

BID DOCUMENTS AND SPECIFICATIONS FOR  
LEAD & ASBESTOS REMEDIATION AND  
FLOOR REPLACEMENTS  
BIRKHIMER EMERGENCY OPERATION CENTER, OAHU  
STATE OF HAWAII, DEPARTMENT OF DEFENSE  
HAWAII EMERGENCY MANAGEMENT AGENCY  
JOB NO. CA-202203

ISSUED BY:  
STATE OF HAWAII  
DEPARTMENT OF DEFENSE  
3949 DIAMOND HEAD ROAD,  
HONOLULU, HAWAII 96816-4495  
TELEPHONE: 808-369-3567

JANUARY 2022

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STATE OF HAWAII  
DEPARTMENT OF DEFENSE  
OFFICE OF THE ADJUTANT GENERAL  
3949 DIAMOND HEAD ROAD  
HONOLULU, HAWAII 96816-4495

**NOTICE TO BIDDERS**

SEALED BIDS for furnishing labor, materials, tools and equipment for "*Lead & Asbestos Remediation and Floor Replacements, Birkhimer Emergency Operation Center, Oahu, State of Hawaii, Department of Defense, Hawaii Emergency Management Agency, Job No. CA-202203*" will be received in the Engineering Office, State of Hawaii, Department of Defense, located in Building 306-A, Room 228, 3949 Diamond Head Road, Honolulu, Hawaii, up to **2:00 PM, Thursday, March 3, 2022** and will then and there be publicly opened and read aloud. Bids may also be mailed to State of Hawaii, Department of Defense, 3949 Diamond Head Road, Honolulu, HI, 96816-4495, **ATTN: HIENG, Room 228**. Bids must be received in the Engineering Office, Room 228, prior to the time and date fixed for opening to be considered. All bids received in the Engineering Office after the time and date fixed for opening will not be considered.

Bidders are advised that the Department of Defense facility at 3949 Diamond Head Road is a secure facility. In order to access the property, Bidders and/or their authorized personnel shall present a current driver's license or other form of official identification (with photograph) to the security personnel at the entry gate and shall inform the security personnel of the building and room number they require access to (State Contracting Section 369-3491). Lack of official identification or knowledge of the building and room to which access is needed are grounds for denial of access onto the property. Bidders should be aware and allow for security screening and random vehicle inspections. The state will not be responsible for late bids due to the afore mentioned reasons.

NOTE: Per Executive Order No. 21-07, bidders will be required to provide COVID-19 vaccination or testing status as a condition of entry onto State properties and facilities. In addition, all bidders will be required to wear a mask the entire time they are present. Bidders shall comply with any and all future COVID-19 related Executive Orders.

Proposed work consists of, but not limited to the following: lead & asbestos remediation and floor replacements

The estimated cost is between \$190,000 and \$218,000.

A pre-bid/site visit will be held on February 9, 2022, at 1:30 PM at Birkhimer Emergency Operation Center, Building 303, located inside of Diamond Head Crater, adjacent to project site. Contractors are to meet Mr. Jim Barbour in front of 3949 Diamond Head Road at 1:15 PM. Interested Bidders are to register by calling Mr. Barbour at (808) 369-3492 between 9:30 AM and 4:30 PM **before** February 8, 2022. If no response, please leave message giving information of company name, name of all individuals that will attend, and contact phone number. After the call, you may assume you have been registered for the site visit. All interested bidders and subcontractors are welcome. Site visit is highly recommended, but not mandatory.

Bona fide bidders may obtain copies of applicable specifications and bidding documents at the above-named office. Documents may also be downloaded from the State Procurement Office website at <http://spo.hawaii.gov/> and at the State Department of Defense website at <http://dod.hawaii.gov/hieng/>. Due to the COVID-19 situation and the recommendation in effect for social distancing, bidders are advised to access the documents via our websites. If prospective bidders obtain copies of the bid documents from sources other than the Contracting and Engineering Office address listed above, then

bidders are responsible to register by sending their company name, address, telephone and facsimile number, and email address via email to [estelita.a.pumares@hawaii.gov](mailto:estelita.a.pumares@hawaii.gov) .

All requests for substitution, clarification of bidding documents and/or specifications must be received in the office listed above, via email, prior to **February 10, 2022, 4:30 PM**. Questions shall be emailed to [estelita.a.pumares@hawaii.gov](mailto:estelita.a.pumares@hawaii.gov) .

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

An Intent to Bid is NOT required to be submitted for this project.

Bidders are required to register on the Hawaii Compliance Express web site for all tax clearances by going to <http://spo.hawaii.gov/> click on "HCE" and registering there.

Bidders are responsible for checking for any addenda for this project. The addenda will be posted on the State Procurement Office web site under the project name at <http://spo.hawaii.gov/>

The Hawaii Products preference pursuant to ACT 175, SLH 2009 may be applicable for numerous items throughout this solicitation. Persons wishing to certify and qualify a product not currently listed as a Hawaii Product shall submit a Certification for Hawaii Product Preference (form SPO-38) by e-mail to [estelita.a.pumares@hawaii.gov](mailto:estelita.a.pumares@hawaii.gov) prior to 4:30 PM, fifteen (15) days prior to the bid opening date for this project. View the current Hawaii Products List on the State Procurement office (SPO) website at <http://hawaii.gov/spo>.

For each product, one form shall be completed and submitted (i.e. 3 products should have 3 separate forms completed). The form is available on the SPO webpage at <http://hawaii.gov/spo>.

**CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS PROHIBITED.** If awarded a contract in response to this solicitation, offeror agrees to comply with HRS §11-355, which states that campaign contributions are prohibited from a State and County government contractor during the term of the contract if the contractor is paid with funds appropriated by the legislative body between the execution of the contract through the completion of the contract.

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

Due to the nature of the work contemplated bidder must possess a valid State of Hawaii Contractor's license in the appropriate classification - C-33 and Health Lead Abatement Contractor registration.

