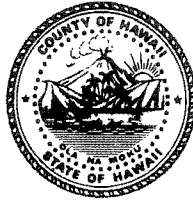


**Susan L.K. Lee Loy**  
Council Member  
District 3




Office: (808) 961-8396  
Fax: (808) 965-8912  
Email: [sue.leeloy@hawaiicounty.gov](mailto:sue.leeloy@hawaiicounty.gov)

**HAWAI'I COUNTY COUNCIL**  
25 Aupuni Street, Hilo, Hawai'i 96720

MEMORANDUM

DATE: January 4, 2023

TO: Heather Kimball, Council Chair; and  
Members of the Hawai'i County Council

FROM: Susan L.K. Lee Loy, Council Member 

SUBJECT: supporting material for Communication 36

2023 JAN - 4 AM 9: 43  
COUNTY CLERK  
COUNTY OF HAWAII

Our office has received the attached items to be discussed as part of Communication 36 on the agenda for the Communications, Reports, and Council Oversight Committee meeting on January 4, 2023.

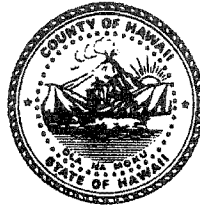
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attach

Comm. No. 36.1  
Ref. To: P/CRCC  
Ref. Date JAN - 4 2022



Mitchell D. Roth  
Mayor



Stephen M. Pause, P.E.  
Director

Lee E. Lord  
Managing Director


Malia Kekai  
Deputy Director

**County of Hawai'i**  
**DEPARTMENT OF PUBLIC WORKS**  
Aupuni Center  
101 Pauahi Street, Suite 7 · Hilo, Hawai'i 96720-4224  
(808) 961-8321 · Fax (808) 961-8630  
public\_works@hawaiicounty.gov

MEMORANDUM

Date: 12 December 2022

To: County Council  
Cost of Government Commission  
Other Stakeholders

From: Stephen Pause, PE, Director 

Subject: Transmittal of "Report Regarding Operations within the Building Code Division of the Hawaii County Public Works Department"

Attached is the report that discusses the findings from an assessment of operations in the Building Division of Department Public Works. James Tinner was retained by the Administration in August 2022 to evaluate the inefficiencies within the Building Division specifically as they may lead to delays in intake, processing, and issuance of building permits. In addition to his familiarity with the Energov (EPIC) permitting software, Mr. Tinner has a wealth of experience in code enforcement and administration as a former building official, plans examiner, building inspector, and fire marshal in the Pacific Northwest.

The report provides a number of recommendations, with some similar to what our Building Division is already working on, and others that are more nuanced and require a longer-term or more strategic implementation. A summary is provided below.

In-Progress by Building

TINNER RECOMMENDATION	STATUS
Look into third-party plan review services	Met with HGEA to discuss union issues; initial feedback is not positive
Eliminate the need for applicant to come back to permit center to obtain permit placard	Applicants are now able to print their permit after issuance
Eliminate "sessions" in Bluebeam Revu process	Evaluating effect of eliminating "sessions" in Bluebeam Revu

Future Attention

<b>TINNER RECOMMENDATION</b>	<b>COMMENT</b>
Implement a technology fee to pay for enhancements to Energov	County does not presently charge a fee
Investigate increasing plan review fees to industry standard (65% of permit fee)	County presently charges 20% permit fee upfront
Conduct Lean Process Improvement training <a href="https://www.lean.org/">https://www.lean.org/</a> The lean process is a method for creating a more effective business by eliminating wasteful practices and improving efficiency.	Reviewing County permitting process in a structured manner could drive out inefficiency and eliminate non-value-added steps
Provide Public Duty Doctrine training for staff	Noted
Investigate allowing building plans reviewers performing structural review for simple projects	Will consider after assessing Plans Examiner workload once all vacancies are filled (only 4/7 positions are presently filled); currently, Structural Engineer's reviews reduces the workload on Plans Examiners who are primarily focused on life-safety compliance
Investigate allowing building inspectors to perform combination inspections	Requires consultation with HGEA regarding work jurisdiction; Inspector positions currently require Supervisory Electrician Licenses for Electrical Inspectors and Journeyman or Master Plumber Licenses for Plumbing Inspectors
Define by Ordinance what constitutes a complete permit application	Will evaluate need for an Ordinance after the effectiveness of the REVISED Application Checklist is implemented.
Provide support to allow Building Chief and Deputy to participate in the ICC Committee Action Hearings and Annual Business Meetings	Noted
Provide additional GIS integration within EPIC to automatically let applicant know if subject property has restrictions such as flood plain or geologic hazards	Noted as a future enhancement that can be used to determine when Engineering Review will be required for Building Permits

The Building Division is working on a number of approaches to improve permitting. These are summarized below.

<b>ACTION</b>	<b>DESCRIPTION</b>
Communication	Improve public outreach with stakeholders; hold "talk story" sessions with design professionals, drafters, contractors, others; share review checklists; improve permit issue metric and include average duration for permits to be issued

Re-design EPIC Website	Organize and make website user-friendly, including a complete list of forms that are needed in the permitting process; include links to related agencies.
Dedicated IT Support for Energov (staff)	Improve staff efficiency by having a dedicated IT specialist available to help troubleshoot customized automation unique to the Building Division
ICC Training and Certification for Inspectors and Plan Examiners	Create classification of work for ICC Certification that recognizes training and level of skill of Inspectors and Plans Examiners
Staff Vacancies	Develop strategy for hiring and retaining staff; 5-step Plans Examiners for on-the-job training (done); Certification Classification for Inspectors (ongoing).
Reassess Duties for Permit Clerks	Assessed Permit Clerk duties; revising processes for permit application, resubmittal and revisions to ensure that documents are complete and correctly formatted to enable Permit Clerk to maximize their productivity
Staff Meetings	Weekly "Brainstorming" Meetings to identify areas for improvement; action items identified in table and progress tracked.
e-Filing	Organize documentation in shared drive readily accessible to the Building Division; this creates consistency through available information resources and uniform procedures
Utilize filters to identify permits that should be prioritized	Deployed Priority Tiles to identify projects that can be expedited based on the scope of work that is essential to community life and safety; provides for educational needs; and is limited and simple for quick review; Priority Tiles used at permit intake, plan review, and permit out-processing
Revise Permit Application Checklist	Provide more clarity on permit application requirements with weblinks to the appropriate agencies and forms; require the Design Professional to be listed as a Permit Contact; require Design Professional to review and certify the Application Checklist
Develop EPIC "Decision Engine" version of the Application Checklist	User-friendly version of the checklist
Create "Self-Certify" Permit Application	Applicants will have the option bypass the conventional Permit Intake to reduce processing time; if Permit Clerks confirm the permit is complete, then plans will go immediately to Plan Review; if applications are found to be incomplete, then they will be

	rejected (cancelled); there is no fee assessment if the application is rejected; the conventional review by Permit Clerks will still be available where the permit application is "active" while awaiting corrections; once corrections are submitted then applications will await re-review in the queue before progressing
Reject Incomplete Permit Applications	Prohibit applications submitted as "place holders" that then requires Permit Clerks to contact them for missing information
Update Residential Plans Designer Checklist Already Posted on the Website	Update for 2018 International Residential Code (IRC) that applicants can use to create a complete set of plans
Finalize and Post Non-Residential/Commercial Designer Checklist on the Website	Finalize checklist for current Codes that applicants can use to create a complete set of plans
Plan Resubmittals and Revisions Format	Require Corrections Letter for Plan Resubmittals; require Design Professional Narrative for Plan Revisions; require all changes be annotated with the "Cloud and Delta" drafting method to highlight the extent of changes; utilize Bluebeam "compare" feature.
Three-strike Rule	Plan reviewer can mark up to three corrections and then approve, "as noted"; if more than three corrections needed, resubmittal will be required
Encourage Communication between Design Professional and Plans Reviewer during Review	Authorize Plans Examiners to have discussions with Design Professionals when design intent is not clear; annotate plans to document revision: "...per telecon with XX on date" instead of requiring resubmittals.
Consider No Plan Review – "Plans Subject to Field Inspection"	For Residential PV less than 10kW; Electric ONLY less than 200A; Plumbing ONLY less than 4-bathrooms.

Director Lee Lord  
Office of the Mayor  
Hawai'i County, HI

## Report regarding operations within the Building Code Division of the Hawai'i County Public Works Department

**Project scope:** To identify inefficiencies within the building division of the Public Works Department that may lead to delayed intake, processing, and issuance of building and/ or associated construction permits.

**Project limitation:** operations within the fire code division, public works permitting division, planning department and health department are outside of the scope of this report.

**Methodology:** Online research of permitting and legal information relative to building and associated permits as well as face to face interviews with building division permitting staff and a limited number of permit applicants. Interviews with staff were held between October 3, 2022-October 7, 2022. Staff interviews were representatives of permit clerks (permit technicians), inspectors, plans examiners and division managers. Below are general interview questions and generalized responses of each group that was interviewed.

### Permit Clerks:

Q. How do you receive most of you permit applications?

A. Most are received electronically through the EPIC permit system.

Q. I understand that you use Tyler Energov as your permit records system. What does EPIC do that Energov does not do?

A. The permit clerks could not provide a clear answer to the question however it became clear to me that EPIC provide enhanced initial permit application ability for the applicants.

Q. Does EPIC require specific information such as building occupancy, construction type, height, etc. to be input by permit applicant before the application process can continue?

A. No

Q. Does EPIC provide automated geographic information such as whether a property is in a flood hazard zone to the permit applicant?

A. No

Q. It appears the owner declaration form and contractor declaration forms must be submitted as separate documents and are not part of the EPIC or Energov systems. Is that correct?

A. Yes, they are separate documents that must be provided by the permit applicant.

Q. Do you issue very many rooftop solar voltaic building permits and if so, can you tell me how many?

A. Yes, we issue a lot of them, but I can't tell you how many.

Do you require building permits for all rooftop solar installations?

A. Yes

Q. Are simple projects prioritized?

A. To some degree yes but there is no formal procedure for doing so.

Q. May I obtain a copy of your policy and procedure manuals?

A. We don't have policy or procedure manuals.

Q. I understand that Hawai'i state law requires that the county verifies the licenses of each contractor with each permit application. I also understand that the State will provide a list of licensed contractors for use in required contractor verification. Does the County utilize that list or do you perform an online search for contractor information with each permit application.

A. The information is within EPIC but it is not automatically validated. Permit Clerks validate the information prior to permit issuance.

