐ Yes
☐ No

*Response required

Hawaiʻi County is an Equal Opportunity Provider and Employer

When equals "Yes"

*6.1. Attach document(s).**

*Response required

7. Have you done business with the County in the past? *

☐ Yes

☐ No

*Response required

When equals "No"

*7.1. V-8 Form**

Please download the below documents, complete, and upload.

- V8_FORM_(Rev_4-2026).pdf

*Response required

6. GENERAL TERMS AND CONDITIONS FOR GOODS AND SERVICES

6.1. PURPOSE

The General Terms and Conditions for Goods and Services for the County (referred to as the "general terms and conditions"), incorporated by reference in the solicitation document and the awarded contract, represent the County's policy and legal requirements relating to contracts as authorized by Hawai'i Revised Statutes ("HRS"), Chapter 103D, as amended, and its promulgated rules under Hawai'i Administrative Rules ("HAR"), Title 3, Department of Accounting and General Services (referred to as the "Procurement Code"), as amended.

References to HAR provisions in these general terms and conditions are included for convenience only and may not be complete. Should any contractual term herein be inconsistent with the Procurement Code, the Procurement Code shall govern.

Before submitting a bid or a proposal, the offeror shall be responsible for reading and examining the solicitation and/or proposal documents, including any offer pages, scope of work, special provisions, exhibits, these general terms and conditions, addenda (if any), and any other sections or documents attached hereto, and all applicable requirements by law. Submission of an offer shall be deemed verification of such reading and examination.

No offeror shall, in any way, be relieved of any obligation with respect to its offer or the contract due to its failure or neglect to secure, receive, examine, familiarize itself with, acquaint itself with, or understand the work requirements, the solicitation and/or proposal documents, or any addenda hereto, applicable standards or requirements, or existing conditions, difficulties, restrictions or obstacles. No claim for additional compensation to the offeror shall be allowed based on lack of knowledge or misunderstanding.

6.2. SECTION 1 - DEFINITIONS OF TERMS

This section incorporates the definitions not listed herein and are contained in §103D, HRS, as amended and Title 3, Department of Accounting & General Services, Subtitle 11, Procurement Policy Board, Chapters 120 through 131, HAR, as amended. Terms as used in these general terms and conditions, unless the context requires otherwise, shall have the following meaning:

ADDENDUM/ADDENDA

A written document issued during the solicitation period involving changes to the solicitation documents, which shall be considered and made a part of the solicitation documents and resulting contract.

AMENDMENT

Amendment shall have the same meaning as "contract modification" or "modification" as hereafter defined.

AWARD

The notification of the County's acceptance of a bid or proposal, or the presentation of a contract to the selected offeror.

BEST VALUE

The most advantageous offer determined by evaluating and comparing all relevant criteria in addition to price so that the offer meeting the overall combination that best serves the County is selected. These criteria may include, but is not limited to, the total cost of ownership, performance history of the offeror, quality of goods, services, or construction, delivery, and proposed technical performance.

BID

The executed document submitted by a bidder in response to an invitation for bids, or a multi-step bidding procedure.

BIDDER

Any individual, partnership, firm, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, a bid for the good, service, or construction contemplated.

BID OR PROPOSAL FORM

The prescribed form or format which an offeror uses to submit his offer.

BID OR PROPOSAL GUARANTY OR SECURITY

Bid guaranty, bid security, proposal guaranty, or proposal security means the security when required, furnished by an offeror with his offer to ensure that the offeror will enter into the contract with the County and execute the required contract and payment bonds covering the work contemplated, if his offer is accepted.

CHANGE ORDER

A written order signed by the procurement officer, directing the contractor to make changes which the changes clause of the contract authorizes the chief procurement officer to order without the consent of the contractor.

CHIEF PROCUREMENT OFFICER

The procurement officer of the County (director of finance) as provided in chapter 103D-203, HRS, as amended, or the officer's designee.

CONTRACT

The combination of the solicitation and/or proposal, including any instructions to offerors, the specifications, scope of work, the special provisions, and the general terms and conditions; the

offer and any best and final offers; and any amendments to the solicitation or to the contract; and any terms implied by law.

CONTRACT BOND

The approved form of security furnished by the contractor and his surety or sureties or by the contractor alone, to ensure completion and satisfactory performance of the contract in accordance with the terms of the contract and to guarantee full payment of all claims for labor, materials and supplies furnished, used or incorporated in the work.

CONTRACT MODIFICATION

Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

CONTRACTOR

An individual, partnership, firm, corporation, joint venture or other legal entity undertaking the execution of work under the terms of the contract with the County of Hawaiʻi, and acting directly or through his, their or its agents, employees or subcontractors.

COST ANALYSIS

The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

COST DATA

Information concerning the actual or estimated cost of labor, material, overhead, and other cost elements which have been actually incurred or which are expected to be incurred by the contractor in performing the contract.

COUNTY OR COUNTY OF HAWAIʻI

All departments of the executive branch and all governmental bodies administratively attached to it; all departments of the legislative branch and all governmental bodies administratively attached to it; and any and all autonomous and semi- autonomous government agencies which may operate under the auspices of the County.

DAYS

Days means calendar days unless otherwise specified.

DESIGNEE

A person appointed by the director of finance or the officer in charge, to act on its behalf with delegated authority.

DIRECTOR

The County of Hawaiʻi Director of Finance.

DISCUSSION

The exchange of information to promote understanding of a County's agency's requirements and offeror's proposal and to facilitate arriving at a contract that will be the best value to the County. Discussions are not permissible in competitive sealed bidding, except to the extent permissible in the first phase of multi-step sealed bidding to determine the acceptability of technical offers.

GENERAL TERMS AND CONDITIONS

General terms and conditions mean these General Terms and Conditions for Goods and Services, dated May 10, 2023.

GOODS

All property, including but not limited to, equipment, equipment leases, materials, supplies, printing, insurance, and processes, including computer systems and software, but excluding land or a permanent interest in land, leases of real property, and office rentals.

HAR

The Hawaiʻi Administrative Rules of the State of Hawaiʻi, as amended.

HEAD OF THE PURCHASING AGENCY

The head of any agency with delegated procurement authority by law or from a chief procurement officer of the County to enter into any and administer contracts.

HRS

The Hawaiʻi Revised Statutes of the State of Hawaiʻi, as amended.

INVITATION FOR BIDS OR IFB

All documents, whether attached or incorporated by reference, utilized for soliciting bids under the competitive sealed bidding source selection method.

LOW TIE BIDS

Bids from responsive, responsible bidders that are identical in price, and which meet all the requirements and criteria set forth in the invitation for bids or IFB.

NOTICE TO PROCEED

The document issued to the contractor designating the official commencement date of the performance under the contract.

OFFER

A bid or proposal as defined herein, in response to any solicitation.

OFFEROR

Offeror means (1) 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 services contemplated in response to a solicitation; or (2) the contractor in a negotiated contract.

OFFICER IN CHARGE

The person responsible, or delegated designee, for carrying out the provisions of the contract and advising the director on contractual matters.

OPENING

The date set for the opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

OVERHEAD

Continuous or general costs occurring in the normal course of business, including but not limited to, the costs for labor, rent, taxes, royalties, interest, discounts paid, insurance, bonds, lighting, heating, cooling, accounting, legal fees, equipment and facilities, telephone systems, depreciation, and amortization.

PERSON

Individuals, partnerships, corporation, associations, or public or private organizations or any character other than a governmental body.

PRICE ANALYSIS

The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

PRICE DATA

Factual information concerning prices, including profit, for goods, services, or construction substantially similar to those being procured. In this definition, “prices” refers to offered or proposed selling prices, historical selling prices, and current selling prices of such items. This definition refers to data relevant to both the general contractor and subcontract prices.

PRIORITY-LISTED OFFERORS

Three or more responsive and responsible offerors who have submitted the highest ranked proposals.

PROCUREMENT

Buying, purchasing, renting, leasing, or otherwise acquiring any good, service, or construction. The term also includes all functions that pertain to the obtaining of any good, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

PROCUREMENT OFFICER

The person with procurement delegation duly authorized to enter into and administer contracts and make written determinations with respect to the contract. The term includes an authorized representative acting within the limits of authority. The delegated authority is received from the chief procurement officer directly or through the head of a purchasing agency or designee to the procurement officer.

PROPOSAL

The executed document submitted by an in response to a request for proposals.

OPENGOV PROCUREMENT SYSTEM

The County's electronic procurement system.

PURCHASING AGENCY

Purchasing agency means any governmental body which is authorized by the HRS or HAR, or by way of delegation, to enter into contracts for the procurement of goods, services, or construction.

REQUEST FOR PROPOSALS OR RFP

All documents, whether attached or incorporated by reference, utilized for soliciting proposals under the competitive sealed proposal source selection method.

RESPONSIBLE BIDDER OR OFFEROR

A person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

RESPONSIVE BIDDER OR OFFEROR

A person who has submitted an offer which conforms in all material respects to the IFB or RFP.

SERVICES

The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

SOLICITATION

An invitation for bids (IFB), used in the competitive sealed bidding process, or a request for proposals (RFP), used in the competitive sealed proposal process, or a request for quotations, or any other document issued by the County for the purpose of soliciting bids or proposals to perform a County contract.

SPECIAL PROVISIONS

The terms and conditions pertaining to the specific solicitation in which they are contained; including but not limited to terms and conditions describing the preparation of solicitations, evaluation of offers, determination of award, plus those applicable to performance by the contractor.

Additions or revisions to the general terms and conditions, which shall be considered a part of the general terms and conditions, setting forth conditions or requirements applicable to the particular project or contract under consideration shall be included in the special provisions. Should any special provisions conflict with these general terms and conditions, said special provisions shall govern.

SPECIFICATIONS

Any description of the physical or functional characteristics, or of the nature of a good, service, or construction item. The term includes descriptions or any requirement for inspecting, testing, or preparing a good, service, or construction item for delivery.

STATE

The State of Hawaiʻi.

SUBCONTRACTOR

Any person who enters into an agreement with the contractor to perform a portion of the work for the contractor.

SURETY

The individual, firm, partnership, or corporation other than the contractor, which executes a bond with and for the contractor to ensure the contractor’s acceptable performance of the contract.

WARRANTY

A written statement that promises the good condition of a product and states that the maker is responsible for repairing or replacing the product for a certain period of time after its purchase.

WORK

The furnishing by the contractor of all labor, services, materials, equipment, and other incidentals necessary for the satisfactory performance of the contract.

WORKING DAY

Any day on the calendar, exclusive of State holidays, Saturdays, and Sundays. Unless another meaning is intended, “working days” shall mean consecutive working days.

6.3. SECTION 2 – SOLICITATION

2.1 ORDER OF PRECEDENCE; CONFLICTING PROVISIONS

(a) The terms and conditions stated in the solicitation shall not apply to any transaction if the provisions conflict with any federal laws or if it shall prevent the County from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(b) The special provisions, specifications, these general terms and conditions, contract documents, and all supplemental documents are essential parts of the contract, and a requirement occurring in one is as binding as though occurring in all. Each document is intended to be complementary and describe and provide for the complete work. In case of conflict or discrepancy within any part of the contract, the stricter requirements, including State statutory requirements, shall govern. Unless it is apparent that a different order of precedence is intended, the following is the precedence list with one (i) taking precedence over two (ii), two (ii) taking precedence over three (iii), etc.:

(1) Contract
(2) Special Provisions
(3) General Terms and Conditions
(4) Specifications

2.2 SOLICITATION FORMS

Prospective offerors may be furnished with solicitation forms, which may include, but is not limited to, a statement of work, the location, description and the contract time of the contemplated work, the various quantities being requested, estimated and/or firm, and items of work to be performed or materials to be furnished, along with a schedule of items for which unit prices and/or lump sum prices are asked, depending on the type of solicitation, e.g. invitation for bids or request for proposals.