General Engineering Contractors holding an 'A' license and General Building Contractors holding a 'B' license are reminded that due to the Hawaii Supreme Court's January 28, 2002, decision in Okada Trucking Co., Ltd. v. Board of Water Supply, et al., 97 Haw. 450 (2002), they are prohibited from undertaking any work, solely or as part of a larger project, which would require the General Contractor to act as a specialty Contractor in any area in which the General Contractor has no license.

Bidders are solely responsible to review the project requirements, determine the appropriate licenses required, and ensure that they possess and that the Subcontractor(s) listed in their OFFER FORM possess the necessary specialty licenses to perform the work for this project.

Kenneth S. Hara  
Major General  
Adjutant General

Posted on: January 25, 2022

**LEAD & ASBESTOS REMEDIATION AND FLOOR REPLACEMENTS, BIRKHMIR  
EMERGENCY OPERATION CENTER, OAHU, STATE OF HAWAII,  
DEPARTMENT OF DEFENSE, HAWAII EMERGENCY MANAGEMENT AGENCY,  
JOB NO. CA-202203**

Adjutant General  
State Department of Defense  
3949 Diamond Head Road  
Honolulu, Hawaii 96816-4495

Dear Sir:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications, and all documents attached hereto, and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

The undersigned represents: **(Check  one only)**

- A Hawaii business** incorporated or organized under the laws of the State of Hawaii; **OR**  
 **A Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii. Business shall be registered prior to award at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii. State of incorporation: \_\_\_\_\_

Offeror is:

- Sole Proprietor     Partnership     Corporation     Joint Venture  
 Other \_\_\_\_\_

Federal I.D. No.: \_\_\_\_\_

Hawaii General Excise Tax License I.D. No.: \_\_\_\_\_

Payment address (other than street address below): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Business address (street address): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Respectfully submitted:

**(x)** \_\_\_\_\_  
Authorized (Original) Signature (\*1)

Date: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

\_\_\_\_\_  
Name and Title (Please Type or Print)

Fax No.: \_\_\_\_\_

\* \_\_\_\_\_  
**Exact Legal Name of Company (Offeror) (\*2)**

E-mail Address: \_\_\_\_\_

**(\*2)** If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:

**(\*1)**

Original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

The undersigned has carefully examined the attached plans and specifications and hereby proposes to furnish at his own expense all labor, materials, tools and equipment necessary to construct all work as shown and called for, in strict accordance with the specifications, schedules and drawings pertaining thereto, all for the LUMP SUM of:

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

(Including the cost of delivery, unloading, freight charges, all applicable taxes, and other cost involved) and will fully complete all the work under this contract within 50 consecutive calendar days from the date of commencement specified by the written order of the Adjutant General including the date of said order.

**NOTE:**

1. This project falls under the requirement of the "Buy American Act".
2. Davis-Bacon Act prevailing wage rate or State wage rates apply to this contract.
3. Contract will be awarded based on the total lump sum bid.
4. A pre-bid/site visit will be held on February 9, 2022, at 1:30 PM at Birkhimer Emergency Operation Center, Building 303, located inside of Diamond Head Crater, adjacent to project site. Contractors are to meet Mr. Jim Barbour in front of 3949 Diamond Head Road at 1:15 PM. Interested Bidders are to register by calling Mr. Barbour at (808) 369-3492 between 9:30 AM and 4:30 PM **before** February 8, 2022. If no response, please leave message giving information of company name, name of all individuals that will attend, and contact phone number. After the call, you may assume you have been registered for the site visit. All interested bidders and subcontractors are welcome. Site visit is highly recommended, but not mandatory.

All requests for substitution, clarification of bidding documents and/or specifications must be received by email at [estelita.a.pumares@hawaii.gov](mailto:estelita.a.pumares@hawaii.gov) prior to 4:30 PM on February 10, 2022.

5. The State reserves the right to determine the extent of the contract by selecting and/or omitting bid items (not necessarily in sequence) to the extent required to come within the funds available for the project. The award of the contract shall be made to the responsible bidder whose total bid is the lowest.
6. **CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS PROHIBITED.**  
If awarded a contract in response to this solicitation, offeror agrees to comply with HRS §11-355, which states that campaign contributions are prohibited from a State and County government contractor during the term of the contract if the contractor is paid with funds appropriated by the legislative body between the execution of the contract through the completion of the contract.
7. The Surety shall not be held liable beyond two (2) years of the project acceptance date.

## HAWAII PRODUCTS PREFERENCE

In accordance with ACT 175, SLH 2009 the Hawaii Products preference is applicable to this solicitation. Hawaii products may be available for those items noted on the offer form. The Hawaii Products List is available on the State Procurement Office (SPO) website at <http://spo.hawaii.gov/> search for "Hawaii Product Preferences".

Offeror offering a Hawaii Product (HP) shall identify the HP on the solicitation offer pages. Any person desiring a Hawaii product preference shall have the product(s) certified and qualified if not currently on the Hawaii Products list, prior to the deadline for receipt of offer(s) specified in the procurement notice and solicitation. The responsibility for certification and qualification shall rest upon the person requesting the preference.

Persons desiring to qualify their product(s) not currently on the Hawaii Product list shall complete form SPO-38, *Certification for Hawaii Product Preference*, and submit to the Department of Defense, Contracting Officer, and provide all additional information required by the Contracting Officer no later than 4:30 PM, fifteen (15) calendar days prior to the bid opening date. For each product, one form shall be completed and submitted (i.e. 3 products should have 3 separate forms completed). The form is available on the SPO webpage at <http://spo.hawaii.gov/> search for "Forms" and select form SPO-38.

Late submittals for this project will not be reviewed by the Department.

### Change in Availability of Hawaii Product

In the event of any change that materially alters the offeror's ability to supply Hawaii Products, the offeror shall immediately notify the Contracting Officer in writing and the parties shall enter into discussions for the purposes of revising the contract or terminating the contract for convenience.