Q. When staff meetings take place is a written meeting agenda distributed to staff?

A. No

Q. Your online checklist shows that once all reviews are approved, the applicant must come to the building division do have a permit placard printed to be posted on the jobsite. What is the purpose of the placard?

A. So that the inspector driving by knows there is a permit for the work being done.

**Plans examiners:**

Q. Do you use Bluebeam Revu to conduct your reviews?

A. Yes

Q. Is Revu integrated with Energov?

A. I don't think so.

Q. How do you know when a new project is ready for review?

A. (A little ambiguous). We are notified by the permit clerks.

Q. Do you prioritize simple projects to get them "out the door" more quickly?

A. Somewhat, yes.

Q. When minor corrections are needed on the plans do you redline them and approve the plans?

A. Sometimes.

Q. When corrective items are noted on plans do you attempt to contact the designer by phone and/ or email or do you always input the corrections into Energov without additional contact attempt methods?

A. Corrections are entered into Energov. We typically do not use additional contact methods.

Q. When are plans sent to the structural engineer for review?

A. When the other plans examiners determine structural review is needed.

Q. Are you familiar with the Public Duty Doctrine?

A. No.

Q. When workloads are overwhelming, do you utilize third party plan review?

A. We've done so on a vey short term basis in the past.

Q. Do you require the industry standard delta and revision cloud when changes are made on plans?

A. No

Q. Do you use the "compare" feature in Bluebeam Revu to identify what changes are made to different iterations of plans?

A. No

Q. Does your division use the "Sessions" feature of Bluebeam Revu?

A. Yes

Q. Do you have an ordinance or policy that defines what a "complete" set of plans is?

A. No

Q. Do you require an engineer or architect to analyze the impact of rooftop solar systems on the

building's roof structure?

A. Yes

**Inspectors:**

Q. Do you require licensed plumbers to perform plumbing inspections?

A. We have dedicated inspectors that perform plumbing inspections.

Q. Does state law require that plumbing inspectors be licensed plumbers?

A. Unsure

Q. Must final plumbing inspections be completed prior to calling for the building final inspection?

A. Yes

Q. Can the general contractor request plumbing inspections?

A. No. Only the plumbing contractor can request plumbing inspections.

Q. When electrical inspections are requested is the general contractor allowed to request the inspection?

A. No. Only the electrical contractor is allowed to request electrical inspections.

Q. Is there a state requirement that electrical inspectors be licensed electricians?

A. We believe that the answer is "yes"

Q. Do you allow building inspectors to perform inspections for minor plumbing and/ or electrical installations?

A. No

Q. When a rooftop solar installation is inspected, does the building inspector go on the roof to check the structural connections?

A. No

Q. When the rooftop solar installation electrical inspection is called for, does the electrical inspector look at the structural connections on the roof?

A. No

Q. Do you allow any level of self-certification for minor maintenance permits such as water heater change-outs?

A. No

**Conclusions:**

Permit processing systems are extremely complex. Without written documentation such as policy/procedure manuals it becomes extremely difficult to keep complex systems organized and predictable for permit staff and permit applicants. The result is inefficiencies, personal preferences, and some level of chaos creeping into the system. These items lead to non-predictability for permit applicants which in turn leads to unnecessary complaints to upper management and elected officials.

The lack of written meeting agendas leads to ineffective use of staff time during staff meetings. If there is no agenda, there should be no meeting.

As you know, there are a significant number of open plan review positions. This is not unique to Hawaii County but rather is an industry-wide concern. It's somewhat worsened by the low rate of pay being offered by Hawaii County. Third-party plan review is a possible solution and seems to be the trend in the industry.

The current plan review fees being charged might make it difficult to retain the services of third-party review. Current building plan review fee is 20% of the building permit fee. Industry standard and the fee called out in in the generic International Building Code (IBC) is 65% of the building permit fee. As you are aware, raising fees brings political implications.

Compartmentalization of duties among inspection staff also leads to inefficiencies as does assignment of virtually all structural plan review being performed by licensed engineering staff in the plan review section. Using licensed engineers to perform structural review projects scoped up to conventionally built single-family houses is extremely unusual in the industry. Finding a third-party plan review firm that would utilize this practice would hover somewhere where the needle is close to "Impossible". There also appears to be an extreme over reliance on internal engineering staff even though the project has been designed by licensed design professions such as architects or engineers. The talents and expertise of internal licensed staff is best reserved for extremely complex structures. This over reliance appears to (at least in part) stem from extreme risk intolerance. Such intolerance can be partially muted with training in the tenants of the Public Duty Doctrine.

Rooftop photovoltaic systems are typically extremely light weight (typically less than 4 PSF) Research and experience in major southwest mainland jurisdictions has demonstrated that there is little benefit in requiring the time and expense of requiring licensed design professionals to design these systems. Washington State as example, specifically exempts systems meeting established criteria from requiring a licensed design professional. It's estimated that well over 95% of rooftop systems fall within the limitations established by Washington State. Several jurisdictions have decided that building permits for these systems provide no benefit other than collection of permit fees so no longer require building permits but rather simply issue an electrical permit and ask the electrical inspector to verify required fire fighter access paths from the ground when they perform the electric inspection.

There are several other areas where staff can be better utilized such as allowing the building inspector to perform plumbing inspections at the same time as the framing inspection for simple structures such as single-family homes.

While there may be some benefit in not allowing the general contractor to call for plumbing or electrical inspections, the benefit is extremely minor but is quite an inconvenience to the permit holder. It is also a procedure I've not seen in my 34-year career.

There are some additional efficiencies that can be made but would require minor changes to the County Code.

Staff members I interviewed were all unaware of what a Lean Process Improvement program is. Lean process improvement program involves a Lean Consultant leading meetings, usually over several days where staff identifies every touch, movement, contact, flow, etc. of the permit application intake through issuance process and documents each (usually by writing each on a sticky note and attaching them to a wall). Each item is then questioned as to the necessity of why the item is being performed. If the item cannot be validated as either necessary or legally mandated, the item is deemed unnecessary and eliminated. The process typically results in a 15%-40% reduction in workload.

It is obvious that a great deal of time and money has been used to implement the Energov and EPIC systems. My limited observation of EPIC indicates to me that the implementation was intended to make

applying for a permit as painless for the applicant as possible and to a great extent looks to have been successful. This is particularly true given the challenges that Energov is well known for. While there are no perfect permit systems in existence, Tyler's Energov is well known in the building permit industry as being particularly problematic. With adequate revenues, the problems eventually always come to a resolution.

I've worked with several jurisdictions that have implemented Energov and one commonality seems to be that the sales team makes promises that the technical installation team can't keep or at least can't keep while staying within the contract budget. Typically, this results in added and unanticipated expenditures after the system goes live. Additionally, there are always things that permit and IT staff find they wished they had done differently. In conversation with building division staff there appears to be some of the same angst in this regard as I've heard from several other jurisdictions.

There is always some level of ongoing customization with any permit system therefore there is always a need for a revenue stream (in addition to annual maintenance charges) to pay for such customization.

It appears EPIC was designed to make permit application as easy as possible for applicants without predefined "you can't go to step B until you complete step A" types of requirements. While on the surface this methodology seems like great customer service, it's counterproductive by putting additional work on the permit clerks so actually results in a delay in permit processing. A better methodology is to utilize drop down pick lists and require applicants to choose the appropriate information from each pick list before they can move on to the next item. Doing so will reduce the workload of the permit clerks and keep the "chess clock" on the applicant's side until the application is completed. If that change is decided to be implemented, it will create a need for significant additional revenue for the vendor.

Another item noted is that there does not appear to be a user-friendly method for applicants to access GIS data via EPIC or Energov. I've heard this complaint from several developers.

The building chief (building official is the position title used in the International Building Code (IBC)) from what I've learned has had no participation in national code development. The same holds true for the assistant building chief. Each year, code change proposals are sent to the appropriate International Code Council (ICC) committee for consideration. The committees meet in the spring where testimony both pro and con are put under consideration and at the end of about a one-week session, the committees will send their recommendations forward for ICC staff to compile.

In the fall of each year, ICC holds their annual business meeting (ABM) where the full membership will listen to testimony both pro and con and then vote whether to accept the committee's recommendations. The ABM's are rotated around major mainland cities each year. These 11-day meetings not only give the building chief knowledge of what code changes will be in the next code cycle but also provides the building chief the knowledge of the reason behind each change. That knowledge gives them the ability to properly interpret the code changes as well as the ability to bring that knowledge back to the jurisdiction and pass it along to building division staff.

While travel around the nation is expensive, it's typically far less expensive than sending multiple staff to mainland training events. The current building chief has never been to one of these events.

**Recommendations:**

- Implement a technology fee to pay for enhancements to Energov. These fees are not unusual (typically around \$25.00 per permit).
- Investigate increasing plan review fees to industry standard (65% of the permit fee).
- Conduct Lean Process Improvement training for all building division staff (<https://www.lean.org/https://www.lean.org/>). This will necessitate hiring a consultant proficient in the Lean process.
- Provide Public Duty Doctrine training for all building division staff. This can usually be facilitated by the jurisdiction's legal staff.
- Investigate allowing building plan reviewers performing structural review for simple projects.
- Investigate allowing building inspectors to perform combination inspections.
- Look into third-party plan review services.
- Define by ordinance what constitutes a complete permit application.
- Assuming that data connectivity is generally available across the jurisdiction, eliminate the need for the permit applicant to come back to the permit center to obtain a permit placard. Instead, provide access to be able to print and post the permit and an inspector to access permit information remotely when they feel necessary.
- Provide budgetary support to allow the building chief and assistant building chief to participate in the ICC Committee Action Hearings (spring meeting) and the ICC Annual Business Meetings (fall).
- Eliminate the use of "Sessions" in the Bluebeam Revu process. The same result can be achieved provided both Hilo and Kona are on the same Local Area network (LAN) without the inordinate amount of work setting up a "session" each review creates. Most jurisdictions where all review staff are on the same LAN have stopped using sessions.
- Provide additional GIS integration within EPIC to automatically let the permit applicant know if the subject property has restrictions such as flood plain or geologic hazards.

