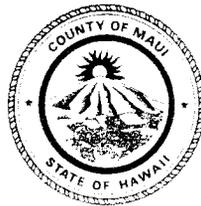


ALAN M. ARAKAWA
MAYOR



RECEIVED

KEITH A. REGAN
MANAGING DIRECTOR

2017 JUL 14 AM 9:10

OFFICE OF THE MAYOR

Ke'ena O Ka Meia

COUNTY OF MAUI – Kalana O Maui

OFFICE OF THE
COUNTY COUNCIL

REFERENCE NO. BD-BA 18-03

July 13, 2017

Honorable Alan Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Riki Hokama, Chair
Budget and Finance Committee
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Hokama:

SUBJECT: AMENDMENTS TO APPENDIX A, GRANT REVENUE – SCHEDULE OF GRANTS BY DEPARTMENTS AND PROGRAMS FOR FISCAL YEAR 2018 (BF-61)

On behalf of the Department of Planning, I am transmitting the attached proposed bill for the purpose of increasing the appropriation for the Coastal Zone Management Program to recognize an additional \$40,387 available for FY 2017 – 2018.

Attached for your review is the supplemental agreement from the State Office of Planning amending the existing FY 2017 contract, which is still in effect. Along with amending the compensation and payment schedule and time of performance, the supplemental agreement amends the scope of services to include an update to the shoreline access inventory which the additional funding will accomplish.

Thank you for your attention in this matter. Should you have any questions, please feel free to contact me at Ext. 7212.

Sincerely,


LYNN A.S. ARAKI-REGAN
Budget Director

Attachments (2)

cc: Keith Regan, Managing Director
Danny Agsalog, Director of Finance
William Spence, Director of Planning

ORDINANCE NO. _____

BILL NO. _____ (2017)

A BILL FOR AN ORDINANCE AMENDING
THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI
AS IT PERTAINS TO APPENDIX A, PART I, GRANT REVENUE -
SCHEDULE OF GRANTS BY DEPARTMENTS AND PROGRAMS,
DEPARTMENT OF PLANNING
(COASTAL ZONE MANAGEMENT PROGRAM)

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Ordinance No. 4456, Bill No. 65 (2017), Draft 1, "Fiscal Year 2018 Budget", Appendix A, Part I, Grant Revenue - Schedule of Grants by Departments and Programs for Fiscal Year 2018, is hereby amended as it pertains to the Department of Planning, by increasing the appropriation for the Coastal Zone Management Program by \$40,387, to read as follows:

"9. Department of Planning

- | | | |
|--|-----------|------------------|
| a. Certified Local Government (CLG) Program | | 25,000 |
| b. Coastal Zone Management Program | [386,694] | <u>427,081</u> " |
| (1) Provided, that disbursement for salaries and premium pay is limited to 4.0 LTA equivalent personnel. | | |

SECTION 2. Material to be repealed is bracketed. New material is underscored.

SECTION 3. This Ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



JEFFREY UEOKA
Deputy Corporation Counsel



**OFFICE OF PLANNING
STATE OF HAWAII**

DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
ACTING DIRECTOR
OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <http://planning.hawaii.gov/>

Ref. No. P-15653

July 5, 2017

Mr. William R. Spence, Director
Department of Planning
County of Maui
200 South High Street
Wailuku, Hawaii 96793

Dear Mr. Spence:

We are enclosing a copy of the supplemental agreement between the Office of Planning (OP) and the County of Maui, for a portion of our Hawaii Coastal Zone Management (CZM) Program FY 2017-2018 work plan. This supplemental agreement allows for additional twelve-month extensions, subject to the availability of funds.

In addition, as discussed, this supplemental agreement includes an additional scope of service for a shoreline access inventory update project in the amount of \$45,000.00 to be completed by June 30, 2018.