Offerors shall indicate in the Hawaii Product Schedule below whether the pre-approved Hawaii Products are offered. Offerors offering a Hawaii Product shall fill-in the quantity, unit measure, unit price and total price for the Hawaii Product they desire to be considered for preference. Products not pre-approved shall not be considered. Hawaii Products not meeting the requirements of the specification shall not be considered.

Offerors selecting the Hawaii Product preference may be required to submit additional information on the cost basis of their selected Hawaii Product preference items when requested after the bid opening to verify cost of the Hawaii Products, including the computations for the estimated quantities, manufacturers or supplier's quotations, and delivered material cost Free on Board (FOB) at the jobsite. The Hawaii Product Cost shall not include installation costs.

**Hawaii Products available for this project are as follows:**

Product Description	Class I, II or III	Manufacturer	Cost
			\$
			\$
			\$
			\$
			\$
			\$
			\$

**CHARACTER OF WORKERS OR EQUIPMENT**

The Contractor shall perform with his own organization, work amounting to not less than twenty percent (20%) of the total contract cost. The Engineer may require the Contractor to verify the percentage of work he will be providing with his own organization by furnishing pertinent information such as all of the actual subcontractor(s)' quotations he received for the bid. If requested, the Contractor shall provide such verification within 5 working days of the request.

**CERTIFICATION FOR SAFETY AND HEALTH PROGRAM FOR BIDS IN EXCESS OF \$100,000**

In accordance with HRS 396-18, by submitting this proposal, the undersigned certifies that his company will have a written safety and health plan for this project that will be available and implemented by the Notice to Proceed date of this project. Details of the requirements of this plan may be obtained from the Department of Labor and Industrial Relations, Occupational Safety and Health Division (HIOSH).

**TAX CLEARANCES FROM THE STATE DIRECTOR OF TAXATION AND INTERNAL REVENUE SERVICE**

Contractors are required to provide a state and federal tax clearance as a prerequisite to entering into a public contract of \$2,500 or more. To meet this requirement, all bidders shall submit valid tax clearances with their bid proposals when the bid is \$2,500 or more.

Failure to submit the required tax clearance may be sufficient grounds for the State to refuse to receive or consider the prospective bidder's proposal.



In accordance with Act 190 Amendment to HRS 103D-310(c), required as a prerequisite to entering into a contract, the contractor shall register on the Hawaii Compliance Express web site for all tax clearances by going to <http://vendors.ehawaii.gov> and registering there.

A Certificate of Vendor Compliance generated from this website should be included with their bid proposal. A Compliant status is required prior to awarding the contract.

## LICENSE

Due to the nature of the work contemplated, bidder must possess a valid State of Hawaii Contractor's license in the appropriate classification - **C-33 and** Health Lead Abatement Contractor registration.

### NOTE:

1. The Adjutant General or his designated representative reserves the right to reject any and/or all bids and waive any defects when, in his opinion, such rejection or waiver will be in the best interest of the State.
2. The award of the contract shall be conditioned upon funds being made available for these projects and further upon the right of the Adjutant General or his designated representative to hold all bids received for a period of ninety (90) days from the date of the opening thereof, unless otherwise required by law, during which time no bid may be withdrawn.
3. The liquidated damages per working day for failure to complete the work on time shall be at \$200.00 per calendar day or as stipulated in the General Conditions, whichever is higher.
4. By submitting this proposal, the undersigned is declaring his firm has not been assisted or represented on this matter by an individual who has, in a State capacity, been involved in the subject matter of this contract in the past two years.
5. Upon the acceptance of the proposal by the Adjutant General or his designated representative, the undersigned must enter into and execute a contract for the same and furnish a bond, as required by law. This bond shall conform to the provisions of Section 103D-324 of the Hawaii Revised Statutes and any law applicable thereto.
6. If the lowest bid received by the State exceeds the funds available for this project, the State reserves the right to negotiate with the lowest responsible bidder as permitted under Section 103D-302, Hawaii Revised Statutes, as amended, to reduce the scope of work and award a contract therefore.
7. This contract may be awarded as an informal contract as determined by the Adjutant General or his designated representative in accordance with the applicable Hawaii Revised Statutes as amended, whereby a purchase order will be executed and used as the formal contract.

Receipt of the following addenda issued by the Department is acknowledged by the day(s) of the receipt indicated below:

Addendum No. 1 \_\_\_\_\_ Addendum No. 2 \_\_\_\_\_  
Date  
Addendum No. 3 \_\_\_\_\_ Addendum No. 4 \_\_\_\_\_

It is understood that failure to receive any such addendum shall not relieve the Contractor from any obligation under this Proposal as submitted. (See Special Notice to Bidders for information regarding addenda.)

ALL JOINT CONTRACTORS & SUBCONTRACTORS TO ENGAGE ON THIS PROJECT

The bidder certifies that the following is a complete listing of all joint contractors or subcontractors covered under Chapter 444, Hawaii Revised Statutes, who will be engaged by the bidder on this project to perform the nature and scope of work indicated pursuant to Section 103D-302, Hawaii Revised Statutes, and understands that failure to comply with this requirement shall be just cause for rejection of the bid.

The bidder further certifies that only those joint contractors or subcontractors listed shall be allowed to perform work on this project and that all other work necessary shall be performed by the bidder with his own employees. If no joint contractor or subcontractor is listed, it shall be construed that all of the work shall be performed by the bidder with his own employees.

All bidders must be sure that they possess and that the subcontractors listed in the proposal possess all the necessary specialty licenses needed to perform the work for this project. The bidder shall be solely responsible for assuring that all of the specialty licenses required to perform the work is covered in his bid.

The bidder shall include the license number of the joint contractors or subcontractors listed below. Failure to provide the correct names and license numbers as registered with the Contractor's Licensing Board may cause rejection of the bid submitted.

Complete Firm Name of Joint Contractor or Subcontractor for Lump Sum Bid	License Number	Nature and Scope of Work to be performed
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Enclosed herewith as required by law:  
Surety Bond  
Certificate of Deposit  
Certified Check  
Cashier's Check  
Share Certificate  
Legal Tender  
(Cross Out Those Not Applicable)

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

\_\_\_\_\_  
\*Signature

HAWAII GENERAL EXCISE TAX

\_\_\_\_\_  
Title

I.D. NO. \_\_\_\_\_

\_\_\_\_\_  
Name of Company

\_\_\_\_\_  
Address

LICENSE CLASSIFICATION  
AND/OR SUBCLASSIFICATION  
NO.