# CONTRACT ROUTING FORM

Date: June 28, 2022  
 Department: Office of the Mayor  
 Contact: Kaycie Saiki 808-961-8211  
(Name) (Telephone Extension)

Name of Contractor: James E. Tinner dba Code Support Group ✓  
(If none, complete Form V-8 and forward to Accounts for assignment of vendor number before processing contract)

Vendor Number: 80231

Purpose /Title of Contract: Electronic Permitting Process - Consultant Services

Employment  Inter-Government

PRC Approval Date (Employment): \_\_\_\_\_  ERC Approval Date (If Applicable): \_\_\_\_\_

Account No. to Charge: 010.111.5111.02.115 ✓ Fiscal Year: 2021-22 ✓

Amount of Contract: \$16,000.00 FRESH Req. No.: my.00458

Procurement Approval: OK ✓ Contract No.: C.009953 ✓ 6/29/22 JW

For contracts requiring multi-year commitments, acceptance of federal funds or funds in a future FY:

Council Resolution Number: \_\_\_\_\_ Date Approved: \_\_\_\_\_  
(Attach copy of resolution)

RECEIVED

JUN 30 2022  
MAYOR - HILO

Route to:  **Contractor** *(Review and sign contract before notary public)*  
 Date completed & forwarded to next: 06/27/22

**Department Head(s)** *(Signature(s) recommending approval)*  
 Date completed & forwarded to next: 06/28/22

**Human Resources** *(Director of Human Resources' certification, required for a contract for services which are exempt pursuant to HRS §76-77(7), (8) or (12) only. Director of Human Resources review required for requests for exemption under HRS §76-77(16))*  
 Date completed & forwarded to next: \_\_\_\_\_

WE, JUN 29 2022 AM 11:10

**Purchasing Agent** *(Procurement review and reporting)*  
 Date completed & forwarded to next: 6/29/22

**Controller/Director of Finance** *(Certification of funds)*  
 Date completed & forwarded to next: JUN 29 2022

**Corporation Counsel** *(Approve as to form and legality)*  
 Date completed & forwarded to next: 6/30/22

**Mayor** *(Review, notarized signature and date)*  
 Date completed & returned to originating Dept: 6/30/22

**RETURN TO DEPARTMENT REQUESTING CERTIFICATION**  
 for issuance of notice to proceed and distribution of contract copies to affected parties and Controller

**CONTRACT AGREEMENT FOR SERVICES**

THIS CONTRACT AGREEMENT FOR SERVICES (hereinafter the "AGREEMENT") made and entered into this 30<sup>th</sup> day of June, 2022 by and between the COUNTY OF HAWAII, a municipal corporation of the State of Hawaii, with its principal place of business at 25 Aupuni Street, Hilo, Hawaii 96720 (hereinafter the "COUNTY"), and JAMES E. TINNER dba CODE SUPPORT GROUP, a sole proprietorship, with his principal place of business at 2307 W. Coneflower Street, Nampa, Idaho 83686 (hereinafter the "CONTRACTOR").

WITNESSETH:

WHEREAS, the Office of Management (hereinafter the "DEPARTMENT"), under the supervision of the Managing Director (hereinafter "DIRECTOR") seeks to assess the County of Hawaii's building permit process; and;

WHEREAS, CONTRACTOR has unique and specialized expertise in assessing and collaborating with governments to improve efficiencies in permitting;

WHEREAS, for the above stated reasons this sole source contract is in the best interest of the COUNTY of Hawaii pursuant to Chapter 103D, Hawaii Revised Statutes ("HRS"), specifically HRS § 103D-306; and

NOW, THEREFORE, the COUNTY and the CONTRACTOR, in consideration of the mutual promises hereinafter, set forth hereby agree as follows:

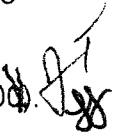
1. EMPLOYMENT OF CONSULTANT. The COUNTY hereby agrees to engage CONTRACTOR and CONTRACTOR hereby agrees to perform the services hereinafter set forth.
2. BEST EFFORTS. CONTRACTOR agrees that it will, at all times, faithfully,

industriously, and to the best of his ability, experience, and talents, perform all of the duties that may be required of it pursuant to the express and implicit terms hereof and to the reasonable satisfaction of the COUNTY.

3. SCOPE OF SERVICES. The CONTRACTOR shall do, perform, and carry out in a satisfactory and proper manner, as determined by the COUNTY or as may be modified by written agreement between the COUNTY and CONTRACTOR an analysis of current permitting processes in an effort to reduce application approval times, identify redundancies and perform an assessment of workflow within the Building Division.

4. TERM. CONTRACTOR shall commence work within thirty days of the execution of this AGREEMENT and shall complete all work within Ninety (90) days of commencement unless otherwise agreed in writing by the parties.

5. COMPENSATION. The COUNTY shall compensate CONTRACTOR at the rate of ONE HUNDRED TWENTY-FIVE AND NO/100 DOLLARS (\$125.00) per hour, inclusive of taxes, not to exceed TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00). In addition, the COUNTY shall pay CONTRACTOR up to SIX THOUSAND AND NO/100 DOLLARS (\$6,000.00) in travel expenses.



Elizabeth Strain  
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6. EMPLOYMENT STATUS. It is agreed and understood that CONTRACTOR is an independent contractor and shall not be entitled to the benefits and privileges of an employee of the COUNTY under the COUNTY'S Civil Service System. It is further agreed and understood that CONTRACTOR shall be excluded from participating in any fringe benefits resulting from work performed under this AGREEMENT.

7. GENERAL TERMS & CONDITIONS. The CONTRACTOR shall perform the services required under this AGREEMENT in accordance with the General Terms and Conditions for Goods and Services, dated July 1, 1994, attached hereto and incorporated herein by reference as Exhibit "A".

8. PROPERTY OF THE COUNTY. Any data, reports or conclusions generated by CONTRACTOR shall become the property of the COUNTY.

9. METHOD OF PAYMENT. The COUNTY shall make payment available to the CONTRACTOR upon the monthly submission of an invoice in a form and content acceptable to the COUNTY.

10. PURCHASE OF ALOCHOL PROHIBITED: Any funds contributed by the COUNTY shall not be used for the purchase of alcohol for consumption. No exceptions apply.

11. TAX CLEARANCE AND VENDOR COMPLIANCE: CONTRACTOR shall, throughout the term of the AGREEMENT including through final payment, acceptable verification through Hawai'i Compliance Express (HCE). Vendors wishing to do business with the State of County must register in HCE and be in compliance.

HCE is a one-stop online program where vendors verify and manage their compliance. Once a vendor is registered, HCE provides the following proof of compliance/compliance documentation:

- a. Certificate of Good Standing from the Department of Commerce and Consumer Affairs Business Registration Division.
- b. Tax Clearances (federal and state) from the Department of Taxation.
- c. Compliance with HRS Chapter 383 Hawai'i Employment Security Law (Unemployment Insurance), 386 Worker's Compensation Law, 392 Temporary Disability Insurance and 393 Prepaid Healthcare Act, from the Department of Labor and Industrial Relations.

There is a nominal fee to subscribe to HCE. Please note that it may take two or more weeks to establish a vendor account in HCE. For more information and to register, see <http://vendors.eHawaii.gov>

12. CONTRACTOR REPRESENTATIONS AND WARRANTIES. The CONTRACTOR represents and warrants he/it is in compliance with the following conditions and shall remain in compliance throughout the duration of this contract:

- a. CONTRACTOR employs and appoints persons on the basis of merit and ability.
- b. CONTRACTOR agrees not to use any public funds for purposes of entertainment or perquisites not previously approved by the COUNTY.
- c. CONTRACTOR shall comply with such other requirements as the DIRECTOR may prescribe to ensure adherence by the CONTRACTOR with Federal, State, and County laws, and established standards for fiscal and program management.
- d. CONTRACTOR has bylaws or policies which describe the manner in which business is conducted, including management, audit and fiscal policies and procedures, policies on nepotism, and policies on management of potential conflict of interest.
- e. CONTRACTOR has at least one year's experience with the service or activity for which the appropriation is sought or can otherwise demonstrate to the satisfaction of the COUNTY sufficient expertise to successfully carry out the service or activity.
- f. CONTRACTOR shall comply with such other requirements as the COUNTY Director of Finance may prescribe to ensure adherence by the Contractor with Federal, State, and COUNTY laws, and established standards for fiscal and program management.
- g. CONTRACTOR shall follow generally accepted accounting procedures and practices and shall maintain books, record, documents, and other evidence which sufficiently and properly account of the expenditure of COUNTY funds.
- h. CONTRACTOR agrees to allow the COUNTY's designee, which may include the finance director, committees of the council and their staffs, and the legislative auditor access to records, reports,

files, and other related documents in order that the program, management, and fiscal practices of the nonprofit organization may be monitored and evaluated to assure the proper and effective expenditure of public funds for this program.

- i. CONTRACTOR agrees that the COUNTY expending agency, director of finance, or Hawai'i COUNTY Council may request periodic written reports on the use of COUNTY funds.

13. REPORTS AND RECORDS. The CONTRACTOR shall prepare monthly reports to the DEPARTMENT. The monthly reports and supporting data shall be the property of the COUNTY.

14. MODIFICATIONS OF AGREEMENT. The COUNTY may at any time make modifications to this AGREEMENT, which shall be made by a written supplemental agreement. Modifications involving no reduction or increase in compensation may be made by written order of the DIRECTOR. All modifications requested by the CONTRACTOR shall be in writing.

15. DELAY IN PERFORMANCE OF CONTRACT. If any delay in the performance under this AGREEMENT occurs as a result of unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not limited to, acts of God, acts of the public enemy, acts of the COUNTY with respect to this AGREEMENT, acts of another contractor in the performance of a contract with the COUNTY, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the CONTRACTOR and such subcontractors or suppliers, then the CONTRACTOR may be granted an extension of the time for performance corresponding to the delay. No extension of time, however, shall be granted unless a written application therefore stating in detail the cause or causes of delay is filed by the CONTRACTOR with the DIRECTOR within ten (10) calendar days after the

commencement of the delay. No extension of time shall be deemed a waiver of the right of the COUNTY to require the completion of the services under this AGREEMENT within the time required herein as so extended by the specific terms of such extension, nor a waiver of right to terminate this AGREEMENT for any other or additional delay not covered by the specific terms of such extension.

16. ABANDONMENT OF SERVICES, DEATH OR DISABILITY OF CONTRACTOR. In the event the COUNTY terminates this AGREEMENT because it wishes to abandon, defer, restudy or revise the program, or in the event the CONTRACTOR, in the case of an individual, dies or becomes physically or mentally disabled, the CONTRACTOR or the CONTRACTOR's estate shall be compensated in the same proportion of the compensation under this AGREEMENT as the services performed bear to the services to be performed under this AGREEMENT.