This supplemental agreement is contingent upon full execution and receipt of all appropriate State approvals by July 31, 2017. Please have it signed, notarized, and returned to us no later than **July 24, 2017**. A copy of the executed contract will be sent to you for your use and reference.

Please note that the State of Hawaii Standards of Conduct Declaration is a part of this agreement and must be completed by each contractor. We are also required by the federal grant award to have each subcontractor complete a Form CD-512. Please return this completed form with the signed supplemental agreement.

If there are any questions, please contact Justine Nihipali or Susan Feeney of our CZM Program at (808) 587-2875 or (808) 587-2880, respectively.

Sincerely,

Leo R. Asuncion
Director

Enclosure



STATE OF HAWAII

SUPPLEMENTAL CONTRACT NO. 1

TO CONTRACT

B17-02CZM

(Insert contract number or other identifying information)

This Supplemental Contract No. 1, executed on the respective dates indicated below, is effective as of _____, 2017, between the Office of Planning, Dept. of Business, Economic Development & Tourism, State of Hawaii

("STATE"), by its Director (Insert title of state officer executing contract),

(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is P.O. Box 2359, Honolulu, Hawaii 96804, and County of Maui

_____ ("CONTRACTOR"),

a Government entity (Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the CONTRACTOR)

under the laws of the State of Hawaii, whose business address and federal and state taxpayer identification numbers are as follows: 200 South High Street, Wailuku, Hawaii 96793 Federal Tax Identification: 99-6000618

RECITALS

A. WHEREAS, the STATE and the CONTRACTOR entered into Contract B17-02CZM

(Insert contract number or other identifying information)

dated July 1, 2016, which was amended by Supplemental Contract No(s) 1 dated _____, which was amended by Supplemental Contract No(s) _____ dated _____, which was amended by Supplemental Contract No(s) _____ dated _____ (hereafter collectively referred to as "Contract"), whereby the CONTRACTOR agreed to provide the goods or services, or both, described in the Contract; and

B. WHEREAS, the parties now desire to amend the Contract.

NOW, THEREFORE, the STATE and the CONTRACTOR mutually agree to amend the Contract as follows: (Check Applicable box(es))

- Amend the SCOPE OF SERVICES according to the terms set forth in Attachment-S1, which is made a part of the Contract.
Amend the COMPENSATION AND PAYMENT SCHEDULE according to the terms set forth in Attachment-S2, which is made a part of the Contract.
Amend the TIME OF PERFORMANCE according to the terms set forth in Attachment-S3, which is made a part of the Contract.
Amend the SPECIAL CONDITIONS according to the terms set forth in Attachment-S6 SUPPLEMENTAL SPECIAL CONDITIONS, which is made a part of the Contract.
Recognize the CONTRACTOR'S change of name.

FROM: _____

TO: _____

As set forth in the documents attached hereto as Exhibit _____, and incorporated herein.

A tax clearance certificate from the State of Hawaii is is not required to be submitted to the STATE prior to commencing any performance under this Supplemental Contract.

A tax clearance certificate from the Internal Revenue Service is is not required to be submitted to the STATE prior to commencing any performance under this Supplemental Contract.

The entire Contract, as amended herein, shall remain in full force and effect.

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

FUNDING AGENCY: (if other than
contracting agency)

STATE

By _____
Signature

(Signature)
Leo R. Asuncion

PRINT NAME: _____

(Print Name)
Director, Office of Planning

DIRECTOR OF _____

(Print Title)

DATE: _____

(Date)

CORPORATE SEAL
(If available)

CONTRACTOR

County of Maui
(Name of Contractor)

(Signature)

(Print Name)

(Print Title)

(Date)

*

APPROVED AS TO FORM:

Deputy Attorney General

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



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF Hawaii)
) SS.
 COUNTY OF)

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

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: Undated at time of notarization # Pages: _____

Notary Name: _____ Circuit _____

Doc. Description: State of Hawaii Supplemental Contract No. 1

Notary Signature Date

NOTARY CERTIFICATION



STATE OF HAWAII
CONTRACTOR'S
STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of County of Maui, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR is* is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

* Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

CONTRACTOR

By _____
(Signature)

Print Name _____

Print Title _____

Name of Contractor County of Maui

Date _____

CERTIFICATION REGARDING LOBBYING LOWER TIER COVERED TRANSACTIONS

Applicants should review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 15 CFR Part 28, "New Restrictions on Lobbying."

LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000 or a loan or loan guarantee over \$150,000 as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

In any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification.

NAME OF APPLICANT	AWARD NUMBER AND/OR PROJECT NAME
County of Maui	Coastal Zone Management Program FY17-18
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE



STATE OF HAWAII
SCOPE OF SERVICES

Attachment S1, "Scope of Services" of the Contract is hereby amended by deleting the language that is bracketed and stricken and adding the language that is underlined to the relevant paragraphs below, to read as follows:

- "11. Update the March 2005 'Shoreline Access Inventory Update - Final Report for Maui County'. Add web access functionality for the public to include easy map and tabular access to the data. Administrative functionality to include a content management system that allows non-technical County staff, interns and/or consultants to be able to update inventory information over time. Geospatial data is be structured to be consistent with the Local Government Information Model (LGIM). Federal Geographic Data Committee (FGDC) compliant metadata is to be included. System will include administrative tools for import and export of the data.

CONTRACTOR may also add new shoreline access site locations and accompanying data/information consistent with the existing database, as well as updating more technically based or other information on previously inventoried access sites where necessary, such as legal status of accessways.

12. [11.] Annotate all reports, maps, electronic files, Internet sites and other documents completed as part of this Contract, other than the documents exclusively for internal use by the CONTRACTOR, with the following notation on the front cover or title page (or, in the case of maps, in the title block):

From July 1, 2016 through June 30, 2017:

"A publication (or report) of the County of Maui, supported by the Hawaii Office of Planning, Coastal Zone Management Program, pursuant to National Oceanic and Atmospheric Administration Award No. NA16NOS4190093, funded in part by the Coastal Zone Management Act of 1972, as amended, administered by the Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, United States Department of Commerce. The views expressed herein are those of the author(s) and do not necessarily reflect the views of NOAA or any of its sub-agencies."

From July 1, 2017 through June 30, 2018:

"A publication (or report) of the County of Maui, supported by the Hawaii Office of Planning, Coastal Zone Management Program, pursuant to National Oceanic and Atmospheric Administration Award No. NA17NOS4190102 or NA15NOS4190105 (respectively), funded in part by the Coastal Zone Management Act of 1972, as amended, administered by the Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, United States Department of Commerce. The views expressed herein are those of the author(s) and do not necessarily reflect the views of NOAA or any of its sub-agencies."

13. [12.] Provide non-federal matching funds or in-kind contributions totaling no less than \$329,878.00[.] from July 1, 2016 through June 30, 2017 and no less than \$383,683.00 from July 1, 2017 through June 30, 2018. The CONTRACTOR's cash or in-kind contributions shall be subject to verification using straight cost accounting principles and practices. The non-federal matching funds or in-kind contributions during the fiscal year covered by this contract shall include no less than \$45,000 from the Update the March 2005 'Shoreline Access Inventory Update - Final Report for Maui County project. Time sheets must be prepared and filed with the STATE for credit and the contribution of donated supplies shall



STATE OF HAWAII
SCOPE OF SERVICES

be valued at market value of the supplies at the time of donation.