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Date

\_\_\_\_\_  
(CORPORATE SEAL)

\*Please attach to this page evidence of the authority of this officer to submit bids on behalf of the Company, and also the names and residence addresses of all officers of the Company.

NOTE: Fill in all blank spaces with the information asked for or bid may be invalidated.  
PROPOSAL PAGES MUST BE INTACT; MISSING PAGES MAY INVALIDATE YOUR BID.

(Name of Corporation)  
Corporate Resolution

I, \_\_\_\_\_, Secretary of \_\_\_\_\_  
Corporation,  
a \_\_\_\_\_ Corporation, do hereby certify that the following is a full, true  
and correct copy of a resolution duly adopted by the Board of Directors of said corporation, at its  
meeting duly called and held at the office of the Corporation \_\_\_\_\_  
Street, \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at  
which a quorum was present and acting throughout, and that said resolution has not been  
modified, amended or rescinded and continues in full force and effect:

“RESOLVED that any individual at the time holding the position of President, Vice  
President, Secretary or Treasurer be, and each of them hereby is, authorized to execute on behalf  
of the Corporation any bid, proposal or contract for the sale or rental of the products of the  
Corporation or for services to be performed by the Corporation, and to execute any bond  
required by any such bid, proposal or contract with the United States Government or the State of  
Hawaii or the City and County of Honolulu, or any County or Municipal Government of said  
State, or any department or subdivision of any of them.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said  
\_\_\_\_\_ Corporation this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Secretary

(Names and Address of:)

President:

Vice President:

Secretary:

Treasurer:

## SPECIAL NOTICE TO BIDDERS - CONSTRUCTION

QUALIFICATIONS OF BIDDERS - Prospective bidders must be capable of performing the work for which bids are being called.

The Department of Defense no longer requires a submittal of "INTENTION TO BID" unless otherwise stated in the notice to bidders.

If two (2) or more prospective bidders desire to bid jointly as a joint venture on a single project, they must file an affidavit of joint venture with their notice of intention to bid or if no intent to bid is required, shall submit an affidavit of joint venture prior to bid opening. Such affidavit of joint venture will be valid only for the specific project for which it is filed. No further license is required when all parties to the joint venture possess current and appropriate contractor's licenses. Joint venture are required to be licensed in accordance with Chapter 444 of the Hawaii Revised Statutes, as amended, and the rules and regulations of the Contractor's License Board when any party to the joint venture agreement does not hold a current or appropriate contractor's license.

The Adjutant General or his designated representative may, in accordance with Section 103D-310, Hawaii Revised Statutes, require the prospective bidder to submit answers to questions in the "Standard Questionnaire and Financial Statement for Bidders," on the form provided by the Department, properly executed and notarized, setting forth a complete statement of the experience of such prospective bidder and his organization in performing similar work and a statement of the equipment proposed to be used, together with adequate proof of the availability of such equipment, at least forty-eight (48) hours prior to the time advertised for the opening of bids. If the information in the questionnaire proves satisfactory, the bidder's proposal will be received. All information contained in the answers to the questionnaire shall be kept confidential. The questionnaire will be returned to the bidder after it has served its purpose.

If upon review of the Questionnaire, or otherwise, the bidder appears not fully qualified or able to perform the intended work, the Adjutant General or his designated representative shall, after affording the bidder an opportunity to be heard and if still of the opinion that the bidder is not fully qualified to perform the work, refuse to receive or to consider any bid offered by the prospective bidder.

Failure to complete the prequalification questionnaire, (IF SENT TO YOU), will be sufficient cause for the Department to disqualify a prospective bidder.

INTERPRETATION OF QUANTITIES IN BID SCHEDULE - When quantities for individual items of work are listed in the bid form for which respective unit prices are asked, said quantities are to be considered as approximate and are to be used by the Department only for the purpose of comparing on a uniform basis bids offered for the work. The Department does not, expressly or by implication, agree that the actual

quantity of work will correspond therewith. The undersigned agrees that his is satisfied with and will at no time dispute said estimated quantities as a means of comparing the bids.

After determining the low bidder by comparison of bids submitted in accordance with the proposal form, the Adjutant General or his designated representative reserves the right to increase or decrease the scope of the improvement.

On unit price bids, payment will be made only for the actual number of units incorporated into the finished project at the unit price bid.

It is understood and agreed that the contractor will make no claim for anticipated profit or loss of profit due to the Department's right to eliminate entirely portions of the work or to increase or decrease any or all of the quantities shown in the proposal form and/or scope of work.

CONTENTS OF CONTRACT FORMS – The Statement of Work will provide the location, description, and the contract time of the work contemplated for which a lump sum bid price is asked or containing a schedule of items, together with estimated quantities of work to be performed and materials to be furnished, for which unit bid prices and/or lump sum bid prices are asked.

Proposal forms will include a listing of joint contractor and/or subcontractors asking the name of each person or firm to be engaged on the project as a joint contractor or subcontractor.

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

The plans, specifications and other documents designated in the bid document package, will also be considered a part thereof whether attached or not.

BIDDERS RESPONSIBILITY FOR EXAMINATION OF PLANS, SPECIFICATIONS, SITE OF WORK, ETC. - The bidder shall examine carefully the site work contemplated and the proposal, plans, specifications, supplemental specifications, special provisions and contract and bond forms, therefore. The submission of a bid shall be considered as a warranty that the bidder has made such examination and is satisfied with the conditions to be encountered in performing the work and with the requirements of the plans, specifications, supplemental specifications, special provisions, contract, and bond.