17. RIGHT OF THE COUNTY TO TERMINATE. The COUNTY shall have the right to suspend performance under this AGREEMENT or terminate this AGREEMENT in whole or in part at any time by written notice to the CONTRACTOR. If the termination is for reasons other than default of the CONTRACTOR as provided in the paragraph herein entitled "TERMINATION DUE TO CONTRACTOR'S DEFAULT," the CONTRACTOR shall be reasonably compensated as determined by the COUNTY for satisfactory services rendered under this AGREEMENT up to the time of termination.

18. TERMINATION DUE TO CONTRACTOR'S DEFAULT. The COUNTY shall have the right to terminate this AGREEMENT, if the CONTRACTOR:

- a. Fails to begin work under this Agreement at the required times; or
- b. Unnecessarily delays the performance of this AGREEMENT or any part thereof; or
- c. Fails to perform this AGREEMENT in accordance with specified times; or
- d. Fails to perform this AGREEMENT in accordance with directions from the DIRECTOR; or

- e. Discontinues performance of this AGREEMENT; or
- f. Becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency; or
- g. Fails to pay for all labor, tools, material and/or equipment; or
- h. Violates or fails to comply with any of the terms, covenants and conditions of this AGREEMENT.

19. TERMINATION FOR NECESSITY OR CONVENIENCE. If the COUNTY determines, in its sole discretion, that it is necessary or convenient, this Contract may be terminated in whole or in part at the option of the COUNTY upon ten (10) working days written notice to the CONTRACTOR. If the COUNTY elects to terminate under this paragraph, the CONTRACTOR shall be entitled to reasonable payment as determined by the COUNTY for satisfactory services rendered under this AGREEMENT up to the time of termination. If the COUNTY elects to terminate under this section, the CONTRACTOR shall cooperate with the COUNTY to affect an orderly transition of services.

20. AUTHORITY TO WITHHOLD MONEY DUE OR PAYABLE. The COUNTY may withhold such amounts from the money due or to become payable under this AGREEMENT to the CONTRACTOR as may be necessary to protect the COUNTY against liability or to satisfy the obligations of the CONTRACTOR to the COUNTY.

21. INDEMNITY. The CONTRACTOR shall perform this AGREEMENT as an independent CONTRACTOR and shall indemnify and save the COUNTY and its officers and employees harmless from any and all deaths, injuries, losses and damages to persons or property, and any and all claims, demands, suits, action and liability therefore, caused by error, omissions or negligence in the performance of this AGREEMENT by the CONTRACTOR or the CONTRACTOR's subcontractors, agents and/or employees.

22. AUTHORITY OF THE DIRECTOR. The DIRECTOR shall decide any question or dispute concerning any provision of this AGREEMENT, which may arise during its performance. The DIRECTOR's decision shall be final and binding upon all parties unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence, provided that nothing herein shall be construed as making final and binding any decision of the DIRECTOR on a question of law. Pending final decision of any dispute or question, the CONTRACTOR shall proceed diligently with the performance under this AGREEMENT in accordance with the decision of the DIRECTOR.

23. LAWS AND REGULATIONS. The CONTRACTOR shall be responsible for being fully informed of all county, state and federal laws, ordinances, codes, rules and regulations, which in any manner may affect this Agreement and the performance thereof, including but not limited to:

- a) All sections of the Hawai'i County Charter and Hawai'i County Code;
- b) Chapter 103, Hawai'i Revised Statutes, as amended, relating to expenditure of public money;
- c) Chapter 378, Hawai'i Revised Statutes, as amended, relating to fair employment practices;
- d) Chapter 489, Hawai'i Revised Statutes, as amended, relating to discrimination in public accommodations;
- e) Chapter 396, Hawai'i Revised Statutes, as amended, relating to occupational safety and health; and
- f) Chapter 386, Hawai'i Revised Statutes, as amended, relating to workers' compensation law; and
- g) Nondiscrimination Clause: During the performance of this contract, the contractor agrees as follows:
  - i. The Contractor shall 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.

- ii. The Contractor shall not discriminate against any employee or applicant for employment because of sex, pregnancy, race, ancestry, national origin, religion, color, disability, genetic information, age, marital status (including civil unions), military status, veteran's status, sexual orientation, gender identity, gender expression, lactation, domestic or sexual violence victim status (including those who have a minor child who is a victim of domestic or sexual violence), arrest and court record, citizenship, or any other classification protected by state or federal law. The 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, genetic information, age, marital status (including civil unions), military status, veteran's status, sexual orientation, gender identity, gender expression, lactation, domestic or sexual violence victim status (including those who have a minor child who is a victim of domestic or sexual violence), 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. The Contractor agrees to post in conspicuous places notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

- iii. The Contractor shall 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, genetic information, age, marital status (including civil unions), military status, veteran's status, sexual orientation, gender identity, gender expression, lactation, domestic or sexual violence victim status (including those who have a minor child who is a victim of domestic or sexual violence), arrest and court record, citizenship, or any other classification protected by state or federal law. 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.
- iv. If the 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 Agreement with the COUNTY to be terminated or suspended pursuant to Section 15 above regarding Termination Due to Contractor's Default.
- v. 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, genetic information, age, marital status (including civil unions), military status, veteran's status, sexual orientation, gender identity, gender expression, lactation, domestic or sexual violence victim status (including those who have a minor child who is a victim of domestic or sexual violence), 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 provisions stated herein. The Contractor shall comply with all such present COUNTY, 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 Director.

24. REMEDIES NOT EXCLUSIVE. The express provision herein of certain measures that may be exercised by the COUNTY for its protection shall not be construed to preclude the COUNTY from exercising any other or further legal or equitable right to protect its interests.

25. FORUM SELECTION. No action or proceeding involving this Agreement shall be commenced by either party except in the Circuit or District Courts of the Third Circuit, COUNTY of Hawai'i, State of Hawai'i, and no action commenced in such court shall be removed or transferred to any other state or federal court.

26. CONTRACTOR'S FAILURE TO COMPLY WITH ALL REQUIREMENTS OF CONTRACTUAL CONDITIONS. The CONTRACTOR's failure to comply with any

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and all of the conditions of this Agreement referenced herein and made a part hereof, may result in the denial or rejection of future funding to the CONTRACTOR from the COUNTY.

27. 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 this AGREEMENT.

28. NON-DEBARMENT REQUIREMENTS. The CONTRACTOR certifies, and, if the COUNTY, State of Hawai'i or the United States Federal Government requires, shall further certify that they were not debarred by the State of Hawai'i or the United States Federal Government at the time of submitting a proposal and hereby certifies and will further certify that the CONTRACTOR shall immediately notify the COUNTY should their debarment status change anytime during the term of the AGREEMENT.

29. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS PROHIBITED. CONTRACTOR agrees to comply with HRS Section 11-355, which states that campaign contributions are prohibited from a state and county government CONTRACTOR during the term of the contract if the CONTRACTOR is paid with funds appropriated by the legislative body between the execution of the AGREEMENT through its completion.

30. CODE OF ETHICS. CONTRACTOR has complied with Hawai'i County Code §2-83(c), if applicable. CONTRACTOR understands and agrees that this contract shall be void if an officer or employee fails to comply with the disclosure requirements set forth in §2-83(c), or if the Board of Ethics finds there is a conflict of interest or any preferential treatment involved.

31. GOVERNING LAW. The validity of this AGREEMENT and any of its terms or provisions, as well as the rights and duties of the parties to this AGREEMENT,

shall be governed by the laws of the State of Hawai'i, and any claim shall be brought in the State of Hawai'i Circuit Court of the Third Circuit.

32. No Assignment. CONTRACTOR hired as the result of his unique and specialized skills. He may not assign this AGREEMENT absent the consent of the COUNTY. The COUNTY may withhold consent for any or no reason.

33. ENTIRE CONTRACT. This AGREEMENT sets forth all of the contracts, conditions, understandings, promises, warranties, and representations between the COUNTY and the CONTRACTOR relative to this AGREEMENT. This AGREEMENT supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no contracts, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the COUNTY and the CONTRACTOR other than as set forth or referred to herein.

34. SEVERABILITY. In the event any provisions of this AGREEMENT is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this AGREEMENT.

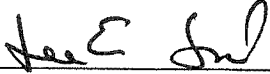
35. WAIVER. The failure of the COUNTY to insist upon the strict compliance with any term, provision, or condition of this AGREEMENT shall not constitute or be deemed to constitute a waiver or relinquishment of the COUNTY's right to enforce the same in accordance with this AGREEMENT.

36. COUNTERPARTS. This AGREEMENT may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one instrument.

37. EXEMPTION. This AGREEMENT is exempt from Chapter 103D, Hawai'i Revised Statutes pursuant to 103D-306.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT effective as of the date first above written.

COUNTY OF HAWAII



BY: <sup>For</sup>  
Mayor  
County of Hawaii

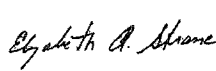
Date: 6/30/22



JAMES E. TINNER  
CONTRACTOR

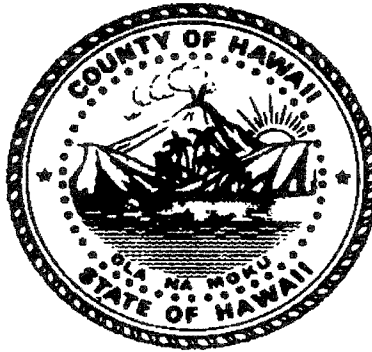
Date: 6-27-22

APPROVED AS TO FORM  
LEGALITY:

  
Elizabeth Strance  
2022.06.30 11:39:45  
-10'00'

ELIZABETH A. STRANCE  
Corporation Counsel

Date: JUN 30 2022



**COUNTY OF HAWAII**  
**CERTIFICATION OF AVAILABILITY OF FUNDS**

I hereby certify that on the date of filing of this contract with the Director of Finance, there remains an unexpended amount of

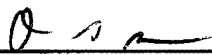
**\$ 16,000.00 in 010.111.5111.02.115**

sufficient to cover the obligation of the County of Hawaii under this contract in fiscal year 2021-2022.

**Contract Title: Electronic Permitting Process - Consultant Services**

**Vendor: James E. Tinner dba Code Support Group**

**Contract No: C.009953**

  
\_\_\_\_\_  
Director of Finance  
Date: June 29, 2022

COUNTY OF HAWAII  
DEPARTMENT OF FINANCE

GENERAL TERMS AND CONDITIONS  
FOR GOODS AND SERVICES

July 1, 1994

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## SECTION 1 - DEFINITIONS OF TERMS

Terms as used in these General Terms and Conditions, unless the context requires otherwise, shall have the following meaning:

### 1.1 BID

Bid means any bid submitted in competitive sealed bidding or in the second phase of multi-step bidding.