These general terms and conditions, specifications, special provisions and other documents referenced in or attached to the solicitation shall be considered a part of the offer whether attached to the solicitation or not at the time of its submission. Such documents shall not be altered in any way when the proposal is submitted, and any alterations so made by the offeror may be cause for rejection of the offer.

2.3 COUNTY’S ESTIMATES

Any estimate provided by the County is for the convenience of the offeror only, and the County does not represent or warrant its accuracy. An offeror should conduct its own review and analysis and not base its offer on the County’s estimate.

2.4 PRE-BID OR PRE-PROPOSAL CONFERENCE

Pre-bid or pre-proposal conference, if held, shall be announced in the solicitation document, or in an addendum. Unless specified otherwise in the solicitation, pre-offer conferences shall be nonmandatory. Nothing stated at the pre-offer conference shall change the solicitation unless a change is made by written addendum.

2.5 PRICE ITEMS

(a) Unless otherwise specified in the solicitation document, offerors must provide a price for all items listed in the solicitation document.

(b) In figuring the offer price, offerors shall take into consideration the cost of all freight and delivery charges, insurance, taxes, permits, and other applicable or related costs/fees, unless specified otherwise.

(c) The cost of furnishing and installing all equipment as called for in the specifications, including warranty repairs of the complete unit shall be included. Whenever installation is specified, installation shall include all necessary labor, materials and other incidentals required to make a complete operative unit. When an offeror is in doubt as to the proper item to which the anticipated cost of any incidental item is to be allocated, the cost in the lump sum or unit price for the items that is deemed most appropriate shall be included.

(d) When alternates are provided for in the solicitation, offerors should enter a price for each and every item listed setting forth the amount to be added to, or deducted from, the offeror's total basic price should such alternate be incorporated into the contract. Failure to enter a price for each and every item may result in the offeror’s offer not being considered for award, provided that if award is based on the item or items on which offers have been submitted, the offeror's offer may be considered for award.

(e) Whenever required herein, offeror shall indicate the exact brand name and number, or make and model of the item on which they are bidding. Failure to do so may be sufficient cause for rejection of bid.

(f) In submitting an offer, the offeror certifies that the price submitted was independently arrived at without collusion.

(g) Offers in which prices are unbalanced, which contain omissions, erasures, alterations, or additions not called for, or irregularities of any kind shall be cause for rejection of an offer.

(h) Prices shall remain valid for sixty (60) days after the established bid submission deadline.

2.6 BRAND NAMES, MODEL, MAKE, OR METHOD

(a) Whenever one or more manufacturers' brand or trade name is specified, an offeror shall base the offer on one of the specified brands. However, other manufacturers' brands may also qualify if found to be equal to or better than those specified.

(b) The burden of proof as to whether an alternate item is equal to or superior to the item specified shall lie with the offeror. The offeror understands and agrees that the Officer in Charge reserves the sole and final right to determine whether alternate brands are equivalent to and meet indicated standards of quality.

2.7 NO SUBSTITUTES ON RESTRICTIVE SPECIFICATIONS

Whenever the specifications restrict offers to only a specific manufacturer's make or model, offers for other products will not be accepted.

2.8 REQUESTS FOR CLARIFICATION

(a) Unless otherwise specified in the solicitation or special provisions, any prospectiveofferor should examine and review the solicitation document with care. If a prospective offeror believes that any of the matters in, or related to, the solicitation are not sufficiently described or explained in the solicitation, or that any discrepancy exists between different parts of the solicitation, or that the full intent of the solicitation is not clear, then the offeror shall submit a written request via the County's OpenGov Procurement System for clarification no later than five (5) days prior to the submittal deadline stated in the solicitation document.

(b) The offeror submitting the inquiry shall be responsible for proper transmission. If additional information is deemed necessary, such information will be issued in an addendum by the head of the purchasing agency. The addendum will be issued via OpenGov Procurement System (provided the solicitation or special provisions specifies that the procurement is an electronic procurement via OpenGov Procurement System) to all persons who have properly registered and obtained the solicitation. If the solicitation or special provisions state that the procurement is via means other than through the OpenGov Procurement System, any addendum shall be issued and provided in accordance with the solicitation and/or special provisions. All addenda issued shall be made a part of the contract.

(c) If the solicitation is a RFP and, during discussions with priority-listed offerors, there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate the clarification or change. All addenda to the RFP shall be distributed only to priority-listed offerors.

2.9 SOLICITATION ADDENDA

(a) All addenda issued shall be a part of the contract. Oral interpretations, clarifications, changes, or approved substitutions will be without legal effect. Only interpretations, clarifications, changes, or approved substitutions provided by formal written addenda to the solicitation shall be binding and have legal effect. Notifications of addenda will be issued to all registered vendors under the OpenGov Procurement System. If the solicitation or special provisions state that the procurement is via means other than

through the OpenGov Procurement System, any addendum shall be issued and provided in accordance with the solicitation and/or special provisions. If the solicitation is a RFP, notifications will be sent to those offerors who submitted proposals or who are "priority listed."

(b) Should an addendum modify the description and/or quantifies of a price item, it shall be the responsibility of the offeror to modify or withdraw its submitted offer, if necessary.

2.10 CANCELLATION OF SOLICITATION

A solicitation may be canceled in whole or in part and at any time during the solicitation process for reasons specified in, but not limited to, §3-122-96, HAR, as amended.

6.4. SECTION 3 - OFFER REQUIREMENTS AND CONDITIONS

3.1 COMPETENCY OF OFFEROR

(a) Prospective offerors must be capable of performing the work for which offers are being called.

(b) Either before or after the deadline for an offer, the purchasing agency may require offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status or any other factors relating to his ability to furnish satisfactorily the goods or services being solicited by the County. Any such inquiries shall be made and replied to in writing; replies shall be submitted over the signatures of the person who signs the offer. Any offeror who refuses to answer such inquiries may be considered a non-responsible offeror.

(c) The purchasing agency reserves the right to visit an offeror's place of business to inspect his facilities and equipment and to observe his methods of operation in order to facilitate evaluation of performance capabilities.

3.2 BROCHURES, SPECIFICATIONS, AND QUESTIONNAIRES

(a) Whenever a questionnaire is attached to the solicitation document, offerors shall complete and submit such questionnaire with their offer. Supporting specifications and brochures may be submitted wherein available.

(b) The director reserves the right to request offerors to provide, at their own expense and within ten (10) days from the date of the request, all specifications and brochures regarding the item or items offered. Failure to comply with the County's request within the time specified shall be sufficient cause for rejection of the offer.

(c) Whenever the preparation and submission of a questionnaire is required, all specifications and brochures submitted by the offeror shall be properly annotated identifying all applicable data on the item(s) being offered and shall fully substantiate the information requested in the questionnaire. In the event the information

requested in the questionnaire cannot be substantiated by the manufacturer's specifications and brochures, the manufacturer shall certify in writing that the item(s) will be manufactured in accordance with the solicitation questionnaire and manufacturer's specifications.

In answering the respective questions, offerors are warned that a response of "as specified" may not be acceptable and may also be cause for rejection of the offer. Accordingly, offerors are directed to avoid using phrases similar or comparable to "as specified" when answering the questionnaire.

3.3 PREPARATION OF OFFER

(a) Proposals submitted in response to a RFP shall be in the format prescribed by the RFP.

(b) The bids submitted in response to a IFB must be prepared in full accordance with the instructions and forms, if any, given by the purchasing agency.

(c) Where the IFB involves the furnishing and delivery of goods, the price shall include the cost of delivery to the specified destination, at which point acceptance of said goods will be made by authorized personnel. Should special requirements involving additional costs to the vendor be necessary, the requirements will be stated in the special provisions and offers for the costs therefore shall be governed by the special provisions.

(d) Only one bid in response to an IFB for the same work from an individual, firm, partnership, corporation or joint venture under the same or different name will be accepted. If more than one bid is offered for the same work, only the lowest priced bid may be considered; all others will be automatically rejected.

(e) Competing subsidiary or jointly-owned companies may submit bids or proposals and these may be accepted for evaluation and award if such companies submit with their proposals a certificate of non-collusion, sworn to before a notary, which acknowledges that the offer is without collusion.

(f) All prices shall include applicable federal, state and local taxes. Any illegible or otherwise unrecognizable price offer shall cause automatic rejection of the offer.

(g) Offers submitted in response to an IFB or RFP shall be signed by (1) the owner of a sole proprietorship, (2) one or more members of a partnership, (3) one or more members or officers of each firm representing a joint venture, (4) one or more officers of a corporation, or (5) an agent of the offeror duly authorized to submit offers on the offeror’s behalf.

(h) All costs to prepare and submit an offer shall be at the offeror’s expense. The County will not reimburse any offer costs, or any best and final offer costs incurred by any offeror, any prospective offeror, or any other person.

3.4 OFFER GUARANTY

Unless required by the special provisions, a bid or proposal security deposit, performance and payment bonds, or any other guaranty is not required on any offer for goods or services.

When required by the special provisions, and unless a different amount is otherwise specified in the special provisions, an acceptable bid or proposal security deposit shall be in an amount equal to at least five percent of the amount offered and shall be limited to:

(a) A bond in a form satisfactory to the County underwritten by a company licensed to issue bonds in this State;

(b) Legal tender; or

(c) A certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn or a certified check accepted by, a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, and payable at sight or unconditionally assigned to the Director of Finance, County. A Certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, official check, or certified check may be utilized only to a maximum of $100,000.00, provided however, if the required security or bond amount totals over $100,000.00, more than one instrument not exceeding $100,000.00 each and issued by different financial institutions, may be submitted.

If an offer does not comply with the security requirements, the offer shall be rejected as nonresponsive, unless the failure to comply is determined by the chief procurement officer, the head of a purchasing agency, or the designee of such officer to be nonsubstantial pursuant to §3-122-223, HAR, as amended.

3.5 CERTIFICATION OF OFFEROR CONCERNING WAGES, HOURS AND WORKING CONDITIONS OF EMPLOYEES SUPPLYING SERVICES

When the procurement for the goods and/or services are at least $25,000 or more, the offeror is required to submit proper certification pursuant to §§ 103-55 and 103D-328, HRS, as amended. Failure to submit the required certification prior to award may be grounds for disqualification of the offeror’s offer. The certification form shall be used to certify that, if awarded the contract, the offeror will comply with HRS §103-55, relating to wages, hours and working conditions of employees of contractor supplying services.

The certification form further certifies that the services to be performed will be performed under the following conditions:

(a) Wages. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.

(b) Compliance with labor laws. Contractor shall be responsible for and comply with all applicable labor laws of the Federal and State governments, including workers' compensation, unemployment compensation, payment of wages and safety standards.

3.6 CERTIFICATE OF COST OR PRICING DATA

When an offer in response to a RFP is in excess of $100,000.00, a certificate of cost or pricing data form shall be completed and transmitted with the offeror's offer. Failure to transmit the required certification may be grounds for disqualification of the offeror's offer. The certificate of cost or pricing data shall be used to certify that the offeror's transmitted cost or pricing data is accurate, complete, and current as of the date of the offer.