14. [13.] Provide data to STATE and its designees as requested by STATE for STATE's reporting requirements under the Coastal Zone Management Act Performance Measurement System (CZMA PMS). Data required on an annual basis (government coordination and decision-making, public access, coastal water quality, coastal habitats, coastal hazards, coastal dependent uses and community development, contextual measures, and other data categories that may be added by the United States Department of Commerce) shall be submitted to STATE [by July 9, 2017.]. Data for July 1, 2016 through June 30, 2017 shall be submitted to STATE by July 9, 2017. Data for July 1, 2017 through June 30, 2018 shall be submitted to STATE by July 9, 2018. Data shall be submitted in the format provided by STATE and as categorized by STATE. Not less than two staff persons shall be assigned to the CZMA PMS to insure continuity of knowledge and skills for this project. Attendance and participation at all CZMA PMS-related meetings and workshops shall be required, as requested by STATE and its designees. Failure to submit the required data in a timely manner may result in the withholding of funds.
15. [14.] Submit for STATE approval, semi-annual status and performance reports not later than fifteen days following the end of each semi-annual subgrant period as prescribed by the STATE for work performed and coordination provided in conjunction with coastal zone management. Such status and performance reports shall be in narrative form as well as chart form where appropriate and describe the progress of the CONTRACTOR in accomplishing the tasks provided for under this Contract and other accomplishments, issues, and concerns related to coastal zone management. Failure to submit the required semi-annual status and performance reports in a timely manner may result in the withholding of funds.
16. [15.] Submit for STATE approval, semi-annual expenditure reports not later than 21 days following the end of each semi-annual subgrant period as prescribed by the STATE for work performed and coordination provided in conjunction with coastal zone management. These reports shall include documentation of actual expenditures incurred during the period to include the CONTRACTOR's cash or in-kind contributions. Failure to submit the required semi-annual expenditure reports in a timely manner may result in the withholding of funds.
17. [16.] Submit for State approval, [a] final annual reports for each fiscal year covered by this Contract to include, but not be limited to:
- a. a summary of all work performed and coordination efforts provided in conjunction with coastal zone management[.] during the fiscal year.
 - b. recommendations for follow up and future opportunities.
 - c. a final annual expenditure report to include all receipts, matching contributions and expenditures[.] for the fiscal year.
18. [17.] Provide STATE with a letter (1) stating whether or not CONTRACTOR expended more than \$750,000 in aggregate of federal funding in the fiscal year covered by this Contract and (2) if such funding was expended, confirming that CONTRACTOR will provide STATE a copy of its single audit report, or program-specific report, as required by Title 2, Code of Federal Regulations (2 CFR), Part 200, Subpart F, within 30 days after receipt of the auditor's report.
19. [18.] The CONTRACTOR shall perform any other assistance mutually agreed upon by the STATE and the CONTRACTOR's Planning Director.



STATE OF HAWAII
SCOPE OF SERVICES

All other terms, conditions and provisions unless specifically modified, amended, or changed herein remain in full force and effect.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

Attachment S2, “Compensation and Payment Schedule” of the Contract is hereby amended by deleting the language that is bracketed and stricken and adding the language that is underlined to the relevant paragraphs below, to read as follows:

- “1. The total compensation under this Contract for services from July 1, 2016 through June 30, 2017, shall not exceed THREE HUNDRED SEVENTY-THREE THOUSAND TWO HUNDRED SEVENTY-SIX AND NO/100 DOLLARS (\$373,276.00) in consideration of the work to be performed by the CONTRACTOR under this Contract. Said subgrant amount shall include the sum of FORTY-THREE THOUSAND THREE HUNDRED NINETY-EIGHT AND NO/100 DOLLARS (\$43,398.00) in State General Funds provided in Act 124, SLH 2016. Said subgrant amount shall also include the sum of THREE HUNDRED TWENTY-NINE THOUSAND EIGHT HUNDRED SEVENTY-EIGHT AND NO/100 DOLLARS (\$329,878.00) in Federal funds provided in Coastal Zone Management Cooperative Agreement Award No. NA16NOS4190093, granted by the National Oceanic and Atmospheric Administration of the United States Department of Commerce under the National Coastal Zone Management Act of 1972, Pub. L. No. 92-583, as amended (16 U.S.C. et. seq.). The CONTRACTOR shall provide THREE HUNDRED TWENTY-NINE THOUSAND EIGHT HUNDRED SEVENTY-EIGHT AND NO/100 DOLLARS (\$329,878.00) in the form of non-Federal cash or services-in-kind.