### 1.2 BID OR PROPOSAL FORM

The prescribed form or format which a offerer uses to submit his offer.

### 1.3 BID OR PROPOSAL GUARANTY OR SECURITY

The security when required, furnished by an offerer with his offer to ensure that the offerer will enter into the contract with the County of Hawaii and execute the required contract and payment bonds covering the work contemplated, if his offer is accepted.

### 1.4 CHANGE ORDER

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

### 1.5 CONTRACT

Contract means the combination of the solicitation, including the instructions to offerors, the specifications or 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.

### 1.6 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.

### 1.7 CONTRACT MODIFICATION

Contract modification means 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.

### 1.8 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 Hawaii, and acting directly or through his, their or its agents, employees or sub-contractors.

### 1.9 DAYS

Days means calendar days unless otherwise specified.

### 1.10 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 of Hawaii to enter into and administer contracts.

### 1.11 OFFER

An offer means a bid or proposal as defined in sections 1.1 and 1.12, in response to any solicitation.

#### 1.12 OFFEROR

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 as defined in 1.17.

#### 1.13 PROCUREMENT OFFICER

Procurement officer means 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.

#### 1.14 PRIORITY-LISTED OFFERORS

Priority-listed offerors are the three or more responsive and responsible offerors who have submitted the highest rank proposals.

#### 1.15 PROPOSAL

A proposal means any offer submitted in response to any solicitation, except a bid as defined in section 1.1.

#### 1.16 PURCHASING AGENCY

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

#### 1.17 SOLICITATION

Solicitation means 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 for the purpose of soliciting bids or proposals to perform a County of Hawaii contract.

#### 1.18 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. Should any special provisions conflict with these general terms and conditions, said Special Provisions shall govern.

#### 1.19 SPECIFICATIONS

A description of what the purchasing agency requires and, consequently, what an offeror must offer to be considered for award.

#### 1.20 COUNTY OF HAWAII

County of Hawaii means 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 of Hawaii.

#### 1.21 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.

## 1.22 WORK

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

## SECTION 2 - OFFER REQUIREMENTS AND CONDITIONS

### 2.1 COMPETENCY OF OFFEROR

Prospective offeror must be capable of performing the work for which offers are being called. 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 of Hawaii. 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 will be considered non-responsive. All answers to such questions will be handled by the purchasing agency on a confidential basis and will be returned after they have served their purpose.

The purchasing agency also 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.

### 2.2 SOLICITATION FORMS

Prospective offerors will be furnished with solicitation forms which may include but not be 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.

The 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 EXAMINATION OF GENERAL TERMS AND CONDITIONS, SPECIFICATIONS, SITE OF WORK, ETC.

The offeror shall carefully examine the site of the contemplated work, the solicitation, general terms and conditions, specifications, special provisions, amendments, required contract and bond forms, etc. before submitting offers. 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 and with the requirements of the proposal, general terms and conditions, specifications, supplemental specifications, special provisions, contract and bonds when required.

No extra compensation will be given by reason of the contractor's misunderstanding or lack of knowledge of the requirements of the work to be accomplished or the conditions to be encountered in performing the work.

### 2.4 ADDENDA AND INTERPRETATIONS

Discrepancies, omissions or doubts as to the meaning of general terms and conditions, specifications or special provisions should be communicated in writing to the procurement officer and must be received by the purchasing agency no later than five (5) calendar days prior to the date fixed for opening. Any interpretation, if made, and any supplemental instructions will be in form of written addenda to the solicitation, which will be mailed, faxed, or made available for pick up by all prospective offerors, prior to the date fixed for the opening of offers. It shall be presumed that any addenda or interpretations so issued have been received by an offeror and such addenda or interpretations shall become a part of the contract documents.

## 2.5 PREPARATION OF OFFER

Proposals submitted in response to request for proposals (RFP) shall be in the format prescribed by the RFP.

The bids submitted in response to an invitation for bids (IFB) must be prepared in ink or typed on the form furnished by the purchasing agency or on an exact copy thereof in full accordance with the instructions given. For each item, the offeror shall specify the unit and total price in figures in the columns provided for that purpose and, if required, the total sum of all items being offered.

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 therefor shall be governed by the special provisions.

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.

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.

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

Offers submitted in response to an IFB or RFP shall be signed in ink in the space provided on the bid or proposal page 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 offerors behalf.

## 2.6 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, 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 bond in a form satisfactory to the County of Hawaii underwritten by a company licensed to issue bonds in this State; legal tender; or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, 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. 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, provided however, if the required security or bond amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions, 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 section 3-122-223, HAR.

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

All offerors for service contracts shall comply with section 103-55, Hawaii Revised Statutes, which provides as follows:

Wages, hours, and working conditions of employees of contractors supplying services. Before any prospective offeror is entitled to submit any offer for the performance of any contract to supply services in excess of \$5,000 to any governmental agency, offer shall certify that the services to be performed will be performed under the following conditions:

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.

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

No contract to perform services for any governmental contracting agency in excess of \$5,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of the contract to perform services shall result in cancellation of the contract.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of \$5,000 to enforce this section.

This section shall apply to all contracts to perform services in excess of \$5,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (16) of section 76-16, HRS.
- (5) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- (6) Contracts with nonprofit institutions.

#### 2.8 PRE-OPENING MODIFICATION OR WITHDRAWAL OF OFFERS

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

Withdrawal of offers: a written notice received in the office designated in the solicitation; a written notice faxed to the office designated in the solicitation; or a telegraphic message received by telephone by the office designated in the solicitation from the receiving telegraph company office, provided the telegraph company confirms the telephone message by sending a written copy of the telegram showing that the message was received at the telegraph company office prior to the time and date set for opening.

Modification of offers: a written notice received in the office designated in the solicitation stating that a modification to the offer is submitted and accompanied the actual modification(s) securely sealed in a separate envelope or container.

#### 2.9 RECEIPT, OPENING, AND RECORDING OF BIDS

Upon its receipt, each bid and modification(s) shall be time-stamped but not opened, and stored in a secure place by the procurement officer until the time and date set for bid opening. Copies of bids transmitted via facsimile machine shall not be acceptable, except as provided for in the Special Provisions.

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 IFB. The name of each bidder, the bid price(s), and such other information as is deemed appropriate by the 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.

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.

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 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 attorney general for confidentiality. If the attorney general 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 chapter 3-126.

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

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

Bids shall be unconditionally accepted without alteration or correction, except as allowed in sections 2.11 and 2.12.

#### 2.10 RECEIPT AND REGISTRATION OF PROPOSALS

Proposals and modifications shall be time-stamped upon receipt and held in a secure place by the 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 of Hawaii personnel having legitimate interest in them.

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.

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.

Proposals of the offeror(s) shall be open to public inspection after award of the contract as provided in section 3-122-55.

#### 2.11 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 a 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 procurement activity. 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 procurement activity 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.

## 2.12 MISTAKES IN BIDS

(A) A bidder may correct a mistake in bid discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in section 2.8.

(B) Correction or withdrawal of a bid after the time and date set for bid opening because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent it is not contrary to the interest of the governmental agency or the fair treatment of other bidders.

(C) When, after bid opening but before award, the procurement officer knows or has reason to conclude that a mistake has been made, including obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids is submitted, such officer should request the bidder to confirm the bid, and if the bidder alleges mistake, the bid may be corrected or withdrawn by the bidder if the conditions under paragraphs (D) and (E) of this section are met and if the mistake is a minor informality which is a matter of form rather than substance evident from the bid document, or an insignificant mistake that can be waived by the procurement officer or corrected by the bidder without prejudice to other bidders depending on which is in the best interest of the governmental jurisdiction soliciting the bid; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. Examples include the failure of a bidder to: return the number of signed bids required by the IFB to sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound; or to acknowledge receipt of an amendment to the IFB (if such acknowledgement is required by the IFB) but only if it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or the amendment involved had a negligible effect on price, quantity, quality, or delivery.

If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of such mistakes include: typographical errors; errors in extending unit prices; transposition errors; and arithmetical errors. In the event of a discrepancy between unit bid prices and extensions, the unit price shall govern. In case of error in addition, the sum of the total amount offered for each item added shall govern.

A bidder may be permitted to withdraw a low bid if a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

(D) A bidder may not correct a mistake in bid discovered after award of the contract except where the chief procurement officer or the head of the purchasing agency makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

(E) When a bid is corrected or withdrawn, or correction or withdrawal is denied, under (C) or (D), the chief procurement officer or the head of a purchasing agency shall prepare a written determination showing that the relief was granted or denied in accordance with this subchapter, except that the procurement officer shall prepare the determination required under paragraph (1) of subsection (C).

## 2.13 MISTAKES IN PROPOSALS

Mistakes shall not be corrected after award of contract.

When the procurement officer knows or has reason to conclude before award that a mistake has been made, the 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.

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.

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.

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.

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 procurement officer may waive such irregularities or allow an offeror to correct them if either is in the best interest of the County of Hawaii. 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.

#### 2.14 OFFER INSPECTION

Offers to competitive sealed bids may be inspected only as provided for in Section 2.9, above, and after award of contract. During the evaluation and award recommendation period, offers will not be available for inspection. For the competitive sealed proposals the proposals shall be made available for public inspection after contract award.

#### 2.15 DISQUALIFICATION OF OFFERORS

An offeror shall be disqualified and his offer automatically rejected for any one or more of the following reasons: 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; offeror's lack of responsibility and cooperation as shown by past work or services; offeror's being in arrears on existing contracts with the County of Hawaii or having defaulted on previous contracts; offeror's lack of proper equipment and/or sufficient experience to perform the work contemplated; offeror does not possess proper license to cover the type of work contemplated, if required; offeror's delivery of the offer after the deadline specified in the public notice calling for offers, or as amended, except as allowed in Section 3-122-29 (1), HAR or offeror's failure to pay, or satisfactorily settle, all bills overdue for labor and material on former County of Hawaii contracts at the time of issuance of solicitation.

#### 2.16 STANDARDS OF CONDUCT

Section 84-15, HRS, provides as follows:

(a) An agency of the County of Hawaii shall not enter into any contract with a legislator or an employee or with a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract is made after public notice and competitive bidding or proposals.

(b) An agency of the County of Hawaii shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in County office or employment in the matter with which the contract is directly concerned.

(c) This section shall not apply to a personal contract of employment with the County.

All offerors should be certain that their bids are not in violation of this law. The submittal form states that by submitting this offer, offeror certifies that his offer does not pose a conflict with section 84-15, HRS. Contracts awarded shall be void if there is a violation of section 84-15, HRS.