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

Where an investigation of subsurface conditions has been made by the Department in respect to foundation or other design, the bidders may inspect the records of the Department as to such investigation, including examination of samples, if any. It is understood, however, that any such information furnished is for the bidders' convenience only and no assurance is given that conditions found at the time of subsurface investigation, such as the presence or absence of water, will be conditions that prevail at the time of construction.

When the contract plan includes a log of test borings showing a record of the data obtained by the Department's investigation of subsurface conditions, said log represents only the opinion of the Department as to the character of material encountered by it in its test borings and there is no warranty, either expressed implied, that the conditions indicated are representative of those existing throughout the work or any part of it, or that unforeseen developments may not occur.

Information regarding the site of work given on the drawings or specifications has been obtained by the Department and is believed to be reasonably correct, however, it is the responsibility of the bidder to verify all such information. Any utilities that the Contractor encounters during the progress of the work, such as telephone ducts, electric ducts, water lines, sewer lines, electric lines, and drainage pipes, whether shown or not on the contract plans, shall not be disturbed or damaged unless otherwise instructed in the plans and specifications.

In the event the utilities are damaged or disturbed by the Contractor, the Contractor shall be held liable for the damage or disturbed utilities which were:

- A. Shown on the plan.
- B. Located and exposed on the job as it progressed.
- C. Pointed out to the Contractor in the field.

The Contractor shall repair the damaged or disturbed utilities to the existing condition at no cost to the Department or the project. Any damage claims due to the disruption of service caused by the utilities being damaged shall be paid by the Contractor who shall save harmless the Department from all suits, actions, or claims of any character brought on account of such damages.

In the event utilities which were not shown on the plans and specifications are damaged or disturbed by the Contractor, the Contractor shall not be held liable but shall notify the Engineer. Upon instruction from the Engineer, the Contractor shall repair all damages which shall be considered to be additional work.

Utilities which must be relocated due to construction and not so indicated in the plans and specifications shall also be considered to be additional work. The Contractor shall not in any case, if he encounters underground utilities, proceed with any work until he has notified the Engineer.



No information derived from such inspection of records of subsurface investigations made by the Department or from the Engineer or from his authorized representative or from maps, plans, specifications, or drawings will in any way relieve the Contractor from any risk or from properly fulfilling all the terms of the contract. The log tests borings if included in the plans are only for the convenience of the bidder and do not constitute a part of the contract. The Contractor is solely responsible for all assumptions, deductions, or conclusions he may make or derive from the subsurface records furnished.

ADDENDA AND INTERPRETATIONS - Discrepancies, omissions, or doubts as to the meaning of drawings and specifications should be communicated via email as directed in the Notice to Bidders and must be received by the Engineering Office, Department of Defense, no later than the date stated in the Notice to Bidders for submittal of questions. Any interpretation, if made, and any supplemental instructions will be in the form of written addenda. All addenda will be posted on the State Procurement Office website <http://spo.hawaii.gov> . Failure of any bidder to receive any such addendum or interpretations shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents.

PREPARATION OF PROPOSAL - The bidder's proposal must be submitted on the proposal form furnished by the Department. The proposal must be prepared in full accordance with the instructions therein. The bidder must state, both in words and numerals, the lump sum price at which the work contemplated is proposed to be done. These prices must be written in ink or typed. Prices written in pencil are not acceptable. In case of a discrepancy between the prices written in words and those written in figures, the words shall govern over the figures. The bidder shall sign the proposal in the spaces provided with ink.

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

Pursuant to the requirements of Section 103D-302, Hawaii Revised Statutes, each bidder shall include in his bid the name of each person or firm to be engaged by the bidder on the project as joint contractor or subcontractor indicating also the nature and scope of work to be performed by such joint contractor and/or subcontractor.

**BID SECURITY** - No proposal totaling \$25,000 or more will be considered unless accompanied by one of the following forms of bidder's security:

A. Surety bond underwritten by a company licensed to issue bonds in this State.

B. Legal Tender.

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

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

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

**THE BID SECURITY SHALL BE AT LEAST FIVE (5) PERCENT OF THE BID AMOUNT.**

If the bidder is a corporation, evidence in the form of a corporate resolution, authorizing the corporate representative to execute the bond must be submitted with the proposal. If the bidder is a partnership, all partners must sign the bond or evidence in the form of a partnership agreement must be submitted showing the authority of the partner.

If the bidder is a joint venture, all parties to the joint venture must sign the bond or evidence in the form of a joint venture agreement must be submitted showing the authority of the bidder to sign the bond on behalf of the joint venture.

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

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

DELIVERY OF PROPOSALS - The entire proposal shall be placed together with the bid security, in a sealed envelope so marked as to indicate the identity of the project, the project number, the date of bid opening and the name and address of the bidder and then delivered as indicated in the Notice to Bidders. Bids which do not comply with this requirement may not be considered. Proposals will be received up to the time fixed in the public notice for opening of bids and must by that time be in the hands of the officials indicated. The words 'SEALED BID' must be clearly written or typed on the face of the sealed envelope containing the proposal guaranty.

WITHDRAWAL OR REVISION OF PROPOSALS - Any bid may be withdrawn or revised at any time prior to, but not after, the time fixed in the public notice for the opening of bids, provided that a request in writing, executed by the bidder or his duly authorized representative, for the withdrawal or revision of such bid is filed with the Adjutant General before the time set for the opening of bids. The withdrawal of a bid shall not prejudice the right of a bidder to file a new bid. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid will not be received after that time, nor may any bid be withdrawn after the time fixed in the public notice for the opening of bids.

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

DISQUALIFICATION OF BIDDERS - Any one or more of the following cause will be considered as sufficient for the disqualification of a bidder and the rejection of his proposal or proposals:

- A. Non-compliance with "QUALIFICATION OF BIDDERS".
- B. Evidence of collusion among bidders.
- C. Lack of responsibility and cooperation as shown by past work.
- D. Being in arrears on existing contracts with the State of Hawaii or having defaulted on a previous contract.
- E. Lack of proper equipment and/or sufficient experience to perform the work contemplated as revealed by the Standard Questionnaire and Financial Statement for Bidders.
- F. No contractor's license or a contractor's license which does not cover type of work contemplated.
- G. More than one proposal for the same work from an individual, firm, partnership, corporation, or joint venture under the same or different name.