3.7 PROPRIETARY OR CONFIDENTIAL

Offeror shall clearly label any proprietary information as confidential, and the information shall be readily separable from the offer to facilitate public inspection of the solicitation documents. Any information labeled as confidential will remain confidential to the extent provided by law. Offers submitted to the County shall become the property of the County. Failure to label proprietary information as confidential shall result in the information being available for public inspection.

3.8 OFFER SUBMISSION

(a) Electronic Submission Required When Specified in Solicitation. For solicitations posted and hosted on the OpenGov Procurement System, all offers shall be electronically submitted via the OpenGov Procurement System, in accordance with the requirements of the solicitation. Offers transmitted via any other means other than as specified in the solicitation shall be deemed unacceptable and shall be rejected. Offers that cannot transmit successfully as a result of system failure on the County's behalf shall be addressed via the issuance of an appropriate addendum.

(b) Non-Electronic Submissions When Specified in Solicitation. The County may choose, in its sole discretion, not to use the OpenGov Procurement System for some solicitations. In the event the County chooses not to use the OpenGov Procurement System, the solicitation and/or special provisions shall specify how offerors shall submit offers. Offers transmitted via any other means other than as specified in the solicitation and/or special provisions shall be deemed unacceptable and shall be rejected.

3.9 PRE- OPENING MODIFICATION OR WITHDRAWAL OF OFFER

Offers may be modified or withdrawn prior to the deadline for submittal of offers by the following documents:

(a) Withdrawal offers. A written notice received in the office designated in the solicitation; a written notice faxed to the office designated in the solicitation; or an electronic mail (e-mail) received in the office designated in the solicitation prior to the time and date set for opening.

(b) Modification of offers. A written notice accompanying the actual modification received in the office designated in the solicitation, stating that a modification to the bid or proposal is submitted; or a facsimile or electronic notice accompanying the actual modification submitted either by facsimile machine, electronic mail, or via OpenGov Procurement System to the office designated in the solicitation; provided if other than through the OpenGov Procurement System, offeror submits the actual written notice and modification within two working days of receipt of the facsimile or the electronic transmittal.

6.5. SECTION 4 RECEIPT, OPENING, AND RECORDING OF BIDS

4.1 PUBLIC BID OPENING OF IFB ELECTRONIC SOLICITATIONS AND OTHER NON-ELECTRONIC SOLICITATIONS

(a) For electronic IFB solicitations posted and hosted by the County on the OpenGov Procurement System, all electronic offers shall be received up to the submittal deadline and recorded immediately. Inspection of submitted bids shall not occur until the time and date set for bid opening.

(b) For electronic IFB solicitations posted and hosted by the County on the OpenGov Procurement System, subsection (c)(3) through (8) of this section 4.1 of these GTCs shall apply.

(c) For non-electronic IFB solicitations or solicitations where the County chooses not to use the OpenGov Procurement System, the following provisions shall apply:

(1) Upon its receipt, each bid and modification(s) shall be time-stamped but not opened and shall be stored in a secure place by the chief procurement officer until the time and date set for bid opening. Copies of bids transmitted via facsimile machine, by hardcopy form, or by electronic mail (e-mail) shall not be acceptable, except that bids submitted in hardcopy form may be accepted if (i) it is provided for in the special provision specific to the solicitation; and (ii) the hardcopy form of the bid is received by the chief procurement officer by the time and date set for bid opening.

(2) Bids and modification(s) shall be opened publicly, in the presence of one or more witnesses, at the time, date, and place designated in the solicitation and/or special provisions. The name of each bidder, the bid price(s), and such other information as is deemed appropriate by the chief procurement officer or his designated representative, shall be read aloud or otherwise made available. If practicable, such information shall also be recorded at the time of bid opening; that is, the bids shall be tabulated, or a bid abstract made. The name(s) and address(es) of the required witnesses shall also be recorded at the opening.

(3) The opened bids shall be available for public inspection at the time of bid opening, except to the extent that the bidder designates trade secrets or other proprietary data to be confidential. Bidders shall ensure that material so designated as confidential shall be

readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. Prices and makes and model or catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

(4) The procurement officer, or his designated representative, shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the chief procurement officer or his designated representative shall inform the bidders present at the bid opening that the material designated for nondisclosure shall be subject to written determination by the corporation counsel for confidentiality. If the corporation counsel determines in writing that the material so designated as confidential is subject to disclosure, the bidder submitting the material under review and other bidders who were present at the bid opening shall be so notified in writing and the material shall be open to public inspection unless the bidder protests under §3-126, HAR, as amended.

(5) The bids shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

(6) When the purchasing agency denies a person access to a County procurement record, the person may appeal the denial to the office of information practices in accordance with §92F- 42(12), HRS, as amended.

(7) The opening and reading of a bid do not imply, indicate, or mean that a bid is responsive and responsible. A complete review and evaluation of all pertinent factors will be conducted by the County after the bids are read and recorded. Accordingly, bidders should not presume that they are entitled to an award until a written award is issued. The successful vendor will be notified via electronic transmission of the letter of award that the vendor is being awarded the contract; provided that if the amount of the award is less than $50,000.00, a purchase order incorporating the terms and conditions herein, may be issued.

(8) Bids shall be unconditionally accepted without alteration or correction, except as allowed in section 4.3 (LATE OFFERS, LATE WITHDRAWALS, AND LATE MODIFICATIONS); section 5.1 (MISTAKES IN IFBS); and section 5.2 (MISTAKES IN RFPS) of these GTCs.

4.2 RECEIPT OF RFPs (ELECTRONIC AND NON-ELECTRONIC SUBMISSIONS)

(a) For electronic RFP solicitations posted and hosted by the County on the OpenGov Procurement System, all electronic offers shall be received up to the submittal deadline and recorded immediately. Proposals and modifications shall not be opened publicly and shall be shown only to members of the evaluation committee. For competitive sealed proposals (or

RFP), except for confidential portions, the proposals shall be made available for public inspection upon notice of award.

(b) For non-electronic RFP solicitations, the following provisions shall apply:

(1) Proposals and modifications shall be time-stamped upon receipt and held in a secure place by the chief procurement officer until the established due date. Proposals shall not be opened publicly but shall be opened in the presence of two or more procurement officials. Proposals and modifications shall be shown only to County personnel having legitimate interest in them.

(2) After the date established for receipt of proposals, a register of proposals shall be prepared which shall include for all proposals: the name of each offeror; the number of modifications received, if any; and a description sufficient to identify the good or service item offered. The register of proposals shall be open to public inspection only after award of the contract.

(3) An offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Offerors shall ensure that such data so designated as confidential shall be readily separable from the proposals in order to facilitate eventual public inspection of the nonconfidential portion of the proposal.

(4) Proposals of the offeror(s) shall be open to public inspection after award of the contract as provided in §3-122-58, HAR, as amended.

4.3 LATE OFFERS, LATE WITHDRAWALS, AND LATE MODIFICATIONS

Any notice of withdrawal, notice of modification of an offer with the actual modification, or any offer received at the place designated for receipt and opening of an offer after the time and date set for receipt and opening of offers is late. A late offer, late modification, or late withdrawal shall not be considered late if received before contract award and would have been timely but for the action or inaction of personnel within the County. A late offer or late modification that will not be considered for award shall be returned to the bidder unopened as soon as practicable and accompanied by a letter from the County stating the reason for its return. A late withdrawal request shall be responded to with a statement of the reason for non-acceptance of the withdrawal.

6.6. SECTION 5 EVALUATION OF OFFERS

5.1 MISTAKES IN IFBs

(a) An obvious mistake in a bid may be corrected or withdrawn or waived by the offeror to the extent that it is not contrary to the best interest of the purchasing agency or to the fair treatment of other bidders.
(b) A mistake in a bid discovered before the deadline for receipt of bids may be corrected or withdrawn as provided in §3-122-16.07, HAR, as amended.
(c) A mistake in a bid discovered after the deadline for receipt of bids but prior to award may be:

(1) Corrected or waived under the following conditions:

(A) If the mistake is attributable to an arithmetical error, the chief procurement officer shall correct the mistake. In case of error in extension of bid price, unit price shall govern.
(B) If the mistake is a minor informality which shall not affect price, quantity, quality, delivery, or contractual conditions, the chief procurement officer may waive the informalities or allow the bidder to request correction by submitting documentation that demonstrates a mistake was made. Examples of mistakes include typographical errors, transposition errors; or failure of a bidder to sign the bid or provide an original signature, but only if the unsigned bid or photocopy is accompanied by other material indicating the bidder's intent to be bound.
(C) If not allowable under clauses (a) and (b) of this subsection (1) but is an obvious mistake that, if allowed to be corrected or waived, is in the best interest of the purchasing agency and is fair to other bidders.

(2) Withdrawn if the mistake is attributable to an obvious error that shall affect price, quantity, quality, delivery, or contractual conditions, provided:

(A) The bidder requests withdrawal by submitting documentation that demonstrates a mistake was made; and
(B) The chief procurement officer prepares a written approval or denial in response to this request.

(d) A mistake in a bid discovered after award of contract may be corrected or withdrawn if the chief procurement officer or head of purchasing agency makes a written determination that it would be unreasonable not to allow the mistake to be remedied or withdrawn.
(e) The determination required by this section shall be final and conclusive unless clearly erroneous, arbitrary, capricious, or contrary to law.

5.2 MISTAKES IN RFPs

(a) Mistakes shall not be corrected after award of contract.
(b) When the chief procurement officer knows or has reason to conclude before award that a mistake has been made, the chief procurement officer should request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn pursuant to this section.
(c) Once discussions are commenced or after best and final offers are requested, any priority-listed offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.
(d) If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.

(e) If discussions are not held, or if the best and final offers upon which award will be made have been received, an offeror alleging a material mistake of fact which makes a proposal nonresponsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or the offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.
(f) Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other offerors; that is, when there is no effect on price, quality, or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the chief procurement officer may waive such irregularities or allow an offeror to correct them if either is in the best interest of the County. Examples include the failure of an offeror to: return the number of signed proposals required by the request for proposal; sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the offeror's intent to be bound; or to acknowledge receipt of an amendment to the request for proposal, but only if it is clear from the proposal that the offeror received the amendment and intended to be bound by its terms; or the amendment involved had no effect on price, quality or quantity.

5.3 [Reserved]

5.4 DISQUALIFICATION OF OFFERORS

An offeror shall be disqualified, and his offer automatically rejected for any one or more of the following reasons:

(a) Proof of collusion, in which case, all offers involved in the collusive action will be rejected and any participant to such collusion will be barred from future solicitations until reinstated;
(b) Offeror's lack of responsibility and cooperation as shown by past work or services;
(c) Offeror's being in arrears on existing contracts with the County or having defaulted on previous contracts;
(d) Offeror's lack of proper equipment and/or sufficient experience to perform the work contemplated;
(e) Offeror does not possess proper license, if required to cover the type of work contemplated;
(f) Offeror who has uncompleted work on contracts in force, or a record of unsatisfactory work performance or delays on completed contracts in force which, in the judgment of the County, might hinder or prevent the prompt completion of additional work if awarded;
(g) Offeror who has complaints filed against the offeror for abusive or threatening language or behavior during previous contracts toward any County employee;
(h) Offeror who has failed to comply, or is delaying compliance with, the requirements for final inspection or final payment of the County’s general terms and conditions for any contract in force;
(i) Offeror is deemed non-responsible, or offeror's failure to pay, or satisfactorily settle, all bills overdue for labor and material on former County contracts at the time of issuance of solicitation;
(j) Offeror was paid for services to develop or prepare the specifications or work statements.