## 2.17 IRREGULAR OFFERS

Offers will be considered irregular and shall be rejected for the following reasons including but not limited to the following: if the offer is unsigned by the offeror; 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; if the required offer guaranty is not in accordance with Section 2.6 of these general terms and conditions; if the offeror or surety fails to sign the surety bond submitted as offer guaranty; if offeror fails to use the surety bond form furnished by the County of Hawaii or identical wording contained in the said form when submitting a surety bond as proposal guaranty; 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.

## SECTION 3 - EVALUATION, AWARD AND EXECUTION OF CONTRACT

### 3.1 EVALUATION

#### A. HAWAII EXCISE AND USE TAXES

Section 103-53.5, HRS, provides as follows:

Where the bidder or vendor is an out-of-state vendor not doing business in the State or is a person exempted from paying the applicable general excise tax, the package bid or purchase price, for the purpose of determining the lowest price bid, shall be increased by the applicable retail rate of general excise tax and the applicable use tax. The lowest responsible bidder, taking into consideration the above increases, shall be awarded the contract, but the contract amount of any contract awarded shall be the amount of the bid offered and shall not include the amount of the increases.

To facilitate compliance with this requirement, each bidder possessing a Hawaii I.D. number for General Excise Tax License shall enter it in the space provided, thereby attesting that he is doing business in the State and that he will pay such taxes on all sales made to the County of Hawaii. Except as provided in the Special Provisions, any bidder who cannot furnish a valid Hawaii General Excise Tax License number in the space provided will be considered as not doing business in the State and his bid will be evaluated accordingly.

#### B. PREFERENCE FOR HAWAII PRODUCTS

Section 103D-1002, HRS, provides as follows:

Hawaii products. In any expenditure of public funds, a purchasing agency shall review all purchase specifications in a bid or proposal for purchase from the Hawaii products list where such products are available, provided that the products: Meet the minimum specifications and the selling price f.o.b. jobsite; unloaded including applicable general excise tax and use tax does not exceed the lowest delivered price in Hawaii f.o.b. jobsite; unloaded including applicable general excise tax and use tax of a similar non-Hawaii product by more than: three per cent, where Class I Hawaii products are involved; five per cent where Class II Hawaii products are involved; or ten per cent where Class III Hawaii products are involved.

Where offers contain both Hawaii and non-Hawaii products, then for the purpose of selecting the lowest offer or purchase price only, the price offered for a non-Hawaii product item shall be increased

by adding thereto three per cent, five per cent or ten per cent where similar Class I, Class II or Class III Hawaii product items have been offered by another party pursuant to the preferences stated above. The lowest total offer, taking into consideration the above preferences, shall be awarded the contract unless the offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the price offered, exclusive of such preferences.

Any person desiring a preference pursuant to this subchapter, must have the product(s) qualified and registered on the Hawaii products list. The responsibility for qualification shall rest upon the person desiring the preference. The product(s) shall be found qualified and on the Hawaii products list before a preference may be granted. Persons desiring to qualify their product(s) shall complete according to instructions and file with the administrator, the "Application for Hawaii Products Preference (7/01/94)" as shown at the end of this subchapter and provide all additional information required by the administrator.

C. PRINTING PREFERENCE

Subchapter 2, chapter 124, HAR, provides that:

All printing, binding, and stationery work for the County of Hawaii, or other political subdivision thereof shall be performed within the State, including all preparatory work, presswork, bindery work, and any other production-related work, and all requests for offers or contracts for such work shall so stipulate; provided that whenever it is established that any such work cannot be performed within the State or that the lowest price for which such work can be procured within the State exceeds the bid or charge of an out-of-state manufacturer of such item by fifteen per cent, the work or any part thereof so affected may be performed outside the State.

No payment shall be made by the County of Hawaii, or other political subdivision thereof for printing, binding, or stationery work unless it appears that the work was done within the State or was authorized to be done outside the State pursuant to this section. In addition, any manufacturer violating a stipulation in a offer or contract that all work will be performed within the State shall be subject to a civil penalty in an amount not to exceed the offer or contract price to be collected by a civil action filed by the attorney general on behalf of the County of Hawaii.

D. RECIPROCAL PREFERENCE

Subchapter 3, chapter 124, HAR, provides that:

To ensure fair and open competition for Hawaii businesses engaged in contracting with other states, the chief procurement officer may impose a reciprocal preference against bidders from those states which apply preferences. The amount of the reciprocal preference shall be equal to the amount by which the non-resident preference exceeds any preference applied by this State.

In determining whether a bidder qualifies as a resident offeror, the definition used by the other state in applying a preference shall apply.

This section shall not apply to any transaction if the provisions of the section conflict with any federal laws.

E. RECYCLED PRODUCTS PREFERENCE

Subchapter 4, chapter 3-124, HAR, provides that:

Solicitations issued by a governmental agency pursuant to section 103D-301, HRS, and consistent with section 3-122-21 HAR, shall contain a notice stating that a price preference will be given to recycled products. This price preference will be at least five per cent of the bid price, and will be used for bid evaluation, as specified in section 3-122-33, HAR.

When a purchase specifies recycled products only or when recycled products only are offered, the price preference shall not apply.

Offerors requesting a preference shall submit a completed certification form, as required by section 3-124-23 HAR, with each offer. Previous certifications shall not apply unless allowed by the solicitation.

All governmental agencies issuing solicitations shall provide an appropriate space for offeror to indicate whether a recycled or a non-recycled product is to be used or supplied and to list the prices of the recycled or non-recycled products or both being offered.

The preference shall be separate from any other preference allowed by statute.

#### F. LOW TIE BIDS

Subchapter 5, chapter 3-122, HAR, provides that:

Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the invitation for bids.

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:

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;

Where identical low bids include the cost of delivery, award the contract to the tie bidder farthest from the point of delivery; and

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.

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.

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.

If no permissible method will be effective in resolving tie bids and a written determination by the procurement officer is made so stating, award may be made by drawing lots.

#### 3.2 ACCEPTANCE OF OFFER

Acceptance of offer, if any, will be made within sixty calendar days after the opening of offers, and the prices quoted by the offeror shall remain firm for the sixty 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 of Hawaii 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.

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 their 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 a 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.

The head of a 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.

### 3.3 EXECUTION OF CONTRACT

This section shall not apply to any contract in which the total amount payable to the contractor cannot be accurately estimated at the time the contract is to be awarded.

In cases where the contract award amounts to \$10,000 or more the County of Hawaii shall forward a formal contract to the successful offeror for execution. (Refer to Exhibit A for agreement form.) 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 days after receipt by the vendor or within such further time as the procurement officer may allow.

No such contract shall be considered binding upon the County of Hawaii until the contract has been fully and properly executed by all the parties thereto and the Director of Finance has, in accordance with the County Charter, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; 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;

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 of Hawaii in contracting for any project involving financial aid from the federal government.

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 no such copy shall be acceptable unless the date of the document previously submitted is dated within one year of the contract date. 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.

### 3.4 CONTRACT BOND

The requirement for contract performance and payment bonds, if any, shall be stated in the Special Provisions of the solicitation.

When required by the Special Provisions, a performance bond and a payment bond shall be delivered by the contractor to the County of Hawaii at the same time the executed contract is delivered. Each amount of the performance and

payment bonds shall not exceed fifty per cent of the amount of the contract price; provided, for contracts where contract price cannot be determined at the time of award, the amounts of the bonds shall be as stated in the solicitation.

The acceptable performance and payment bonds are the same as the acceptable bid or proposal security deposit specified in section 2.6. (Refer to Exhibits C, D, E, F, G, and H 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.

### 3.5 FAILURE TO EXECUTE CONTRACT

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 3.4 within ten days after such award or within such further time as the procurement officer may allow, the purchasing agency shall pay the amount of offeror's proposal guaranty, as required under Section 2.6, into the County Treasury as a realization of the County of Hawaii. The procurement officer may thereupon award the contract to the next lowest responsible offeror or may call for new offers, whichever method he may deem is in the best interest of the County of Hawaii.

### 3.6 RETURN OF OFFER GUARANTIES

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

### 3.7 SUBMISSION OF INSURANCE CERTIFICATION

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

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 of Hawaii to exercise any or all of the remedies provided in this contract for a default of the contractor.

## SECTION 4 - PERFORMANCE OF CONTRACT

### 4.1 CONTRACT ADMINISTRATION

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 of Hawaii 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.

### 4.2 COMPLIANCE WITH CONTRACT TERMS, ETC.

The work shall be completed in conformity with the specifications and each and every requirement of the 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, reserves the right to suspend the contractor from bidding on any or all County of Hawaii contracts pursuant to Chapter 3-126, HAR.

#### 4.3 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. (Refer to Exhibit I for Contract Modification form and Exhibit J for the Change Order form.)

### SECTION 5 - LEGAL RELATIONS AND RESPONSIBILITY

#### 5.1 LAWS TO BE OBSERVED

The contractor shall at all times observe and comply with all federal, state and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the 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.

The contractor shall protect and indemnify the County of Hawaii and all its officers, agents and employees against any claim or liability arising from or 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. 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 procurement officer in writing.

The Contractor's attention is especially directed to chapter 103 and 103D, Hawaii Revised Statutes and the chapter 91, Hawaii Administrative Rules issued by the Procurement Policy Board.

#### 5.2 PATENTED ARTICLE

The contractor will be required to, and shall hold the County of Hawaii and its duly authorized representatives harmless against all demands, claims, actions, suits or liabilities arising from the use of any patented article, patented process or patented appliance used in connection with the contract. Any royalties due or becoming due for the use of any patented article or process shall be paid by the contractor and shall be deemed to be included within the proposal amount and contract price.

#### 5.3 SUBCONTRACTING AND ASSIGNING

The contractor shall not subcontract any of the work to be performed under his contract with the County of Hawaii, nor shall he assign the contract to any other person or firm without written permission from the procurement officer, 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 of Hawaii, and all persons engaged in performing the work covered by the contract shall be considered employees of the contractor.

#### 5.4 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.

#### 5.5 RESPONSIBILITY FOR DAMAGE CLAIMS

The contractor shall indemnify, hold harmless and defend the County of Hawaii and its officers, employees, agents, and representatives from all suits, actions, claims, damages, and judgements of any character that may be

brought against the County of Hawaii 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 of Hawaii 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 of Hawaii under this section shall extend only to the contractor's pro rata share of negligence as determined in accordance with section 663-12, Hawaii Revised Statutes.