The total compensation under this Contract for services from July 1, 2017 through June 30, 2018, shall not exceed FOUR HUNDRED TWENTY-SEVEN THOUSAND EIGHTY-ONE AND NO/100 DOLLARS (\$427,081.00) in consideration of the work to be performed by the CONTRACTOR under this Contract. Said subgrant amount shall include the sum of FORTY-THREE THOUSAND THREE HUNDRED NINETY-EIGHT AND NO/100 DOLLARS (\$43,398.00) in State General Funds provided in Act 49, SLH 2017. Said subgrant amount shall also include the sum of THREE HUNDRED THIRTY-EIGHT THOUSAND SIX HUNDRED EIGHTY-THREE AND NO/100 DOLLARS (\$338,683.00) in Federal funds provided in Coastal Zone Management Cooperative Agreement Award No. NA17NOS4190102 and the sum of FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00) in Federal funds provided in Coastal Zone Management Cooperative Agreement Award No. NA15NOS4190105 granted by the National Oceanic and Atmospheric Administration of the United States Department of Commerce under the National Coastal Zone Management Act of 1972, Pub. L. No. 92-583, as amended (16 U.S.C. et. seq.). The CONTRACTOR shall provide THREE HUNDRED EIGHTY-THREE THOUSAND SIX HUNDRED EIGHTY-THREE AND NO/100 DOLLARS (\$383,683.00) in the form of non-Federal cash or services-in-kind.”

2. Payment for expenditures to be incurred in performing the services in Attachment 1, entitled “Scope of Services,” shall be made in advance quarterly amounts upon presentation to the STATE by the CONTRACTOR of advance quarterly statements of projected expenditures; provided that the STATE's obligation to disburse such subgrant funds shall be subject to the following conditions:
- The CONTRACTOR has submitted required semi-annual status reports and performance reports and semi-annual and annual CZMA PMS data as outlined in Paragraphs [13] 14 and [14] 15 of the Scope of Services.
 - The CONTRACTOR has submitted required semi-annual expenditure reports as outlined in Paragraph 15 of the Scope of Services.
 - The CONTRACTOR has submitted a letter as outlined in Paragraph [17] 18 of the Scope of Services.
 - The aggregate amount of the advance quarterly payment shall not exceed the total subgrant amount provided for in this Contract.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

- e. All travel expenses incurred by the CONTRACTOR in carrying out this Contract may be paid from the subgrant amount stated in Paragraph 1, subject to guidelines as outlined in Paragraph 16 of the General Conditions.
- f. It is agreed by and between the parties hereto that, as to the portion of the obligation under this Contract to be payable to the CONTRACTOR out of Federal funds, this Contract shall be construed strictly to be an agreement to pay such portion to the CONTRACTOR only out of Federal funds when such funds are so received from the Federal government. This Contract shall not be construed as a general agreement to pay the CONTRACTOR such portion out of any funds other than those which are received from the Federal government under any circumstance.

All other terms, conditions and provisions unless specifically modified, amended, or changed herein remain in full force and effect.



STATE OF HAWAII

TIME OF PERFORMANCE

Attachment S3, “Time of Performance” of the Contract is hereby amended by deleting the language that is bracketed and stricken and adding the language that is underlined to the relevant paragraphs below, to read as follows:

- “2. All of the services required hereunder shall be completed within [twelve (12)] twenty-four (24) months, unless this Contract is sooner terminated or extended as hereinafter provided.
3. The final report and quarterly invoice for services from July 1, 2016 through June 30, 2017 shall be submitted no later than July 31, 2017[, which shall be the termination date of this Contract.]. The final report and quarterly invoice for services from July 1, 2017 through June 30, 2018 shall be submitted no later than July 31, 2018, which shall be the termination date of this Contract.
4. This Contract may be extended for [two (2)] one (1) additional twelve (12)-month [periods] period, subject to the following conditions:
 - a. Any extension shall serve the best interest of the STATE by promoting economies in procurement.
 - b. Any extension shall be mutually agreed upon in writing at least sixty (60) days prior to termination of the Contract.
 - c. The CONTRACTOR understands and agrees that funds are available for only the initial term of the Contract, and the contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds.
 - d. The CONTRACTOR understands and agrees that the Contract price shall remain the same or lower than the initial contract price, except for any allowable increases related to increased wages of public employees performing similar work and for performance of additional services. This Contract is to procure services from a political subdivision of the STATE and thus is exempt from Hawaii Revised Statutes Chapter 103D, pursuant to Hawaii Revised Statutes section 103D-102.”

All other terms, conditions and provisions unless specifically modified, amended, or changed herein remain in full force and effect.



STATE OF HAWAII SPECIAL CONDITIONS

COUNTY SPECIAL CONDITIONS

1. Modification of General Conditions. For purposes of this Contract, subparagraph 20.b. on page 10, of the General Conditions is modified to read as follows:

"20.b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. Later notification of intent shall not bar the CONTRACTOR's claim unless the STATE is prejudiced by the delay in notification."

2. Modification of General Conditions. For purposes of this Contract, paragraph 7 on page 4, of the General Conditions is modified to read as follows:

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

3. Modification of General Conditions. For purposes of this Contract, paragraph 8 on page 4, of the General Conditions is modified to read as follows:

"8. Cost of Litigation. Subject to Maui County Council approval as may be required by law, in case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees."

4. Modification of General Conditions. For purposes of this Contract, paragraph 33 on page 13, of the General Conditions is modified to read as follows:

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

5. Deletion of General Conditions. For purposes of this Contract, the following General Conditions are hereby deleted from the General Conditions and have no operative effect between the parties:

- a. Subparagraphs 2.e.;
- b. Subparagraph 17.d.;
- c. Subparagraphs 19.g.;
- d. Subparagraphs 19.h.; and
- e. Subparagraph 20.c.



STATE OF HAWAII
SPECIAL CONDITIONS

National Oceanic and Atmospheric Administration (NOAA)

SPECIAL CONDITIONS

1. Audits and Inspections. The CONTRACTOR shall permit an authorized representative of the STATE, at all reasonable times, to inspect and make copies of all summaries, maps, charts, graphs, tables, recommendations, publication material, electronic records, and other documents produced in whole or in part under this Contract. Such material shall be delivered and surrendered to the STATE on demand and shall become the property of the STATE. The STATE, the Secretary of Commerce of the United States, the Comptroller General of the United States or any of their duly authorized representatives shall, for a period of three (3) years from the expiration of the final financial report made under the Grant, have access to any directly pertinent books, documents, paper and records of the CONTRACTOR involving transactions related to the performance of this Contract for the purposes of making audit, examination, excerpts, and transcriptions. The CONTRACTOR shall maintain all records of expenses related to this Contract by generally accepted accounting methods and principles. All required records shall be maintained for three (3) years after the STATE's submission of the "Financial Status Report" under the Grant. All subcontracts awarded by the CONTRACTOR that are payable from the Contract funds in whole or in part shall contain a provision to the same effect.
2. Nondiscrimination. The CONTRACTOR assures that the activities supported by this Contract shall be conducted in compliance with Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352, as amended, 42 U.S.C. §2000D, and the requirements imposed by the Regulations of the United States Department of Commerce, 15 CFR Part 8, issued pursuant to that Title. In accordance therewith, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the CONTRACTOR received Federal financial assistance and shall immediately take any measures necessary to effectuate this assurance. The CONTRACTOR shall insert a similar provision in all subcontracts for services required under this Contract.
3. Officials Not to Benefit. No member of, or delegate to, the Congress of the United States of America or resident Federal commissioner shall be admitted to any share or part of the subgrant amount or to any benefit arising out of this Contract.
4. Equipment Acquired with Contract Funds. Acquisition of equipment by the CONTRACTOR or any of its agents, whether wholly or in part with funds provided by this Contract, shall be in furtherance of and in connection with coastal zone management purposes, and shall require the prior written approval of the STATE. Title to such equipment shall be vested with the STATE and appropriate property records shall be maintained by the CONTRACTOR. "Equipment" as used in this paragraph shall be defined as goods with a life expectancy or durability of one year or more and whose value or cost per unit is TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) or more.