(k) If the required offer guaranty received separately from the offer is not identifiable as guaranty for a specific offer, or is received after the date and time set for the opening;
(l) If the required offer guaranty is not in accordance with section 3.4 (OFFER GUARANTY) of these GTCs;
(m) If the offeror or surety fails to sign the surety bond submitted as offer guaranty;
(n) If offeror fails to use the surety bond form furnished by the County or identical wording contained in a substantially similar form when submitting a surety bond as proposal guaranty; or
(o) If the offer shows any non-compliance with applicable law or contains any unauthorized additions or deletions, conditioned, incomplete, or irregular or is in anyway making the proposal incomplete, indefinite, or ambiguous as to its meaning; or unbalanced offers in which the price for any item is obviously out of proportion to the prices for other items.

5.5 STANDARDS OF CONDUCT

All offerors should be certain that their bids are not in violation of §84-15, HRS, as amended. The submittal form states that by submitting this offer, offeror certifies that his offer does not pose a conflict with §84-15, HRS, as amended. Contracts awarded shall be void if there is a violation of §84-15, HRS, as amended. This section shall not apply to a personal contract of employment with the County.

5.6 [Reserved]

5.7 MULTIPLE OR ALTERNATE OFFERS

Unless specifically provided for in the solicitation, multiple or alternate offers shall not be accepted, and all such offers shall be rejected. This includes offers submitted by any one person under the same or different names. Without limiting the generality of the foregoing provision, a person shall be considered to have submitted more than one offer if such person submits more than one offer under the same name, or through agents, or through joint ventures, partnerships or corporation in which such person has more than a twenty-five per cent interest in each of them, or through any combination thereof.

5.8 CONDITIONED OFFERS

Any offer which is conditioned upon receiving a contract other than as provided for in the solicitation shall be deemed nonresponsive and not acceptable. This includes any offer that is conditioned upon receiving award of both the particular contract being solicited and another County contract.

5.9 NON-RESPONSIVE OFFERS OR NON-RESPONSIBLE OFFERORS

Offers submitted by offerors who have been determined to be non-responsive or non-responsible shall be rejected. An offer is considered non-responsive when it does not conform in all material respects to the solicitation by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the solicitation.

5.10 REJECTION OF OFFERS

The County reserves the right to reject any or all offers when in the County's opinion; such rejection will be in the best interest of the County. Reasons for rejection of an offer includes but is not limited to the reasons stated in these instructions and the reasons stated in §3-122-97, HAR, as amended.

6.7. SECTION 6 DISCUSSION AND BEST AND FINAL OFFER

6.1 PRIORITY LISTED OFFERS

The County may establish a priority list consisting of at least three (3) offerors for discussions and Best and Final Offers (BAFOs). Those offerors who are selected for the priority list are referred to as the "Priority-Listed Offerors (PLO)." The County will not publicly identify the Priority-Listed firms prior to the notice of award being posted.

6.2 DISCUSSIONS

Discussions will be limited to only PLOs. Discussions are held to: (1) Promote understanding of the County's requirements and the priority listed offerors' proposals; and (2) facilitate arriving at a contract that will provide the best value to the County, taking into consideration the evaluation factors set forth in the request for proposals. PLOs shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of offers; however, offers may be selected without such discussion. Addenda to this RFP after establishment of a priority list shall be distributed only to PLOs. New proposals or amendments to the existing solicitation that, in the County's sole judgment, significantly change the nature of the procurement will not be permitted. Should the County believe it is in its best interest to go forward with a significant change, then the solicitation may be cancelled, and a new solicitation issued. During the discussion process, contents of any offer shall not be disclosed to competing offerors.

6.3 BEST AND FINAL OFFERS

Although the County reserves the right to issue a request for BAFOs, the County is under no obligation to do so. The County may make its selection and award based on the initial offers submitted. If the County requests BAFOs, Priority-Listed Offerors may be informed of and requested and/or allowed to revise their offers, including correction of any weaknesses, minor irregularities, errors, and/or deficiencies identified to the Priority-Listed Offerors by the County following initial evaluation of the offers. The request for BAFOs will allow adequate time for the Priority-Listed Offerors to revise their offers. Upon receipt of any BAFOs, the process of evaluation will be repeated. The process will consider the revised information and re-evaluate and revise scores as appropriate. If discussions are held, the County will attempt to limit the selection process to a single BAFO, but this does not preclude the County from additional discussions or BAFOs in compliance with §3-122-54(b), HAR, as amended.

6.8. SECTION 7 –PREFERENCES

7.1 [Reserved]

7.2 PREFERENCE FOR HAWAIʻI PRODUCTS

(a) This section shall not apply whenever its application will disqualify the County from receiving federal funds or aid.
(b) All offers shall comply with the preferences, as applicable, set forth in §3-124, HAR, as amended.

6.9. SECTION 8 AWARD AND EXECUTION OF CONTRACT

8.1 INVITATION FOR BID SOLICITATIONS

For IFB solicitations under HRS §103D- 302, the contract shall be awarded with reasonable promptness by written notice to the lowest responsive, responsible offeror whose offer meets the requirements and criteria set forth in the IFB and posted pursuant to §103D-701, HRS, as amended, for five (5) working days. In the event additive alternates are included in the solicitation, the lowest offer will be determined after adding to the total base price, the alternate or alternates considered for award. Alternates, if any are awarded, shall be awarded in the order listed in the offer. Award of alternates shall be dependent upon the availability of funds.

8.2 LOW TIE BIDS FOR IFB SOLICITATIONS

(a) In the discretion of the chief procurement officer or the head of a purchasing agency, award shall be made in any permissible manner that will resolve tie bids, including but not limited to:

(1) Award the contract to a business providing goods produced or manufactured in this State or to a business that otherwise maintains a place of business in this State;
(2) Where identical low bids include the cost of delivery, award the contract to the tie bidder farthest from the point of delivery; and
(3) Award the contract to the identical bidder who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical.

(b) Where there are multiple items in the same solicitation, award the contract on the tied bid item(s) to the bidder whose other contract award is largest.
(c) If no permissible method will be effective in resolving tie bids and a written determination by the Chief procurement officer is made so stating, award may be made by drawing lots.
(d) Records in accordance with §3-122-34, HAR, as amended, shall be made a part of the procurement file.

8.3 ACCEPTANCE OF OFFER

(a) Acceptance of offer, if any, will be made within sixty (60) days after the opening of offers, and the prices quoted by the offeror shall remain firm for the sixty (60) day period. Unless otherwise provided, each individual item or group of items will be awarded to the responsive and responsible offeror whose offer complies with all the solicitation requirements. In determining the responsive and responsible offeror, offers will be evaluated not only on the amounts thereof, but on all factors relating to the satisfactory performance of the contract.

Products must be of a quality and nature that will meet the needs and purposes of the intended use and must conform to all requirements prescribed in the specifications. The offeror must have the ability to perform as called for in the contract terms. The County shall be the sole judge of product or vendor capability. The successful vendor will be notified by letter that the offer has been accepted and that the vendor is being awarded the contract.

(b) If the offer is rejected or if the vendor to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, the purchasing agency may, at its discretion, award the contract to the next lowest or remaining responsible offeror or may publish another call for offers; provided in the case of only one remaining responsible offeror, the head of the purchasing agency may negotiate with such bidder to reduce the scope of work, if available funds are exceeded, and to award the contract at a price which reflects the reduction in the scope of work.

(c) The head of the purchasing agency further reserves the right to cancel the contract award at any time prior to execution of said contract by all parties, without any liability to the awardee and to any other offeror.

8.4 EXECUTION OF CONTRACT

(a) In cases where the contract award amounts to $50,000.00 or more, the County shall forward a formal contract to the successful offeror for execution. The contract shall be signed by the successful vendor and returned, together with a satisfactory contract bond, if required, and other supporting documents, within ten (10) days after receipt by the vendor or within such further time as the chief procurement officer may allow in writing.

(b) No such contract shall be considered binding upon the County until the following has occurred:

(1) The contract has been fully and properly executed by all the parties thereto, with an authorized person of the contractor signing first and the Mayor, or his/her designee signing last;

(2) The Director of Finance has, in accordance with the County charter, approved the contract as to the availability of funds in the amounts and for the purposes set forth therein if they involve financial obligations of the County; with the exception of a multi-term contract, whereby, the Director of Finance shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract;

(3) Be authorized by the council by resolution if legislative action is necessary to implement the contract;

(4) Be approved by the corporation counsel as to form and legality; and

(5) Except as otherwise provided, be signed by the mayor.

(c) In any contract involving not only State or County funds but supplemental funds from the federal government, this section shall be applicable only to that portion of the contract price as is payable out of State or County funds. As to the portion of the contract price as is expressed in the contract to be payable out of federal funds, the contract shall be construed to be an agreement to pay the portion to the contractor, only out of federal funds to be received from the federal government. This paragraph shall be liberally construed so as not to hinder or impede the County in contracting for any project involving financial aid from the federal government.

(d) If the successful offeror is other than a sole proprietorship, it shall submit satisfactory evidence, e.g., certificate or corporate resolution, power of attorney or other such evidence of authority of the signers' authority to execute on the contract date the contract on behalf of the successful bidder. If such document has been submitted to the purchasing agency on a previous occasion, the successful offeror may submit a copy of this document, provided there has been no amendment, modification or rescission of the document previously submitted, and provided further, that the document previously submitted is still effective as of the date of execution of the contract. If there has been a modification, amendment or rescission of the evidence of authority previously submitted, then the superseding document shall be attached to the contract.

8.5 CONTRACT BOND

(a) When required by the special provisions, a performance bond and a payment bond shall be delivered by the contractor to the County at the same time the executed contract is delivered.

(b) The acceptable performance and payment bonds are the same as the acceptable bid or proposal security deposit specified in section 3.4 (OFFER GUARANTY) of these GTCs. (Refer to Exhibits for the forms to be submitted.) If a surety bond is submitted for either the performance or payment bond, in addition to the form prescribed, a power of attorney for the surety's attorney-in-fact executing the bond shall be provided.

(c) If an offer does not comply with the security requirements, the offer shall be rejected as nonresponsive, unless the failure to comply is determined by the chief procurement officer, the head of the purchasing agency, or the designee of such officer to be nonsubstantial pursuant to §3-122-223, HAR, as amended.

8.6 FAILURE TO EXECUTE CONTRACT

(a) If the offeror to whom a contract is awarded shall fail or neglect to enter into the contract and to furnish satisfactory security as required by section 8.5 (CONTRACT BOND) of these GTCs, within ten (10) days after such award or within such further time as the chief procurement officer may allow, the purchasing agency shall pay the amount of offeror's IFB or RFP guaranty as required under section 3.4 (OFFER GUARANTY) of these GTCs, into the County Treasury as a realization of the County. The chief procurement

officer may thereupon award the contract to the next lowest responsive, responsible offeror or may call for new offers, whichever method the chief procurement officer may deem is in the best interest of the County.

8.7 RETURN OF OFFER GUARANTIES

All offer guaranties submitted as required by subchapter 24, §3-122, HAR, as amended shall be retained until the successful offeror enters into the contract and furnishes satisfactory security or if the contract is not awarded or entered into, until the chief procurement officer's determination is made to publish another call for offers. At such time, all offer guaranties, except surety bonds, will be returned.

8.8 SUBMISSION OF INSURANCE CERTIFICATION

(a) The contractor agrees to deliver to the County, when contract documents are executed, a certificate of insurance evidencing any and all insurance required by the solicitation and/or special provisions. Said certificate shall contain an endorsement that such insurance may not be cancelled except upon thirty (30) days' notice to the County. It shall also contain a statement to the effect that the County is named additional insured under the policy(s).