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

I. Failure to pay, or satisfactorily settle, all bids overdue for labor and material on former contracts in force at the time of issuance of proposal forms.

CONSIDERATION OF PROPOSALS - After the proposals are opened and read, the figures will be extended and/or totaled in accordance with the bid prices of the acceptable proposals and the totals will be compared and the results of such comparison shall immediately be made public. In the comparison of bids, words written in the proposals will govern over figures and unit prices will govern over totals. Until the award of the contract, however, the right will be reserved to reject any and all proposals and to waive any defects or technicalities as may be deemed best for the interest of the State.

IRREGULAR PROPOSALS - Proposals will be considered irregular and may be rejected for the following reasons:

A. If the proposal is unsigned.

B. Bid security not in accordance with paragraph "BID SECURITY".

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

D. If the proposal shows any non-compliance with applicable law, alteration of form, additions not called, conditional bids, incomplete bids, uninitiated erasures, other defects, or if the prices are obviously unbalanced, or if sufficient funds are not available to prosecute the work.

E. If the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.

This does not exclude a proposal limiting the maximum gross amount of awards acceptable to any one bidder at any one bid letting, provided that any selection of awards will be made by the Department.

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

G. Where there is an incomplete or ambiguous listing of joint contractors and/or subcontractors the proposal may be rejected. All work which is not listed as being performed by joint contractor and/or subcontractors must be performed by the bidder

with his own employees. Additions to the list of joint contractors or subcontractors will not be allowed. Whenever there is a doubt as to the completeness of the list, the bidder will be required to submit within five (5) working days, written confirmation that the work in question will be performed with his own force. Whenever there is more than one joint contractor and/or subcontractor listed for the same item of work, the bidder will be required to either confirm in writing within five (5) working days that all joint contractors or subcontractors listed will actually be engaged on the project or obtain with five (5) working days, written releases from those joint contractor and/or subcontractors who will not be engaged.

AWARD OF CONTRACT - The award of contract, if it be awarded, will be made within ninety (90) consecutive calendar days after the opening of the proposals to the lowest responsible and responsive bidder (including the alternate or alternates which may be selected by the Adjutant General in the case of alternate bids) whose proposal complies with all the requirements prescribed, but in no case will an award be made until all necessary investigations are made. The successful bidder will be notified, by letter mailed to the address shown on the proposal that his bid has been accepted and that he has been awarded the contract.

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

CANCELLATION OF AWARD - The Adjutant General or his designated representative reserves the right to cancel the award of any contract at any time before the execution of said contract by all parties without any liability to the awardee and to any other bidder.

RETURN OF BID SECURITY (excluding bid bonds) - All bid securities, except those of the four (4) lowest bidders, will be returned immediately following the opening and checking of the proposals. The retained bid securities of the remaining two (2) lowest bidders will be returned within five (5) working days following the execution of contract. The successful bidder's bid security may be returned after a satisfactory contract bond has been furnished and the contract has been executed.

RETURN OF BID BONDS – The bid bonds will be returned only after receipt of a written request from the contractor.

REQUIREMENT OF PERFORMANCE AND PAYMENT BONDS - Performance and Payment Bonds shall be required for contracts exceeding \$50,000. At the time of the execution of the contract, the successful bidder shall file a good and sufficient performance and payment bonds on the form furnished by the Department or the contractors Surety, each in an amount equal to one hundred percent (100%) of the amount of the contract price unless otherwise stated in the solicitation of bids. Acceptable performance and payment bonds shall be limited to the following:

- A. Surety bond underwritten by a company licensed to issue bonds in this State; or

B. Legal Tender; or

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

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

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

If the contractor fails to deliver the required performance and payment bonds, the contractor's award shall be canceled, its bid security enforced, and award of the contract shall be made to the next lowest bidders.

EXECUTION OF THE CONTRACT - The contract shall be signed by the successful bidder and returned, together with a satisfactory performance and payment bonds, within ten (10) consecutive calendar days, after the bidder has received his contract for execution or within such further time as the Adjutant General or his designated representative may allow. No proposal or contract shall be considered binding upon the State until the contract has been fully and properly executed by all parties thereto and the Adjutant General or his designated representative has endorsed therein his certificate, as required by Section 103D-309, Hawaii Revised Statutes, that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the State's amount required by such contract.

On any individual award totaling less than \$50,000, the State reserves the right to execute the contract by the issuance of a State Purchase Order. Acceptance shall result in a binding contract between the parties without further action by the State. Executing the contract by Purchase Order shall not be deemed a waiver of these specification requirements.

FAILURE TO EXECUTE THE CONTRACT - If the bidder to whom a contract is awarded shall fail or neglect to enter into the contract and to furnish satisfactory security within ten (10) consecutive calendar days after such award or within such further time as the Adjutant General or his designated representative may allow, the award shall be canceled and the bid security shall be declared forfeited. The bid security shall thereupon become a realization of the State, not as a penalty, but in liquidation of the damages sustained. The Adjutant General may thereupon award the contract to the next lowest responsible bidder or may call for new bids, whichever method he may deem is to the best interest of the State.

NOTICE TO PROCEED - After the contract is fully executed, the Contractor will be sent a formal "Notice to Proceed" advising the Contractor of the date on which he may proceed with the work. The Contractor shall be allowed ten (10) consecutive working days from said date to begin his work. In the event that the Contractor refuses or neglects to start the work, the Adjutant General or his designated representative may terminate the contract.

## **SPECIAL PROVISIONS FOR CONSTRUCTION CONTRACTS**

### **RESPONSIBILITY OF OFFERORS**

Offeror shall furnish proof of compliance in accordance with Act 190 Amendment to HRS 103D-310(c)

Required as a prerequisite to entering into a contract, the contractor shall register on the Hawaii Compliance Express web site for all tax clearances by going to <http://vendors.ehawaii.gov> and registering there.