#### 5.6 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 procurement officer or his authorized representatives, either personally or as officials of the County of Hawaii, it being understood that in such matters, they act solely as agents and representatives of the County of Hawaii.

#### 5.7 CONTRACT PROVISIONS TO CONSIDER TRAFFIC

Unless otherwise prohibited by law, all public contracts awarded shall consider the extent to which the work undertaken pursuant to the contract will increase traffic congestion. The contract shall contain provisions to reasonably minimize any adverse impact.

### SECTION 6 - MODIFICATIONS AND TERMINATIONS OF CONTRACTS FOR GOODS AND SERVICES

#### 6.1 GENERAL

(A) This section of the general terms and conditions apply to goods and services contracts.

(B) Pursuant to the provisions of section 103D-501, HRS, the chief procurement officer or the head of a purchasing agency shall make a written determination describing the circumstances justifying the variation or variations and provided that notice of any such material 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) Alternative clauses are allowed in some instances to permit accommodation of differing contract situations.

#### 6.2 CHANGES IN FIXED-PRICE CONTRACTS

(A) Change order. The procurement officer may, at any time, by a written order, (Exhibit J), and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following: (1) Drawings, designs, or specifications, if the goods to be furnished are to be specially manufactured for the County of Hawaii in accordance therewith; (2) Method of shipment or packing; or (3) Place of delivery.

(B) Adjustments of price 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 order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this section shall be determined in accordance with the price adjustment Section 6.2.

(C) Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the procurement officer promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(D) Time period for claim. Within thirty days after receipt of a written change order under paragraph (A), unless such period is extended by the procurement officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the County is prejudiced by the delay in notification.

(E) Claim barred after final payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

(F) 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.

### 6.3 CHANGES IN COST-REIMBURSEMENT CONTRACTS

The provisions of Section 6.2 are also to be used for cost-reimbursement contracts, provided further that any claims for reimbursement by the contractor shall be in accordance with chapter 3-123, EAR, provided that if a written determination is approved at a level above the procurement officer, such cost principles may be modified by contract.

### 6.4 AUTHORIZATION FOR A STOP WORK ORDER

(A) Section 6.5 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.

(B) Stop work orders shall not exceed sixty consecutive 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, some 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. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.

### 6.5 STOP WORK ORDERS

(A) Order to stop work. The 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 order shall be for a specified period not exceeding sixty days after the order is delivered to the contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this paragraph. Upon receipt of such an 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 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, the procurement officer shall either: (1) Cancel the stop work order; or (2) terminate the work covered by such order as provided in the "termination for default clause" or the "termination for convenience clause" of this contract.

(B) Cancellation or expiration of the order. If a stop work order issued under this section is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the contractor shall have the right to resume 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 days after the end of the period of work stoppage; provided that, if the 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 the price adjustment clause of this contract.

#### 6.6 VARIATIONS IN ESTIMATED QUANTITIES FOR DEFINITE QUANTITY CONTRACTS

Variation in quantity. 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 provided: the unit prices will remain the same except for any price adjustments otherwise applicable; and the 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.

#### 6.7 VARIATIONS IN ESTIMATED QUANTITIES FOR INDEFINITE QUANTITY CONTRACTS

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 delivery should be designed to meet using agency needs.

However, the contracts Special Provisions should provide for: the minimum quantity, if any, the County of Hawaii is obligated to order and the contractor to provide; whether there is a quantity the County of Hawaii expects to order and how this quantity relates to any minimum and maximum quantities that may be ordered under the contract; any maximum quantity the County of Hawaii may order and the contractor must provide; and whether the County of Hawaii is obligated to order its actual requirements under the contract, or in the case of a multiple award as defined in section 3-122-160, HAR, that the County of Hawaii will order its actual requirements from the contractors under the multiple award subject to any minimum or maximum quantity stated.

#### 6.8 PRICE ADJUSTMENT

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

- (A) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (B) By unit prices specified in the contract or subsequently agreed upon;
- (C) By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
- (D) In such other manner as the parties may mutually agree; or
- (E) In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.

Submission of cost or pricing data. The contractor shall provide cost or pricing data for any price adjustments subject to the provisions of subchapter 15, chapter 3-122, HAR.

#### 6.9 NOVATION OR CHANGE OF NAME

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

(B) Recognition of a successor in interest; novation. When in the best interest of the County of Hawaii, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that: the transferee assumes all of the transferor's obligations; the transferor waives all rights under the contract as against the County of Hawaii; and unless the transferor guarantees performance of the contract by the transferee, the transferee shall 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 of Hawaii, the 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 novation agreements effected hereunder other than by the chief procurement officer shall be reported to the chief procurement officer within thirty days of the date that the agreement becomes effective.

(E) Actions affecting more than one purchasing agency. Notwithstanding the provisions of paragraphs (A) through (C), when a contractor holds contracts with more than one purchasing agency of the County of Hawaii, the novation or change of name agreements herein authorized shall be processed only through the office of the chief procurement officer.

#### 6.10 CLAIMS BASED ON A PROCUREMENT OFFICER'S ACTIONS OR OMISSIONS

(A) Notice of Claim. If any action or omission on the part of a procurement officer or designee of such officer, 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 procurement officer or designee of such officer: Prior to the commencement of the work involved, if at that time the contractor knows of the occurrence of such action or omission; Within thirty days after the contractor did not have such knowledge prior to the commencement of the work; or Within such further time as may be allowed by the procurement officer in writing.

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 procurement officer or designee of such officer, upon receipt of such notice may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the procurement officer or designee of such officer;

- (2) 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

(3) The contractor maintains and, upon request, makes available to the procurement officer 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 contractors 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 clause shall be determined in accordance with the price adjustment clause of the contract.

#### 6.11 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 procurement officer may notify the contractor in writing of the delay or non-performance, and if not cured in ten days or any longer time specified in writing by the procurement officer, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the procurement officer may procure similar goods or services in a manner and upon terms deemed appropriate by the procurement officer. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

(B) Contractor's duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the County of Hawaii has an interest.

(C) Compensation. Payment for completed goods delivered and accepted by the County of Hawaii 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 procurement officer; if the parties fail to agree, the procurement officer shall set an amount subject to the contractor's rights under chapter 126, HAR. The County of Hawaii may withhold from amounts due the contractor such sums as the procurement officer deems to be necessary to protect the County of Hawaii against loss because of outstanding liens or claims of former lien holders and to reimburse the County of Hawaii 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 procurement officer within fifteen 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 State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the contractor shall not be deemed to be in default, unless the goods 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 procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and

performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the County of Hawaii under the clause entitled in fixed-price contracts, "Termination for Convenience" and in cost-reimbursement contract, "Termination". As used in this paragraph of this clause, the term "subcontractor" means subcontractor at any tier.

(E) Erroneous termination for default. If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of the clause, or that the delay was excusable under the provisions of paragraph (4), Excuse for nonperformance or delayed performance of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the County of Hawaii, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the County of Hawaii, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under chapter 3-126, HAR.

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

#### 6.12 LIQUIDATED DAMAGES

(A) The following is for goods or services contracts when it is difficult to determine with reasonable accuracy the amount of damage to the County of Hawaii due to delays caused by late contractor performance or nonperformance and the contract contains the termination for default clause set forth in section 3-125-11, HAR.

- (1) Liquidated damages. When the contractor is given notice of delay or nonperformance as specified in Section 6.11(A) termination for default clause of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the dollar amount specified in the liquidated damages provision of the Special Provisions, if any, per calendar day from date set for cure until either the County of Hawaii reasonably obtains similar goods or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under paragraph 6.11(D), excuse for nonperformance or delayed performance of the termination for default clause of this contract, liquidated damages shall not be due the County of Hawaii. The contractor remains liable for damages caused other than by delay.

(B) If the contract will not have a termination for default clause and the liquidated damages are to be assessed for reasons other than delay, the chief procurement officer or the head of a purchasing agency may approve the use of any appropriate liquidated damages clause.

#### 6.13 TERMINATION FOR CONVENIENCE

(A) Termination for convenience. The procurement officer may, when the interests of the County of Hawaii so require, terminate this contract in whole or in part, for the convenience of the County of Hawaii. The 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. The procurement officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the County of Hawaii. 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 procurement officer may require the contractor to transfer title and deliver to the County of Hawaii in the manner and to the extent directed by the procurement officer: 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 procurement officer, protect and preserve property in the possession of the contractor in which the County of Hawaii has an interest. If the 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 of Hawaii 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, chapter 3-122, HAR, bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the procurement officer may pay the contractor, if at all, an amount set in accordance with subparagraph (3) below.
- (2) The 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, chapter 3-122, HAR, and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the County of Hawaii, the proceeds of any sales of goods and manufacturing materials under paragraph (c), and the contract price of the work not terminated.
- (3) Absent complete agreement under subparagraph (2), the procurement officer shall pay the contractor the following amounts, provided payments agreed to under subparagraph (2) shall not duplicate payments under this subparagraph for the following:
  - (a) Contract prices for goods or services accepted under the contract;
  - (b) Costs incurred in preparation and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work, such profit 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 profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (c) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph (B) of this clause. These costs must not include costs paid in accordance with subparagraph (3)(b).
  - (d) The reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum

to be paid the contractor under this subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of goods and manufacturing materials under paragraph (C), and the contract price of work not terminated.

- (4) Cost claimed, agreed to, or established under subparagraph (2) and (3) shall be in accordance with chapter 3-123, HAR.

#### 6.14 TERMINATION FOR COST-REIMBURSEMENT CONTRACTS

Termination for cost-reimbursement contracts. The only cost recognized as allowable shall be in accordance with the cost principles set forth in chapter 3-123, HAR, provided that if a written determination is approved at a level above the procurement officer, such cost principle may be modified by contract.

#### 6.15 DISPUTES

(A) All controversies between the County of Hawaii 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 procurement officer in writing, within one hundred twenty calendar days after a written request by the contractor for a final decision concerning the controversy; provided that if the procurement officer does not issue a written 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 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 circuit court of the State within the six months from the date of receipt of the decision.

(D) The contractor shall comply with any decision of the procurement officer and proceed diligently with performance of this contract pending final resolution by the circuit court of this State of any controversy arising under, or by virtue of, this contract, except where there has been a material breach of contract by the County of Hawaii; 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.

#### 6.16 REMEDIES

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

### SECTION 7 - PAYMENT

#### 7.1 METHOD OF PAYMENT

The method of payment under the contract shall be as set forth in the Special Provisions. Further, payment to the Contractor shall be made in accordance contract provision at the contracted price(s). Invoices shall be payable upon certification by authorized County of Hawaii personnel that the contractor has satisfactorily performed the work required herein.