(b) Failure of the contractor to provide and keep in force insurance policy(s) as required shall be regarded as material default under this contract, entitling the County to exercise any or all of the remedies provided in this contract for a default of the contractor.

(c) If a contractor is providing services on County property, adequate insurance coverage and proof of insurance shall be required, including the County being listed as an additional insured. The solicitation and/or special provisions shall specify adequate insurance coverage provisions.

8.9 CANCELLATION OF AWARD

The County reserves the right to cancel the solicitation in accordance with §3-122-96, HAR, as amended.

6.10. SECTION 9 DEBRIEFING, PROTEST, SUSPENSION & DEBARMENT AND SOLICITATIONS & AWARDS IN VIOLATION OF LAW

9.1 DEBRIEFING

(a) Debriefing shall apply only to RFP solicitations. The purpose of a debrief is to inform the non-selected offerors of the basis for the source selection decision and contract award. A written request for a debriefing shall be made within three (3) Working Days after the posting of the award.

(b) Debriefing shall be held by the chief procurement officer or designee, to the maximum extent practicable, within seven (7) Working Days; provided the chief procurement officer or designee may determine whether or not to conduct individual or combined debriefings.

(c) A protest by the requestor submitted pursuant to §103D-701, HRS, as amended, following a debriefing shall be filed within five (5) Working Days, as specified in §103D-303(h), HRS, as amended.

9.2 COMPLAINTS AND PROTESTS

(a) A protest of an award shall be subject to the requirements specified in §103D-701, HRS, as amended, and §3-126, HAR, as amended.

(b) Protests shall be made in writing or as otherwise specified in the solicitation to the chief procurement officer, and shall be filed within five (5) Working Days after the protestor knows or should have known of the facts giving rise therein; provided that a protest of an award or proposed award shall in any event be submitted in writing or as otherwise specified in the solicitation within five (5) Working Days after the posting of award of the contract either under §§103D-302 or 103D-303, HRS, as applicable; provided further that no protest based upon the content of the solicitation shall be considered unless it is submitted in writing prior to the date set for the receipt of offers. A protest is considered filed when received by the chief procurement officer. Protests filed after the five (5) day period shall not be considered.

(c) To expedite handling of protests, the envelope or communication should be labeled "Protest" and either served personally, sent by registered or certified mail, return receipt requested, to the chief procurement officer, or as otherwise specified in the solicitation. The written protest shall include as a minimum the following:

(1) The name and address of the protestor;

(2) Appropriate identification of the procurement and, if a contract has been awarded, its number;

(3) A statement of reasons for the protest; and

(4) Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the availability date shall be indicated.

(d) When a protest has been filed, no further action shall be taken until the protest has been settled, unless the chief procurement officer makes a written determination, after consulting with the Head of the purchasing agency, that the award of the contract is necessary to protect the substantial interests of the State.

9.3 AUTHORITY TO DEBAR OR SUSPEND

The County, in accordance with §103D-702, HRS, as amended, and subchapter 2 of §3-126, HAR, as amended, may debar or suspend an offeror for cause from consideration for award of contracts. The period of debarment shall be limited to not more than three (3) years. The period of suspension shall be limited to not more than three (3) months.

9.4 SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

If a solicitation or award is found to be in violation of law, it shall be resolved in accordance with §§103D-705, 103D-706, and 103D-707, HRS, as amended; and subchapter 4 of §3-126, HAR, as amended.

6.11. SECTION 10 - PERFORMANCE OF CONTRACT

10.1 INDEPENDENT CONTRACTOR

It is expressly understood and agreed that the contractor is an independent contractor, with the authority to control and direct the performance and details of the work and services herein contemplated; however, the County retains the general right of inspection by a designated representative in order to judge, whether in the County's opinion, such work is being performed by the contractor in accordance with the terms of this agreement. Under no circumstances will the contract be considered an agreement of partnership or joint venture between the County and the contractor.

10.2 CONSTRUCTION OF CONTRACT

The masculine shall be deemed to embrace and include the feminine and the singular shall be deemed to embrace and include the plural, whenever required in the context of the contract.

10.3 COMPLIANCE WITH CONTRACT TERMS, ETC.

The contractor shall perform in conformity with the specifications and each and every requirement of these general terms and conditions and other provisions forming a part of the contract. In the event the contractor fails to so perform, the chief procurement officer or Head of the purchasing agency, in addition to any other recourse, reserve the right to suspend the contractor from bidding on any or all County contracts pursuant to §3-126, HAR, as amended.

10.4 EXAMINATION OF SITE

(a) Examination of site. When applicable, the offeror shall carefully examine the site of the proposed work before submitting an offer. The submission of an offer shall be considered as a warranty that the offeror has made such examination and is satisfied with the conditions to be encountered in performing the work.

(b) Materials and equipment. The County does not assume any responsibility for the availability of any materials or equipment required under this contract. Unless otherwise specified in the solicitation, the offeror shall be considered as having taken into account when submitting an offer, the availability of materials or equipment required under the contract.

10.5 PRICE INCLUSIVE OF ALL APPLICABLE TAXES

Unless otherwise specified in the solicitation document, the offeror shall include in its unit price and be responsible for paying all taxes, which shall be applicable to the goods, services, or the furnishing

and sale thereof. offerors are directed to contact the Department of Taxation of the State of Hawai'i for assistance as to whether the State of Hawai'i excise tax, the applicable use tax, or other taxes will apply to the offeror. offeror shall not pass through any increases in taxes to the County.

10.6 CHANGE ORDERS AND MODIFICATIONS

The contractor will not undertake to perform the portion of the work affected by the changes until a Change Order or modification has been approved and issued, pursuant to section 12 (MODIFICATIONS AND TERMINATIONS OF CONTRACTS FOR GOODS AND SERVICES) of these GTCs.

10.7 LIQUIDATED DAMAGES

The contractor understands and agrees that time is an essential factor of this contract, and that the County will suffer material loss by reason of delays that may occur in the contractor's performance of the work or any portions of the work within the time or times fixed in the contract or any extensions thereto. When the contractor is given notice of delay or nonperformance, in accordance with section 12.11 (TERMINATION FOR DEFAULT) of these GTCs and fails to cure in the time specified, the contractor shall pay to the County, as liquidated damages for any such delays, the sum set forth in the solicitation, special provisions, and/or the contract for each and every calendar day of delay or nonperformance from the day set for cure until either the County reasonably obtains similar Goods or Services if the contractor is terminated for default, or until the contractor provides the Goods or Services if the contractor is not terminated for default. The sums of each and every calendar day of delay or nonperformance shall be deducted from the contract price. It is expressly stipulated by and between the contractor and the County that any such sums shall be deemed and taken to be liquidated damages for the contractor's failure to perform within the specified time and not be in the nature of a penalty. To the extent that the contractor's delay or nonperformance is excused under section 12.11(d) (EXCUSE FOR NONPERFORMANCE OR DELAYED PERFORMANCE) of these GTCs, liquidated damages shall not be due the County. The contractor remains liable for damages caused other than by delay.

10.8 DELIVERY

(a) The number of calendar days for delivery of Goods or Services for the completion of the contract shall be calculated from the official commencement date as established in the Notice to Proceed or from the date of the purchase order.

(b) Should the contractor begin work or make delivery before the official commencement date set forth in the Notice to Proceed, the contractor understands and agrees that such work or delivery shall be considered as having been done at his own risk and expense, as a gift of services or goods, and no payment will be owed to him for such premature work or delivery.

(c) The contractor shall deliver the goods and furnish services at such particular location designated and, in the manner, specified or ordered in the contract.

(d) Whenever equipment is specified, the contractor shall deliver the equipment completely assembled, unless provided for otherwise.

(e) contract prices shall be based on delivery F.O.B. place of destination and shall include all freight, handling, delivery, and related charges.

10.9 NOTICE TO PROCEED

(a) After the contract is fully executed, the procurement officer will issue a written "Notice to Proceed" establishing the official commencement date. Until said Notice to Proceed is issued, the County may find cause for cancellation of the award and any expenses incurred before the official commencement date shall be done at the contractor's own risk and expense.

(b) The number of days for completion of the contract will be calculated from the official commencement date.

(c) In cases where the amount of the award is less than $50,000.00 and a purchase order is issued, no notice to proceed will be made.

10.10 DISPUTES

(a) All controversies between the County and the contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the chief procurement officer in writing, within ninety (90) days after a written request by the contractor for a final decision concerning the controversy; provided that if the Director does not issue a written decision within ninety (90) days after written request for a final decision, 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.

(b) The chief procurement officer shall immediately furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

(c) Any such decision shall be final and conclusive, unless fraudulent, or the contractor brings an action seeking judicial review of the decision in the Third Circuit Court of the State of Hawaiʻi within the six (6) months from the date of receipt of the decision.

(d) The contractor shall comply with any decision of the Director and proceed diligently with performance of this contract pending final resolution by the Third Circuit Court of the State of Hawaiʻi of any controversy arising under, or by virtue of, this contract, except where there has been a material breach of contract by the County; provided that in any event the contractor shall proceed diligently with the performance of the contract where the chief procurement officer has made a written determination that continuation of work under the contract is essential to the public health and safety.

10.11 REMEDIES

Any dispute arising under or out of this contract is subject to §3-126, HAR, as amended.

10.12 COUNTY'S RIGHT OF OFFSET

The County may offset any monies or other obligations the County owes to the contractor under this contract, any amount owed to the County by the contractor under this
contract, or any other contract, or pursuant to any law or other obligation owed to the County, including, but not limited to, the payment of any fees, landfill tipping fees, taxes or levies of any kind or nature. The County shall notify the contractor in writing of any exercise of its right of offset and the nature and amount of such offset. For the purposes of this paragraph, amounts owed to the County shall not include debits or obligations which have been liquidated by agreement with the contractor, and that are covered by an installment payment or other settlement plan approved by the County, provided, however, that the contractor is current, and in compliance with, and not delinquent on, any payments, obligations, or duties owed to the County under such payment or other settlement plan.

10.13 TIME IS OF THE ESSENCE

Performance of the contract shall commence on the commencement date designated in the Notice to Proceed and shall be completed within the time specified in the contract, except as modified by mutual agreement. contractor acknowledges that time is of the essence in the completion of the work within the designated time in the contract.

6.12. SECTION 11 - LEGAL RELATIONS AND RESPONSIBILITY

11.1 LAWS TO BE OBSERVED

11.1 LAWS TO BE OBSERVED

(a) Comply with all laws. The contractor shall at all times observe, perform, 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 performance of the work, the manufacture and sale of materials and equipment required under the contract, 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. 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 chief procurement officer in writing.

(b) Indemnification for violation of law. The contractor shall indemnify, hold harmless and defend the County and all its officers, agents, employees, and representatives from all suits, actions, claims, damages, and judgments, of any character or kind, that may arise from, or which are based on the violation of any such laws, ordinances, rules and regulations, orders and decrees, whether such violation is committed by the contractor or his subcontractor or the employee or either or both.

(c) The contractor's attention is especially directed to §§103 and 103D, HRS, as amended; subtitle 11 Procurement Policy Board of title 3 Department of Accounting and General Services, HAR, as amended; the Hawai'i County Charter (2022 Edition, as amended); and the Hawai'i County Code 1983 (2016 Edition, as amended) The applicable provisions of the aforementioned shall be deemed to be a part of the contract as though fully set forth herein. 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 chief procurement officer in writing.