A Certificate of Vendor Compliance generated from this website should be included with their bid proposal. A Compliant status is required prior to awarding the contract.

### **COMPREHENSIVE ANNUAL FINANCIAL REPORTING**

For any project that involves work on multiple structures, including non-building structures, whether it be new work or renovation work, or when the project involves both site improvements and a structure, the Contractor shall provide the following information to the Project Manager for fixed asset allocation purposes:

1. Within 30 calendar days of award as applicable to the project, the following shall be submitted:
  - a. The total cost of each individual structure.
  - b. The total cost of on-site improvement work; and
  - c. The total cost of off-site improvement work.
2. After all work, including all change order work has been completed, and prior to a request for final payment, the following shall be submitted:
  - a. The total cost of each individual structure including any related change order cost.
  - b. The total cost of on-site improvement work including any related change order cost; and
  - c. The total cost of off-site improvement work including any related change order cost.
3. The sum total cost of each category noted above shall total to the contract amount awarded, plus all change order work issued.
  - a. The cost of each individual structure includes the cost of the structure and any work within five (5) feet of the structure or building line which may include, but is not limited to its foundation, foundation earthwork, and utility improvements within and immediately below the building line.
  - b. The on-site improvement cost includes all site improvement work from



five (5) feet and beyond the building line and up to the project's property line, which may include but is not limited to clearing and grubbing, grading, drainage system, site utility, walkway, parking lot, and landscape improvements.

- c. The off-site improvement cost includes all off-site improvement work outside of the project's property line, which may include but is not limited to walkway, landscape, drainage, utility, and roadway improvements.

## **LIABILITY INSURANCE**

The Contractor shall not commence any work until it obtains, at its own expense, all required liability insurance. Such insurance must have the approval of the State as to limit form and amount and must be maintained with a company acceptable to the State. Such insurance must be maintained for the full period of the contract and shall provide protection from claims arising out of or resulting from the Contractor's operations under the Contract itself Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

The contractor shall take out and maintain during the life of this contract broad form public liability (Bodily Injury) and broad form property damage liability insurance in a combined single limit not less than \$1,000,000 and not less than \$2,000,000 in the aggregate to protect such contractor and all his subcontractors from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by himself or anyone directly or indirectly employed by either of them and to include automotive liability, workers compensation and employers liability.

The insurance described herein will be maintained by the Contractor for the full period of the Contract and in no event will be terminated or otherwise allowed to lapse prior to final acceptance of the work by the State.

A certificate of insurance acceptable to the State shall be filed with the State prior to commencement of the work. Such certificate shall contain a provision that coverage afforded under the policy will not be canceled or changed until at least thirty days written notice has been given to the State by registered mail at the address denominated for the State in the Contract for official communications to it should any policy be canceled before final acceptance by the State, and the Contractor fails to immediately procure replacement insurance as specified, the State reserves the right to procure such insurance and to deduct the cost thereof from any sum due the Contractor.

## **BID PREPARATION**

**Offer Form, Page Of-1.** Offeror is requested to submit its offer using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate space on Offer Form, page OF-1. Failure to do so may delay proper execution of the contract.

The authorized signature on the first page of the Offer Form shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

**Hawaii Business.** A business entity referred to as a "Hawaii business", is registered and incorporated or organized under the laws of the State of Hawaii.

**Compliant non-Hawaii business.** A business entity referred to as a "compliant non-Hawaii business," is not incorporated or organized under the laws of the State of Hawaii but is registered to do business in the State.

**Tax Liability.** Work to be performed under this solicitation is a business activity taxable under Chapter 237, Hawaii Revised Statutes (HRS), and vendors are advised that they are liable for the Hawaii GET at the current rate.

**4.712% tax rate.** All businesses located on Oahu are required to pay the ½% County Surcharge tax on all Oahu transactions for which they pay the 4% GE tax. Neighbor island and out-of-state businesses that deliver goods or services to Oahu and have a 'physical presence' on Oahu, must pay the new ½% County Surcharge tax on their Oahu transactions.

**4% tax rate.** Neighbor island and out-of-state businesses that do not deliver any goods or services to Oahu are not subject to the new ½% County Surcharge tax.

If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax-exempt status and cite the HRS chapter or section allowing the exemption.

**Taxpayer Preference.** For evaluation purposes, pursuant to §103D-1008, HRS, the Bidder's tax-exempt price offer submitted in response to an IFB shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

## **AWARD OF CONTRACT**

**Method of Award.** Award, if made, shall be to the responsive, responsible offeror submitting the lowest Lump Sum Bid unless otherwise noted in the bid documents.

**Responsibility of Lowest Responsive Bidder.** Reference Responsibility of Offerors in §3-122-112, HAR. If compliance documents have not been submitted to the State Department of Defense prior to award, the lowest responsive offeror shall produce documents to the procurement officer to demonstrate compliance with this section.

### **HRS Chapter 237 tax clearance requirement for award and final payment.**

Instructions are as follows:

In accordance with Act 190 Amendment to HRS 103D-310(c)

Required as a prerequisite to entering into a contract, the contractor shall register on the Hawaii Compliance Express web site for all tax clearances by going to <http://vendors.ehawaii.gov> and registering there.

A Certificate of Vendor Compliance generated from this website should be included with their bid proposal. A Compliant status is required prior to awarding the contract.

A current Certificate of Vendor Compliance must accompany the invoice for final payment on the contract.

### **HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award.** Instructions are as follows:

Pursuant to §103D-310(c), HRS, The Certificate of Vendor Compliance must have a "Compliant" rating with the DLIR.

### **Compliance with Section 103D-310(c)(1) and (2), HRS.**

Contractors are required to provide a state and federal tax clearance as a prerequisite to entering into a public contract of \$2,500 or more. To meet this requirement, all bidders shall submit valid tax clearances with their bid proposals when the bid is \$2,500 or more.

In accordance with Act 190 Amendment to HRS 103D-310(c), required as a prerequisite to entering into a contract, the contractor shall register on the Hawaii Compliance Express web site for all tax clearances by going to <http://vendors.ehawaii.gov> and registering there.