STATE OF HAWAII
SPECIAL CONDITIONS

5. Publication of Paper. If the CONTRACTOR uses National Oceanic and Atmospheric Administration financial assistance to publish a paper based in whole or in part on the work funded by this Contract, the author shall assure that the paper bears the following notation:

“this paper is funded (‘in part’ if appropriate) by a grant from the National Oceanic and Atmospheric Administration. The views expressed herein are those of the author(s) and do not necessarily reflect the views of NOAA or any of its sub-agencies.”

6. Government Debarment, Suspension and Other Responsibility Matters (Nonprocurement). The CONTRACTOR assures that the activities supported by this Contract shall be conducted in compliance with Executive Order 12549, Debarment and Suspension, and 15 CFR Part 26, “Government-wide Debarment and Suspension (Nonprocurement).” In accordance therewith, unless authorized by the U.S. Department of Commerce in writing, a person (as defined at 15 CFP part 26.105(n)) who is debarred or suspended shall be excluded from Federal financial and non-financial assistance and benefits under Federal programs and activities except to the extent prohibited by law or authorized in writing by the U.S. Department of Commerce.

Further, unless the U.S. Department of Commerce authorizes in writing an exception in accordance with 15 CFR Parts 26.215, and/or 26.625, the Recipient of this lower tier covered transaction shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible or voluntarily excluded, except as provided in 15 CFR Part 26.215.

7. Restrictions on Lobbying (applicable to awards exceeding \$100,000 in Federal funds). This Contract is subject to Section 319 of Public Law 101-121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code. The new section is explained in the common rule, 15 CFR Part 28 (55 FR 6736-6748, 2/26/90). Each recipient of this subgrant and subrecipients are generally prohibited from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this award.
- a. The CONTRACTOR must file with the STATE Form CD-512, "Certification Regarding Lobbying Lower Tier Covered Transactions," and Standard Form-LLL, "Disclosure of Lobbying Activities," regarding the use of any non-Federal funds for lobbying. In addition, the CONTRACTOR must file a disclosure form within 15 days of the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person.
- b. The CONTRACTOR shall require each person who requests or receives from the CONTRACTOR a subgrant, contract, or subcontract exceeding \$100,000 of Federal funds at any tier under this Contract, to file Form CD-512, "Certification Regarding Lobbying Lower Tier Covered Transactions," without modification, and, if applicable, Standard Form-LLL, "Disclosure of Lobbying," regarding the use of any non-Federal funds for lobbying. Certifications shall be retained by the next higher tier. All disclosure



STATE OF HAWAII
SPECIAL CONDITIONS

forms, however, shall be forwarded from tier to tier until received by the STATE, who shall forward all disclosure forms to the Grants Officer.

- c. The CONTRACTOR shall include the following provision in all contracts, subcontracts, or subgrants:

"This contract, subcontract, or subgrant is subject to Section 319 of Public Law 101-121, which added Section 1352, regarding lobbying restrictions to Chapter 13 of Title 31 of the United States Code. The new section is explained in the common rule, 15 CFR Part 28 (55 FR 6736-6748, 2/26/90). Each bidder/applicant/recipient of this contract, subcontract, or subgrant, and subrecipients are generally prohibited from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this award."