11.2 WARRANTY OF TITLE

The contractor shall warrant absolute title and full and clear right to sell or provide the goods or services, as specified herein, to the County and that there are no liens, claims or encumbrances of any kind on said Goods or Services. The contractor shall hold the County free, clear, and harmless against any adverse claim of title.

11.3 COPYRIGHT

The County shall have ownership of the work product that is produced by the contractor in the performance of work under the contract with the County, including an unrestricted, royalty-free, nonexclusive and irrevocable license to reproduce, publish, translate or otherwise use and to authorize others to publish and use all materials obtained or produced in connection with the work hereunder, which may be copyrighted by the County.

If the contractor uses or licenses any design, device, material, process, technology or any other intellectual property ("Intellectual Property") covered by patent, copyright, trademark or other Intellectual Property protection, the right for such use shall be procured by the contractor from the appropriate owner. The contractor shall indemnify and hold the County and all its officers, agents, employees and representatives harmless against all claims arising from the use of any claims for infringement by reason of the use of any such Intellectual Property in connection with providing services under this contract.

11.5 SUBCONTRACTING AND ASSIGNING

The contractor shall not subcontract any of the work to be performed under this contract with the County, nor shall he assign the contract to any other person or firm without written permission from the chief procurement officer, or his/her designee, and no subcontract or assignment made without such permission will be recognized. No subcontract shall, under any circumstances, relieve the contractor of his obligation and liability under his contract with the County, and all persons engaged in performing the work covered by the contract shall be considered agents of the contractor, and shall be subject to the provisions of the contract.

11.6 ASSIGNMENT OF ANTITRUST CLAIMS

Vendor and purchaser recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, vendor hereby assigns to purchaser any and all claims for such overcharges as to goods and materials 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 which are not passed on to the purchaser under an escalating clause.

11.7 INDEMNIFICATION

The contractor shall indemnify, hold harmless and defend the County and its officers, employees, agents, and representatives from all suits, actions, claims, damages, and judgments of any character that may be brought against the County by whomsoever, on account of any injuries or damages sustained by any person and property, due to the negligent acts or omissions by the contractor, or any of his officers, employees, subcontractors, assignees, or representatives, in the performance of the contract. In the event the County and the contractor are found to be joint tortfeasors with respect to any such injuries or damages, the contractor's obligations to indemnify the County under this section shall extend only to the contractor's pro rata share of negligence as determined in accordance with §663-12, HRS, as amended.

11.8 PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions of the contract or in exercising any power or authority granted to them by the contract, there shall be no liability upon the chief procurement officer or his/her authorized representatives, either personally or as officials of the County, it being understood that in such matters, they act solely as agents and representatives of the County.

11.9 [Reserved]

11.10 RECORD RETENTION AND RIGHT TO AUDIT RECORDS

(a) The contractor and/or any of its subcontractors shall maintain the books and records that relate to the contract and any cost or pricing data for three (3) years from the date of final payment under the contract.

(b) The County, at reasonable times and places, may audit the books and records of any contractor who has submitted cost or pricing data.

11.11 NON-DISCRIMINATION

(a) The contractor and/or subcontractor shall not discriminate on the basis of race, religion, color, national origin, sex, sexual orientation, gender identity, age, marital status, pregnancy, parenthood, disability, or political affiliation in the performance of this contract. Failure to comply with this requirement may be cause for termination of this contract or such other remedy as the County deems appropriate.

(b) Pursuant to Executive Order No. 142, County of Hawaiʻi, dated February 11, 2005, during the performance of this contract, the contractor shall:

(1) Comply with all requirements set forth in Federal and State laws and regulations relative to Title VI of the Civil Rights Act of 1964, as amended, which provide for non-discrimination in federally assisted programs.

(2) Not discriminate against any employee or applicant for employment because of sex, pregnancy, race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law. Contractor shall assure that applicants are employed and that employees are treated during employment without regard to sex, pregnancy, race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor agrees to post in conspicuous places notes to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

(3) In all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants shall receive consideration for employment without regard to sex, pregnancy, race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law.

(4) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled or suspended in whole or in part and the contractor may be declared ineligible for further County contracts until such time that the contractor, by satisfactory evidence, in good faith, ceases such discriminatory practices or procedures.

(5) If contractor subcontracts any portion of the contract, it shall assure the County that such subcontractor shall abide by the nondiscrimination provisions stated herein and agrees that any subcontractor who is found in violation of such provisions shall subject the principal contractor's contract with the County to be terminated or suspended pursuant to subsection section 11.11(b)(4).

(6) The County may direct any bidder, prospective contractor, or subcontractor to submit a statement in writing signed by an authorized officer, agent, or employee of the contracting party that the signer's practices and policies do not discriminate on the grounds of sex, pregnancy, race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record,

citizenship, or any other classification protected by state or federal law, and that the terms and conditions of employment under the proposed contract shall be in accordance with the purposes, and any bidder, prospective contractor or subcontractor shall comply with all such present state and federal laws, ordinances, codes, rules and regulations, and all amendments thereto. If any discrepancy or inconsistency is discovered between this Agreement and any such law, ordinance, code, rule or regulation, the contractor shall forthwith report the same in writing to the County.

11.12 RESPONSIBILITY OF CONTRACTOR AND TAX CLEARANCE

The following applies to any procurement of $25,000 or more and/or any County contract of $25,000 or more:

(a) Upon award of the contract, §103D-310, HRS, as amended, specifies that all offerors shall comply with all laws governing entities doing business in the State, including, but not limited to, §§237, 383, 386, 392, and 393, HRS, as amended.

(b) In addition, pursuant to §§103D-328 and 103-53, HRS, as amended, no contract shall be binding or effective until the purchasing agency confirms tax clearance from the Director of Taxation and the Internal Revenue Service. The contractor shall provide updated tax clearances as required by the Director of Finance to comply with §103-53, HRS, as amended.

(c) As proof of compliance with the above, the purchasing agency shall verify contractor compliance using Hawai'i Compliance Express (HCE), as a pre-requisite to award, for the following requirements:

(1) Tax Clearance from the Department of Taxation and Internal Revenue Service to demonstrate compliance with §237, HRS, General Excise Tax Law, and §103D-328, HRS, Tax Clearance;

(2) Compliance from the Department of Labor and Industrial Relations to verify current compliance with §383 (Hawaiʻi Employment Security Law), §386 (Workers' Compensation Law); §392 (Temporary Disability Insurance Law); and §393 (Prepaid Healthcare Act), HRS, as amended; and

(3) Good Standing Certificate from the Department of Commerce and Consumer Affairs.

11.13 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

If awarded a contract in response to this solicitation, offeror agrees to comply with §11-355, HRS, as amended. Questions regarding this statute should be directed to the State Campaign Spending Commission.

6.13. SECTION 12 - MODIFICATIONS AND TERMINATIONS OF CONTRACTS

12.1 GENERAL

(a) Pursuant to §3-125-1, HAR, as amended, the contract clauses in this section 12 (MODIFICATIONS AND TERMINATIONS OF CONTRACTS) of these GTCs are required for use in invitation for bids or requests for proposals and may be used in other contracts subject to §103D, HRS, as amended. Clauses that are specific for a certain category of goods, services, or construction are not required for contracts of another category. For example, specific clauses applicable only to goods and services are not required for construction contracts.

(b) If the clauses set forth in §3-125, HAR, as amended, are plainly inappropriate for use in a proposed contract, then the chief procurement officer or the head of purchasing agency shall make a written determination describing the circumstances requiring a material variation, provided that notice of any variation shall be stated in the invitation for bids or requests for proposals.

(c) Any material variation from these clauses shall be described in the solicitation documents in substantially the following form:

"General Terms and Conditions Section no._____, entitled _____, is not a part of the general terms and conditions of this contract and has been replaced by Special Provisions clause no._____, entitled _____."

(d) In accordance with applicable law and in consultation with the corporation counsel and the chief procurement officer and his/her designee, alternative clauses are allowed in some instances to permit accommodation of differing contract situations.

12.2 CONTRACT CHANGE ORDERS

(a) Generally. By written order, at any time, and without notice to any surety, the chief procurement officer may, unilaterally, order of the contractor:

(1) Changes in the work within the scope of the contract; and

(2) Changes in the time of performance of the contract that do not alter the scope of the contract work.

(b) Adjustments of prices or performance time. If any such Change Order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the Change Order, an adjustment shall be made and the contract modified in writing accordingly and signed by the parties. Any adjustment in contract price made pursuant to this section shall be determined in accordance with section 12.8 (PRICE ADJUSTMENT) of these GTCs. Failure of the parties to agree to an adjustment in contract price shall be resolved in accordance with section 12.8 (PRICE ADJUSTMENT) of these GTCs. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the chief procurement officer within fourteen (14) days after the changed work commences, makes the provisional adjustments in time as the Chief Procurement Office deems reasonable. The right of the contractor to dispute

the contract price or time, or both, shall not be waived by its performing the work; provided, however, that the contractor files a claim in accordance with section 12.2(c) (CONTRACT CHANGE ORDERS) of these GTCs.

(c) Time period for claim. Except as may be provided otherwise by §103D-501(b), HRS, as amended, the contractor must file a written claim disputing the contract price or time, or both, provided in a Change Order, within ten (10) days after receipt of a written Change Order, unless such period for filing is extended by the chief procurement officer in writing. The requirement for filing a timely written claim cannot be waived and shall be a condition precedent to the assertion of a claim.

(d) Claim barred after final payment. No claim by the contractor for an adjustment hereunder shall be allowed if the claim is not received by the Director of Finance prior to final payment under this contract.

(e) Other claims not barred. In the absence of such a Change Order, nothing in this clause shall be deemed to restrict the contractor's right to pursue a claim as permitted under the contract or for breach of contract.

12.3 CONTRACT MODIFICATIONS

(a) Contract modification. By a written order, at any time, and without notice to any surety, the chief procurement officer or his/her designee, subject to mutual agreement of the parties to the contract and all appropriate adjustments, may make modifications within the general scope of this contract to include any one or more of the following:

(1) Drawings, designs, or specifications, for the goods to be furnished;

(2) Method of shipment or packing;

(3) Place of delivery;

(4) Description of services to be performed;

(5) Time of performance (i.e., hours of the day, days of the week, etc.);

(6) Place of performance of the services; or

(7) Other provisions of the contract accomplished by mutual action of the parties to the contract that are within the general scope of the contract.

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

(c) Claim barred after final payment. No claim by the contractor for an adjustment hereunder shall be allowed if the claim is not received by the Director of Finance prior to final payment under this contract.

(d) Other claims not barred. In the absence of such a contract modification, nothing in this clause shall be deemed to restrict the contractor's right to pursue a claim under the contract or for breach of contract.

12.4 AUTHORIZATION FOR A STOP WORK ORDER FOR GOODS AND SERVICES CONTRACTS

(a) Section 12.5 (STOP WORK ORDERS) of these GTCs applies to any fixed-price contract under which work stoppage may be required for reasons such as advancements in the state of the art, production modifications, engineering changes, or realignment of programs. A stop work order shall not be used in lieu of the issuance of a termination notice after a decision to terminate has been made.

(b) Stop work orders shall not exceed sixty (60) days and shall include, as appropriate:

(1) A clear description of the work to be suspended;

(2) Instructions as to the issuance of further orders by the contractor for material or services;

(3) Guidance as to action to be taken on subcontracts; and

(4) Other instructions and suggestions to the contractor for minimizing costs.

(c) As soon as feasible after a stop work order is issued: (1) The contract will be terminated; or (2) the stop work order will be canceled or extended in writing beyond the period specified in the order.