#### 7.2 FINAL PAYMENT

In accordance with section 103-53, HRS, final payment under any contract of \$10,000 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.

#### 7.3 INTEREST

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

(EXHIBIT B)  
SURETY BID OR PROPOSAL BOND

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That we, [Full name or legal title of offeror] as Principal, hereinafter called the Principal, and [Bonding company], a corporation duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of Hawaii, as Surety, hereinafter called the Surety, are held and firmly bound unto the County of Hawaii, as Owner, in the penal sum of [Required amount of offer 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 County of Hawaii shall reject said offer, or in the alternate, accept the offer of the Principal and the Principal shall enter into a Contract with the County of Hawaii 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 \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Principal)

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

\_\_\_\_\_  
(Surety)

By \_\_\_\_\_  
Its Attorney-in-Fact

(EXHIBIT C)  
SURETY PERFORMANCE BOND

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That we, [Full name or legal title of Contractor and street address], as principal, hereinafter called Contractor, and [Bonding company], a corporation duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of Hawaii, as surety, hereinafter called the Surety, are held and firmly bound unto County of Hawaii, its successors and assigns, as Obligee, hereinafter called Obligee, in the amount of [Required amount of the bond] 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 and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS:

The Contractor has by written agreement dated [Date of contract] entered into a contract with Obligee for [Project by number and brief description], and is hereinafter referred to as the Contract.

NOW, THEREFORE:

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform said Contract then this obligation shall be null and void; otherwise it shall remain in full force and effect. The Surety hereby waives notice of any alteration or extension of time made by the Obligee and its obligation is not affected by any such alteration or extension provided the same is within the scope of the contract. Whenever Contractor shall be, and is declared by Obligee to be in default under the Contract, the Obligee having performed its obligations thereunder, the Surety may promptly remedy the default or shall promptly:

- 1) Complete the Contract in accordance with its terms and conditions; or
- 2) Obtain an offer or offers for completing the Contract in accordance with its terms and conditions, and upon determination by the Obligee and the Surety jointly of the responsive and responsible offeror, arrange for a contract between such offeror and the Obligee, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the

balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Obligee to Contractor under the Contract and any amendments thereto, less the amount paid by County of Hawaii to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligee.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Principal) (SEAL)

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

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

\_\_\_\_\_  
(Surety) (SEAL)

\*By \_\_\_\_\_  
Its Attorney-in-Fact

**\*ALL SIGNATURES MUST BE ACKNOWLEDGED  
BY A NOTARY PUBLIC**

(EXHIBIT D)  
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That [Full name or legal title of Contractor and street address], hereinafter called Obligor, is firmly bound unto the County of Hawaii, its successors and assigns, hereinafter called Obligee, in the amount of [Required amount of the bond] dollars (\$ ), lawful money of the United States of America, for the payment of which the Obligor does hereby bind himself/herself/itself and his/her/its heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

As security for the above obligation, Obligor attaches hereto [Legal tender; certificate of deposit; share certificate; and/or cashier's, treasurer's, teller's, official or certified check(s)] in the amount of [Required amount of bond] dollars (\$ ).

WHEREAS:

The Obligor has by written agreement dated [Date of contract] entered into a contract with Obligee for [Project by number and brief description], and is hereinafter referred to as the Contract.

NOW, THEREFORE:

The condition of this obligation is such that if the Obligor shall promptly and faithfully perform said Contract then this obligation shall be null and void; otherwise it shall remain in full force and effect. The Obligor hereby waives notice of any alteration or extension of time made by the Obligee and its obligation is not affected by any such alteration or extension provided the same is within the scope of the contract. Whenever Obligor shall be, and is declared by Obligee to be in default under the Contract, the Obligee having performed its obligations thereunder:

- 1) The Obligor may promptly remedy the default or shall promptly complete the Contract in accordance with its terms and conditions; or
- 2) If the Obligor fails to promptly remedy the default or complete the contract in accordance with its terms and conditions, the Obligee shall arrange for a contract between another Contractor and the Obligee, and the Obligee will pay the cost of completing the contract, plus any administrative costs incurred by the Obligee in securing another contract or contracts, less the balance of the contract price from the security amount set forth in the first paragraph above (even though there should be a default or a succession of defaults under the contract

or contracts of completion arranged under this paragraph); but not exceeding the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Obligee to Obligor under the Contract and any amendments thereto, less the amount properly paid by Obligee to Obligor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligee.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
(Principal) (SEAL)

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

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

**\*ALL SIGNATURES MUST BE ACKNOWLEDGED  
BY A NOTARY PUBLIC**

(EXHIBIT E)  
SURETY LABOR AND MATERIAL PAYMENT BOND

Bond No. \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS:**

That [Full name or legal title of Contractor and street address] as Principal, hereinafter called Contractor, and [Bonding Company], a corporation duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of Hawaii, as Surety, hereinafter called Surety, are held and firmly bound unto the County of Hawaii as Obligee, hereinafter called Obligee, for the use and benefit of claimants as hereinbelow defined, in the amount of [Required amount of bond] dollars (\$) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS:**

The Contractor has by written agreement dated [Date of contract], entered into a contract with Obligee for [Project by number and brief description], and is hereinafter referred to as the Contract.

**NOW, THEREFORE:**

The condition of this obligation is such that, if Contractor shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- 1) A claimant is defined as one having direct contract with the Contractor or with a Subcontractor of the Contractor for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the Contract.
- 2) The above-named Contractor and Surety hereby jointly and severally agree with the Obligee that every claimant as herein defined, who has not been paid in full before the expiration of a period on ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such

sum or sums as may be justly due claimant, and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit.

- 3) No suit or action shall be commenced hereunder by any claimant:
  - a) Unless claimant, other than one having a direct contract with the Contractor, shall have given written notice to any two of the following: the Contractor, the Obligee, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served or served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Contractor at any place the Contractor maintains an office or conducts its business.
  - b) After the expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit.
  - c) Other than in a court of competent jurisdiction of the county or district in which the construction contract was to be performed.
- 4) 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 by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Principal) (SEAL)

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

\*ALL SIGNATURES MUST BE  
ACKNOWLEDGED BY A  
NOTARY PUBLIC

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

\_\_\_\_\_  
(Surety) (SEAL)

\*By \_\_\_\_\_  
Its Attorney-in-Fact

(EXHIBIT F)  
LABOR AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That [Full name or legal title of Contractor and street address] hereinafter called Obligor, is held and firmly bound unto County of Hawaii as Obligee, hereinafter called Obligee, for the use and benefit of claimants as hereinbelow defined, in the amount of [Required amount of bond] dollars (\$) for the payment of which the Obligor does hereby bind himself/herself/itself and his/her/its heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

As security for the above obligation, Obligor attaches hereto [Legal tender; certificate of deposit; share certificate; and/or cashier's, treasurer's, teller's, official or certified check(s)] in the amount of [Required amount of bond] dollars (\$) .

WHEREAS:

The Obligor has by written agreement dated [Date of contract], entered into a contract with Obligee for [Project by number and brief description], and is hereinafter referred to as the Contract.

NOW, THEREFORE:

The condition of this obligation is such that, if Obligor shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- 1) A claimant is defined as one having a direct contract with the Obligor or with a Subcontractor of the Obligor for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material, being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the Contract.
- 2) The above-named Obligor agrees with the Obligee that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit.

3) No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Obligor, shall have given written notice to the Obligor and the Obligees within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served or served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Obligor at any place the Obligor maintains as office or conducts its business.

b) After the expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit.

c) Other than in a court of competent jurisdiction for the county or district in which the construction contract was to be performed.

4) The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Obligor) (SEAL)

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

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

**\*ALL SIGNATURES MUST BE ACKNOWLEDGED  
BY A NOTARY PUBLIC**





(EXHIBIT I)  
CONTRACT MODIFICATION FORM

COUNTY OF HAWAII  
DEPARTMENT OF FINANCE

MODIFICATION ORDER NO. \_\_\_\_\_ Date \_\_\_\_\_  
Contractor \_\_\_\_\_ Contract No. \_\_\_\_\_  
Contract Title \_\_\_\_\_

A. MODIFICATIONS

The following modifications are to be performed in accordance with all contract stipulations (specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions by mutual action of the parties to the contract.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

B. CONTRACTOR'S QUOTATION

The modifications described in A above will be performed at a contract price\_\_ increase \_\_ decrease of \$\_\_\_\_\_. Contractor will not undertake to perform the changes in A above until this modification order has been approved and issued.

\_\_\_\_\_  
Contractor's Signature and Date

C. STATEMENT OF CONTRACT FUNDS

Original Contract Price \$ \_\_\_\_\_  
Previous Adjusted Contract Price \$ \_\_\_\_\_  
Amount this Change: Plus \_\_\_\_ Minus \_\_\_\_  
New Adjusted Contract Price \$ \_\_\_\_\_

D. VALIDATION OF CONTRACT MODIFICATION

\_\_\_\_\_  
User Agency Date [Procurement Officer] Date

DISTRIBUTION: Original - Accounts Division cc: Contractor  
User Agency  
Purchasing Division

(EXHIBIT J)  
CHANGE ORDER FORM

COUNTY OF HAWAII  
DEPARTMENT OF FINANCE

CHANGE ORDER NO. \_\_\_\_\_ Date \_\_\_\_\_

Contractor \_\_\_\_\_ Contract No. \_\_\_\_\_

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

A. CONTRACTOR IS TO PERFORM THE FOLLOWING CHANGES:

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

B. CONTRACTOR'S RESPONSE DUE WITHIN TEN CALENDAR DAYS:

1. The changes described in A above will result in an  
increase \_\_\_\_ decrease \_\_\_\_ of \$ \_\_\_\_\_.
2. The change issued in A above will be completed by \_\_\_\_\_.

\_\_\_\_\_  
Contractor's Signature and Date

C. STATEMENT OF CONTRACT FUNDS

Original Contract Price \$ \_\_\_\_\_  
Previous Adjusted Contract Price \$ \_\_\_\_\_  
Amount this Change: Plus \_\_\_\_ Minus \_\_\_\_ \_\_\_\_\_  
New Adjusted Contract Price \$ \_\_\_\_\_

D. VALIDATION OF PRICE ADJUSTMENT

\_\_\_\_\_  
User Agency Date [Procurement Officer] Date

DISTRIBUTION: Original - Accounts Division cc: Contractor  
Using Agency  
Purchasing Division