- d. The CONTRACTOR shall include the following contract clauses regarding lobbying in each application for a subgrant and in each bid for a contract or a subcontract exceeding \$100,000 of Federal funds at any tier under the Federal award:

"Each applicant/recipient of a subgrant and each bidder/applicant/recipient of a contract or subcontract exceeding \$100,000 of Federal funds must file Form CD-512, "Certification Regarding Lobbying Lower Tier Covered Transactions," regarding the use of any non-Federal funds for lobbying. Certifications shall be retained by the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient of the Federal award, who shall forward all disclosure forms to the Grants Officer."

Each subgrantee, contractor, or subcontractor that is subject to the Certification and Disclosure provision of this contract clause is required to file a disclosure form within 15 days of the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person. Disclosure forms shall be forwarded from tier to tier until received by the STATE, who shall forward all disclosure forms to the Grants Officer.

8. The CONTRACTOR shall be required to certify compliance with Federal regulations relating to lobbying "Certification Regarding Lobbying Lower Tier Covered Transactions."
9. Collection or production of geospatial data (e.g., GIS data layer) by the CONTRACTOR or any of its agents, whether wholly or in part with funds provided by this CONTRACT, shall be in furtherance of and in connection with coastal zone management purposes, and the CONTRACTOR will comply to the maximum extent practicable with Executive Order 12906 "coordinating Geographic Data Acquisition and Access: the National Spatial Data Infrastructure" Federal Register vol. 59, Number 71, pp. 17671-17674. The CONTRACTOR shall document all new geospatial data it collects or produces using the standard developed by the Federal Geospatial Data Center (FGDC), and make that standardized documentation electronically



STATE OF HAWAII
SPECIAL CONDITIONS

accessible to the STATE. The standard can be found at
<http://www.fgdc.gov/standards/projects/FGDC-standards-projects/metadata/base-metadata/index.html>

GENERAL CONDITIONS

Table of Contents

	<u>Page(s)</u>
1. Coordination of Services by the STATE.....	2
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.....	2
3. Personnel Requirements	3
4. Nondiscrimination	3
5. Conflicts of Interest	3
6. Subcontracts and Assignments	3
7. Indemnification and Defense.....	4
8. Cost of Litigation.....	4
9. Liquidated Damages	4
10. STATE'S Right of Offset.....	4
11. Disputes	4
12. Suspension of Contract.....	4
13. Termination for Default.....	5
14. Termination for Convenience.....	6
15. Claims Based on the Agency Procurement Officer's Actions or Omissions.....	8
16. Costs and Expenses	8
17. Payment Procedures; Final Payment; Tax Clearance	9
18. Federal Funds	9
19. Modifications of Contract.....	9
20. Change Order.....	10
21. Price Adjustment	11
22. Variation in Quantity for Definite Quantity Contracts	11
23. Changes in Cost-Reimbursement Contract.....	11
24. Confidentiality of Material	12
25. Publicity.....	12
26. Ownership Rights and Copyright	12
27. Liens and Warranties.....	12
28. Audit of Books and Records of the CONTRACTOR.....	13
29. Cost or Pricing Data	13
30. Audit of Cost or Pricing Data	13
31. Records Retention.....	13
32. Antitrust Claims.....	13
33. Patented Articles.....	13
34. Governing Law	14
35. Compliance with Laws	14
36. Conflict between General Conditions and Procurement Rules	14
37. Entire Contract.....	14
38. Severability.....	14
39. Waiver	14
40. Pollution Control	14
41. Campaign Contributions.....	14
42. Confidentiality of Personal Information.....	14

GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Termination for Default.

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

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

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

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

14. Termination for Convenience.

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

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

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

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

d. Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

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

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
 - c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
 - d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.
21. Price Adjustment.
- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
 - b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.
22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.
23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:
- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

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

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

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

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

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

31. Records Retention.

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

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

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

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

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

e. Records Retention.

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