(d) In any event, such action must be taken before the specified stop work period expires. If an extension of the stop work order is necessary, it must be evidenced by a supplemental agreement signed by the parties. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.

12.5 STOP WORK ORDERS

(a) Order to stop work. The chief procurement officer, may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This stop work order shall be for a specified period not exceeding sixty (60) days after the stop work order is delivered to the contractor unless the parties agree in writing to any further period. Any such stop work order shall be identified specifically as a stop work order issued pursuant to this subsection. Upon receipt of such a stop work order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Before the stop work order expires, or within any further period to

which the parties shall have agreed to in writing, the chief procurement officer shall either: (1) Cancel the stop work order; or (2) Terminate the work covered by such stop work order as provided in section 12.11 (TERMINATION FOR DEFAULT) or section 12.12 (TERMINATION FOR CONVENIENCE) of these GTCs.

(b) Cancellation or expiration of the stop work order. If a stop work order issued under this subsection is canceled at any time during the period specified in the stop work order, or if the period of the stop work order or any extension thereof expires, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if: (1) The stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and (2) The contractor asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the chief procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

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

(d) Adjustment of price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with section 12.8 (PRICE ADJUSTMENT) of these GTCs.

12.6 VARIATIONS IN QUANTITIES FOR DEFINITE QUANTITY CONTRACTS

Upon the agreement of the parties, the quantity of goods or services, or both, specified in this contract may be increased by a maximum of ten percent (10%) provided: (1) the unit prices will remain the same except for any price adjustments otherwise applicable; and (2) the chief procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

12.7 VARIATIONS IN ESTIMATED QUANTITIES FOR INDEFINITE QUANTITY CONTRACTS

(a) Except as provided for in this section, no clause is provided here because in indefinite quantity contracts, the flexibility as to the County’s obligation to order, and the contractor's obligation to deliver, should be designed to meet using agency needs, while still making the contract as attractive as possible to potential contractors, to obtain maximum practicable competition, and to assure the best economy for the County. However, in each case, the contract shall state:

(1) The minimum quantity, if any, the County is obligated to order, and the contractor is required to provide;

(2) Whether there is a quantity the County expects to order and how this quantity relates to any minimum and maximum quantities that may be ordered under the contract;

(3) Any maximum quantity the County may order, and the contractor must provide; and

(4) Whether the County is obligated to order its actual requirements under the contract, or in the case of a multiple award as defined in §3-122-145, HAR, as amended, the County will order its actual requirements from the contractors under the multiple award subject to any minimum or maximum quantity stated.

12.8 PRICE ADJUSTMENT

(a) Any adjustment in contract price pursuant to a provision in the contract shall be made in one or more of the following ways:

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance;

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

(3) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon before commencement of the pertinent performance;

(4) In any other manner as the contracting parties may mutually agree upon before commencement of the pertinent performance; or

(5) In the absence of agreement between the parties, the provisions of §103D-501(b)(5), HRS, as amended, shall apply.

(b) The contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of §103D-312, HRS, as amended. The submission of any cost or pricing data shall be made for any price adjustment subject to the provisions of subchapter 15, §3-122-123, HAR, as amended. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in paragraphs (a)(1) through (a)(5) of this subsection shall be issued within ten (10) days after agreement on the method of adjustment.

12.9 NOVATION OR CHANGE OF NAME

(a) No assignment. No County contract is transferable, or otherwise assignable, without the written consent of the chief procurement officer or the head of the purchasing agency provided that a contractor may assign monies receivable under a contract after due notice to the County.

(b) Recognition of a successor in interest; assignment. When in the best interest of the County, a successor in interest may be recognized in an assignment agreement in which the transferor,

the transferee, and the County shall agree that: the transferee assumes all of the transferor's obligations; the transferor remains liable for all obligations under the contract but waives all rights under the contract as against the County; and the transferor shall continue to furnish, and the transferee shall also furnish, all required bonds.

(c) Change of name. When a contractor requests to change the name in which it holds a contract with the County, the chief procurement officer responsible for the contract 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.

(d) Reports. All change of name or assignment agreements effected hereunder other than by the chief procurement officer shall be reported to the chief procurement officer within thirty (30) days of the date that the agreement becomes effective.

12.10 CLAIMS BASED ON A PROCUREMENT OFFICER'S ACTIONS OR OMISSIONS

(a) Notice of claim. If any action or omission on the part of the chief procurement officer or his/her designee, requiring performance changes within the scope of the contract constitutes the basis for a claim by the contractor for additional compensation, damages, or an extension of time for completion, the contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(1) The contractor shall have given written notice to the chief procurement officer or his/her designee:

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

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

(C) Within such further time as may be allowed by the chief procurement officer or his/her designee, in writing.

(2) This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The chief procurement officer, or his/her designee, upon receipt of such notice may rescind such action, remedy such omission, or take such other steps as may be deemed advisable;

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

(4) The contractor maintains and, upon request, makes available to the chief procurement officer or his/her designee, within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

(b) Limitation of clause. Nothing herein contained, shall excuse the contractor from compliance with any rules of law precluding any County officers and any contractor from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

(c) Adjustments of price. Any adjustment in the contract price made pursuant to this subsection shall be determined in accordance with section 12.8 (PRICE ADJUSTMENT) of these GTCs.

12.11 TERMINATION FOR DEFAULT

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

(b) Contractor’s duties. Notwithstanding termination of the contract and subject to any directions from the chief procurement officer or his/her designee, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the County has an interest.

(c) Compensation. Payment for completed goods delivered and accepted by the County shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the contractor and the chief procurement officer; if the parties fail to agree, the chief procurement officer shall set an amount subject to the contractor’s rights under §3-126, HAR, as amended. The County may withhold from amounts due the contractor such sums as the Chief Procurement Officer deems to be necessary to protect the County against

loss because of outstanding liens or claims of former lien holders and to reimburse the County for the excess costs incurred in procuring similar goods and services.

(d) Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms, including any failure by the contractor to make progress in the prosecution of the work hereunder which endangers such performance, if the contractor has notified the chief procurement officer or his/her designee within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the County and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather; or for delay due to reasons beyond the contractor's control. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the contractor shall not be deemed to be in default, unless the goods or services to be furnished by the subcontractor were unreasonably obtainable from other sources in sufficient time to permit the contractor to meet the contract requirements. Upon request of the contractor, the chief procurement officer shall ascertain the facts and extent of such failure, and, if the chief procurement officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the County under section 12.12 (TERMINATION FOR CONVENIENCE) for fixed-price contracts, and under section 12.13 (TERMINATION FOR COST-REIMBURSEMENT CONTRACTS) for cost-reimbursement contracts of these GTCs. As used in this subsection, the term "subcontractor" means subcontractor at any tier.

(e) Additional rights and remedies. The rights and remedies provided in this section 12.11 are in addition to any other rights and remedies provided by law or under this contract.

12.12 TERMINATION FOR CONVENIENCE

(a) Termination for convenience. The chief procurement officer may, when the interests of the County so require, terminate this contract in whole or in part, for the convenience of the County. The chief procurement officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

(b) Contractor's obligations. The contractor shall incur no further obligations in connection with the terminated work and on the dates 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 County's approval. The chief procurement officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the

County. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(c) Right to goods. The chief procurement officer may require the contractor to transfer title and deliver to the County in the manner and to the extent directed: any completed goods; and the partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights, hereinafter called "manufacturing material," as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the chief procurement officer, protect and preserve property in the possession of the contractor in which the County has an interest. If the chief procurement officer does not exercise this right, the contractor shall use best the contractor's efforts to sell such goods and manufacturing materials. Use of this section in no way implies that the County has breached the contract by exercise of the termination for convenience clause.

(d) Compensation.

(1) The contractor shall submit a termination claim specifying the amounts due based on the termination for convenience together with cost or pricing data to the extent required by subchapter 15, §3-122, HAR, as amended, bearing on such claim. If the contractor fails to file a termination claim within one (1) year from the effective date of termination, the chief procurement officer may pay the contractor, if at all, an amount set in accordance with subparagraph (3) below.

(2) The chief procurement officer and the contractor may agree to settlement provided the contractor has filed a termination claim supported by cost or pricing data to the extent required by subchapter 15, §3-122, HAR, as amended, and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the County, the proceeds of any sales of goods and manufacturing materials under section 12.12(c) (RIGHT TO GOODS) of these GTCs, and the contract price of the work not terminated.

(3) Absent complete agreement under subparagraph (2), the chief procurement officer shall pay the contractor the following amounts, provided payments agreed to under subparagraph (2) shall not duplicate payments under this paragraph for the following:

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

(B) Costs incurred in preparation and performing the terminated portion of the work plus a five percent (5%) markup on actual direct costs on such portion of the work, such markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, 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.

(C) Subject to prior approval of the chief procurement officer, the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph (3)(B). Subcontractors shall be entitled to a markup of no more than ten percent (10%) on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with subparagraph (3)(B).

(D) The total sum to be paid the contractor under this subparagraph (3) shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of goods and manufacturing materials under section 12.12(d)(2) (TERMINATION FOR CONVENIENCE) of these GTCs, and the contract price of work not terminated.

(e) Cost claimed, agreed to, or established under clauses (B) and (C) of subparagraph (3) shall be in accordance with §3-123, HAR, as amended.

12.13 TERMINATION FOR COST-REIMBURSEMENT CONTRACTS

The only cost recognized as allowable shall be in accordance with the cost principles set forth in §3-123, HAR, as amended, provided that if a written determination is approved by the chief procurement officer, such cost principle may be modified by the contract.

6.14. SECTION 13 - PAYMENT

13.1 METHOD OF PAYMENT

Payments will be authorized by the chief procurement officer after completion of performance, or delivery and acceptance by the Officer-in-Charge of all goods, and services stipulated in the contract or Purchase Order. Payments will be made as soon thereafter as the regular course of business will allow; provided, however, that payments shall be made no later than thirty (30) days following receipt of the statement for goods received and services completed, and that all statutory and contractual requirements for final payment are satisfied.

13.2 FINAL PAYMENT

In accordance with §103-53, HRS, as amended, final payment under any contract of $25,000 or more shall not be made until the contractor has filed with the purchasing agency a tax clearance from the State Director of Taxation that all delinquent taxes levied or accrued under State statutes have been paid.

13.3 INTEREST

Interest on amounts ultimately determined to be due to a contractor or the County shall be payable at the statutory rate applicable to judgments against the County under §662, HRS, as amended, from the date the claim arose through the date of decision or judgment, whichever is later.

13.4 PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS

(a) Generally. Any money paid to a contractor shall be disbursed to 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 procurement agency has withheld payment.

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

(c) Penalty. The Procurement Officer or the contractor, as applicable, will be subject to a penalty of one and one-half per cent (1.5%) per month upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. 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 section 13.4(d) (PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS) of these GTCs, and:

(1) 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 §103-32.1, HRS, as amended; or

(2) The following has occurred:

(A) A period of ninety (90) 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 §103D-324, HRS, as amended; and

(B) The subcontractor has provided to the contractor, 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; any other bond acceptable to the contractor; or any other form of mutually acceptable collateral, then, 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 chief procurement officer to the contractor and subsequently, upon receipt from the chief procurement officer, by the contractor to the subcontractor within the applicable time periods specified in section 13.4(b) (PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS) of these GTCs and §103-10, HRS, as amended. The penalty may be withheld from future payment due the contractor if the contractor was the responsible party. If a contractor has violated section 13.4(b) (PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS) of these GTCs three or more times within two (2) years of the first violation, the contractor shall be referred by the chief procurement officer to the contractor's respective license board for action under §444-17(14), HRS, as amended.

(d) Final payment request form. A properly documented final payment request from a subcontractor, as required by section 13.4(c) (PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS) of these general terms and conditions, shall include:

(1) Substantiation of the amounts requested;

(2) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:

(A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

(B) The subcontractor has made payments due to its subcontractor 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

(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

(3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

(4) The chief procurement officer shall return any final payment request that is defective to the contractor within seven (7) days after receipt, with a statement identifying the defect.

(5) In the case of a construction contract, a payment request made by a contractor to the chief procurement 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 section 13.4(c) (PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS) of these general terms and conditions unless the payment request includes:

(A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

(B) The subcontractor has made payments due to its subcontractor 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 section; and

(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.

(D) The chief procurement officer shall return any final payment request that is defective to the contractor within seven (7) days after receipt, with a statement identifying the defect.

(e) This section 13 of these GTCs 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 section 13.4(c) (PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS) of these GTCs; provided that any such payments withheld shall be withheld by the chief procurement officer.

6.15. SECTION 14 – MISCELLANEOUS

14.1 HEADINGS

All headings are for convenience only and shall not affect the interpretation of this contract.

14.2 NO WAIVER

No failure of either County or contractor to insist upon the strict performance by the other of any covenant, term or condition of this contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

14.3 SEVERABILITY

The unenforceability, invalidity, or illegality of any provision of this contract shall not render any other provision of this contract unenforceable, invalid, or illegal.

14.4 DELEGATION OF AUTHORITY TO PROCUREMENT OFFICER

(a) Subject to subsection (b), unless a provision of the contract specifies that the authority to settle and resolve controversies and to issue decisions is reserved to the head of the purchasing agency, the authority is delegated to the chief procurement officer.

(b) The settlement or resolution of controversies involving claims in excess of fifty thousand dollars ($50,000.00) is subject to the prior written approval of the head of the purchasing agency. The chief procurement officer shall prepare a recommended decision for the head of purchasing agency.

14.5 DRAFTING AMBIGUITIES

The Parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this contract, and the decision of whether to seek advice of legal counsel with respect to this contract is the sole responsibility of each Party. This contract shall not be

construed in favor of or against either Party by reason of the extent to which each party participated in the drafting of the contract.

14.6 AMENDMENTS

Neither this contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of County and contractor. Any alleged oral amendments have no force or effect.

14.7 SURVIVAL OF OBLIGATIONS

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this contract, as well as all continuing obligations indicated in this contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the contract.

14.8 CONFIDENTIALITY OF SERVICES

All services performed by contractor, and any subcontractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by contractor, are for the sole use of County, its agents, and employees. Neither the documents nor their contents shall be released by contractor or any subcontractor to any third party without the prior written consent of County. This provision does not apply to information that: (1) was publicly known, or otherwise known to contractor, at the time it was disclosed to contractor by County; (2) subsequently becomes publicly known through no act or omission of contractor; or (3) otherwise becomes known to contractor other than through disclosure by County.

14.9 NO THIRD PARTY OBLIGATIONS

Except as may be specifically set forth in this contract, none of the provisions of this contract are intended to benefit any third party not specifically referenced herein. No party other than County and contractor shall have the right to enforce any of the provisions of this contract.

14.10 INSOLVENCY

If contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the purchasing agency and the Officer in Charge responsible for administering the contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of County contract numbers and contracting offices for all County contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this contract.

14.11 ACTIONS OF THE COUNTY IN ITS GOVERNMENTAL CAPACITY

Nothing in this contract shall be interpreted as limiting the rights and obligations of the County in its governmental or regulatory capacity.

14.12 GOVERNING LAW

This contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of Hawaiʻi without regard to the conflicts or choice of law provisions hereof.

14.13 COUNTERPARTS

This contract may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding on the parties as of the date of the last signature. Delivery of counterpart may be effectuated by transmitting a signed signature page by emailed PDF or other mutually agreeable electronic means.

14.14 NOTICES REQUIRED UNDER EXECUTED CONTRACT

Any notice required to be given by a party to this contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid (or by a recognized courier service, such as Federal Express or UPS), or (c) sent by email. Notice to the County shall be sent to the Officer-in-Charge's mailing address or email address indicated in the contract. Notice to the contractor shall be sent to the contractor's mailing address or email address indicated in the contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. Either party may change its mailing address or email address by giving written notification of the change to the other party.

EXHIBITS

THE FOLLOWING EXHIBITS ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. SHOULD THE COUNTY REQUIRE SUBMISSION OF THESE EXHIBITS, THEY WILL BE REQUESTED THROUGH THE VENDOR QUESTIONNAIRE.

Exhibit A Surety Bid/Proposal Bond
Exhibit B Performance Bond (Surety)
Exhibit C Performance Bond
Exhibit D Labor and Material Payment Bond (Surety)
Exhibit E Labor and Material Payment Bond
Exhibit F Reserved
Exhibit G Performance Bond (Surety) for Supplemental Agreement for Goods and Services
Exhibit H Performance Bond for Supplemental Agreement for Goods and Services
Exhibit I Contractor Acknowledgment
Exhibit J Surety Acknowledgment

6.16. EXHIBITS

COUNTY OF HAWAIʻI
PURCHASING DIVISION

25 Aupuni Street, Suite 1101, Hilo, HI 96720
(808) 961-8231 • Fax (808) 961-8248

EXHIBIT A

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 _____,
(State/County Entity)

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 assigns, 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 or 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 (Offeror)

_____

_____

Signature

_____

_____

Title

(Seal) _____

_____

Name of Surety

_____

_____

Signature

_____

_____

Title

EXHIBIT B

PERFORMANCE BOND (SURETY)

KNOW TO ALL BY THESE PRESENTS:

COUNTY OF HAWAIʻI
PURCHASING DIVISION

25 Aupuni Street, Suite 1101, Hilo, HI 96720
(808) 961-8231 • Fax (808) 961-8248

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 signed a Contract with Obligee on _____, 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 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.

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.

COUNTY OF HAWAIʻI
PURCHASING DIVISION
25 Aupuni Street, Suite 1101, Hilo, HI 96720
(808) 961-8231 • Fax (808) 961-8248

Signed this _____ day of _____, _____.

(Seal) _____

Name of Principal (Contractor)

* _____

Signature

_____

Title

(Seal) _____

Name of Surety

* _____

Signature

_____

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBIT C

PERFORMANCE BOND

KNOW TO ALL BY THESE PRESENTS:

Hawaiʻi County is an Equal Opportunity Provider and Employer

COUNTY OF HAWAIʻI
PURCHASING DIVISION

25 Aupuni Street, Suite 1101, Hilo, HI 96720
(808) 961-8231 • Fax (808) 961-8248

That we, _____,
(Full Legal Name and Street Address of Contractor)

as Contractor, hereinafter called Contractor, is held and firmly bound unto the

_____, its successors and assigns, as Obligee, hereinafter called
(State/County Entity)
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 is 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 unconditionally 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 unconditionally 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 unconditionally assigned

Hawaiʻi County is an Equal Opportunity Provider and Employer

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 unconditionally 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 unconditionally 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 unconditionally assigned
_____
_____;

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 cost, 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 or 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 Contractor

* _____

Signature

_____

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBIT D

LABOR AND MATERIAL PAYMENT BOND (SURETY)

KNOW TO ALL BY THESE PRESENTS:

That _____,

COUNTY OF HAWAIʻI
PURCHASING DIVISION

25 Aupuni Street, Suite 1101, Hilo, HI 96720
(808) 961-8231 • Fax (808) 961-8248

(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 signed Contract with the Obligee on _____ 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 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.

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 been paid amounts due for 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 this 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

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBIT E

LABOR AND MATERIAL PAYMENT BOND

COUNTY OF HAWAIʻI
PURCHASING DIVISION
25 Aupuni Street, Suite 1101, Hilo, HI 96720
(808) 961-8231 • Fax (808) 961-8248

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

_____, its successors and assigns, as Obligee, hereinafter called
(State/County Entity)

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 is 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 unconditionally 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 unconditionally assigned to
_____
_____;

¨ Teller's Check No. _____, dated _____, issued by
_____,
drawn on _____,

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a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally 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 unconditionally 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 unconditionally 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 unconditionally 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, free from all liens and claims and without further cost, 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 or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, and shall promptly pay all persons supplying labor and materials for the performance of the Contract, 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 and 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 Contractor

* _____

_____

Signature

_____

_____

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBIT F
[Reserved]

EXHIBIT G

COUNTY OF HAWAIʻI
PURCHASING DIVISION

25 Aupuni Street, Suite 1101, Hilo, HI 96720
(808) 961-8231 • Fax (808) 961-8248

PERFORMANCE BOND (SURETY)
FOR SUPPLEMENTAL AGREEMENT
FOR GOODS AND SERVICES

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 _____
_____
_____
_____;
and entered into Supplemental Agreement No. _____, dated _____ for the period _____;
hereinafter collectively 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.

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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.

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, Surety shall either remedy the Default, or take over the work to be performed under the Contract and complete such work, subject, however, to the limitation of the penal sum of this bond.

Signed this _____ day of _____, _____.

(Seal) _____

Name of Principal (Contractor)

* _____

Signature

_____

Title

(Seal) _____

Name of Surety

* _____

Signature

_____

Title

COUNTY OF HAWAIʻI
PURCHASING DIVISION
25 Aupuni Street, Suite 1101, Hilo, HI 96720
(808) 961-8231 • Fax (808) 961-8248

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBIT H

PERFORMANCE BOND
FOR SUPPLEMENTAL AGREEMENT
FOR GOODS AND SERVICES

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

_____, its successors and assigns, as Obligee, hereinafter called Obligee,
(State/County Entity)
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 is 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 unconditionally assigned to _____
_____;

¨ Cashier's Check No. _____, dated _____, 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 unconditionally assigned to _____

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_____;

¨ Teller's Check No. _____, dated _____, 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 unconditionally assigned to _____
_____;

¨ Treasurer's Check No. _____, dated _____, 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 unconditionally assigned to _____
_____;

¨ Official Check No. _____, dated _____, 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 unconditionally 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 unconditionally assigned to _____
_____;

WHEREAS:

The Contractor has by written agreement dated _____ entered into a contract with Obligee for the following Project: _____
_____
_____
and entered into Supplemental Agreement No. _____, dated _____ for the period _____; hereinafter collectively 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 cost, 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 or 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 Contractor

* _____

Signature

_____

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBIT I

CONTRACTOR ACKNOWLEDGMENT

[FOR USE WITH PERFORMANCE AND PAYMENT BONDS]

COUNTY OF HAWAIʻI
PURCHASING DIVISION
25 Aupuni Street, Suite 1101, Hilo, HI 96720
(808) 961-8231 • Fax (808) 961-8248

CONTRACTOR ACKNOWLEDGMENT:

STATE OF _____)
: SS.
_____ COUNTY OF _____)

On this _____ day of _____, 20_____, 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: _____

EXHIBIT J

SURETY ACKNOWLEDGMENT

[FOR USE WITH SURETY PERFORMANCE AND PAYMENT BONDS]

SURETY ACKNOWLEDGMENT:

STATE OF _____)
: SS.
_____ COUNTY OF _____)

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COUNTY OF HAWAIʻI
PURCHASING DIVISION

25 Aupuni Street, Suite 1101, Hilo, HI 96720
(808) 961-8231 • Fax (808) 961-8248

On this _____ day of _____, 20_____, before me personally came _____ to me 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 corporate seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; and that it was so affixed by order 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: _____

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