A Certificate of Vendor Compliance generated from this website shall be included with their bid proposal. A Compliant status is required prior to awarding the contract.

Failure to submit the required tax clearance will be sufficient grounds for the State to refuse to receive or consider the prospective bidder's proposal.

The Certificate of Vendor Compliance should be applied for as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

**Final Payment Requirements.** A current Certificate of Vendor Compliance will be required for final payment.

## **SPECIAL PROVISIONS for Act 68, SLH 2010, CONSTRUCTION CONTRACTS**

### **DEFINITIONS FOR TERMS USED IN ACT 68, SLH 2010:**

- a. "Contract" means contracts for construction under 103D, HRS.
- b. "Contractor" has the same meaning as in section 103D-104, HRS, provided that "contractor" includes a Subcontractor where applicable.
- c. "Construction" has the same meaning as in section 103D-104, HRS.
- d. "Procurement Officer" has the same meaning as in section 103D-104, HRS.
- e. "Resident" means a person who is physically present in the State of Hawaii at the time the person claims to have established the person's domicile in the State of Hawaii and shows the person's intent is to make Hawaii the person's primary residence.
- f. "Shortage trade" means a construction trade in which there is a shortage of Hawaii residents qualified to work in the trade as determined by the Department of Labor and Industrial Relations.

### **EMPLOYMENT OF STATE RESIDENTS' REQUIREMENTS – ACT 68, SLH 2010:**

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

- b. Prior to starting any construction work, the Contractor shall submit the subcontract dollar amount for each of its Subcontractors.
- c. The requirements of this section shall apply to any subcontract of \$50,000 or more in connection with the Contractor, that is, such Subcontractors must also ensure that Hawaii residents compose not less than eighty percent of the Subcontractors workforce used to perform the subcontract.
- d. The Contractor and any Subcontractor whose subcontract is \$50,000 or more shall comply with the requirements of Act 68 for the entire duration of the contract.
  - 1. Certification of Compliance for Employment of State Residents (attached) shall be made prior to submittal of the final invoice.
  - 2. The Certification of Compliance for Employment of State Residents shall be made under oath by an officer of the company by completing a Certification of Compliance for Employment of State Residents form and executing the Certificate before a licensed notary public.
  - 3. In addition to the certification as required above, the Contractor and Subcontractors shall maintain records such as certified payrolls for laborers and mechanics who performed work at the site and time sheets for all other employees who performed work on the project. These records shall include the names, addresses and number of hours worked on the project by all employees of the Contractor and Subcontractor who performed work on the project to validate compliance with Act 68. The Contractor and Subcontractors shall retain these records and provide access to the State for a minimum period of four (4) years after the final payment, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the four (4) year period, the Contractor and Subcontractors shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the four (4) year period, whichever occurs later. Furthermore, it shall be the Contractor's responsibility to enforce compliance with this provision by any Subcontractor.
- e. A Contractor who fails to comply with this section shall be subject to any of the following sanctions:
  - 1. Temporary suspension of work on the project until the Contractor or its Subcontractor complies with Act 68.
  - 2. Withholding of payment on the contract until the Contractor or its Subcontractor complies with Act 68.

3. Permanent termination of the Contractor or Subcontractor from any further work on the project.
4. Recovery by the State, as applicable, of any moneys expended on the contract or subcontract as applicable; or
5. Proceedings for debarment or suspension of the Contractor or Subcontractor under Hawaii Revised Statutes §103D-702.

**Conflict with Federal Law:**

This section shall not apply if the application of this section is in conflict with any federal law, or if the application of this section will disqualify the State from receiving Federal funds or aid.

**Davis-Bacon Act:**

Davis-Bacon Act prevailing wage rates apply to all State of Hawaii Construction contracts over \$2,000.00.

**CERTIFICATION OF COMPLIANCE  
FOR  
EMPLOYMENT OF STATE RESIDENTS  
HRS CHAPTER 103B, AS AMENDED BY ACT 192, SLH 2011**

Project Title: \_\_\_\_\_

Agency Project No: \_\_\_\_\_

Contract No.: \_\_\_\_\_

As required by Hawai'i Revised Statutes Chapter 103B, as amended by Act 192, Session Laws of Hawai'i 2011-Employment of State Residents on Construction Procurement Contracts, I hereby certify under oath, that I am an officer of \_\_\_\_\_ and

(Name of Contractor or Subcontractor Company)

for the Project Contract indicated above, \_\_\_\_\_ was in

(Name of Contractor or Subcontractor Company)

compliance with HRS Chapter 103B, as amended by Act 192, SLH 2011, by employing a workforce of which not less than eighty percent are Hawai'i residents, as calculated according to the formula in the solicitation, to perform this Contract.

I am an officer of the **Contractor** for this contract.

I am an officer of the **Subcontractor** for this contract.

***CORPORATE SEAL***

\_\_\_\_\_  
(Name of Company)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

Subscribed and sworn to me before this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Doc. Date: \_\_\_\_\_ # of Pages \_\_\_\_\_ 1<sup>st</sup> Circuit

Notary Name: \_\_\_\_\_

Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, 1<sup>st</sup> Circuit, State of Hawai'i  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date

NOTARY CERTIFICATION

SURETY BID BOND

Bond No.

KNOW TO ALL BY THESE PRESENTS:

That we, \_\_\_\_\_

[Full name or legal title of bidder]

as Offeror, hereinafter called Principal, and \_\_\_\_\_

[Bonding Company]

\_\_\_\_\_,  
as Surety, hereinafter called Surety, a corporation authorized to transact business as a Surety in the State of Hawaii,  
are held and firmly bound unto the State of Hawaii, Department of Defense, as Owner, hereinafter called owner, in  
the penal sum of \_\_\_\_\_

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_),

[Required amount of bid security]

lawful money of the United States of America, for the payment of which sum well and truly to be made, the said  
Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly  
and severally, firmly by these presents.

WHEREAS:

The Principal has submitted an offer for \_\_\_\_\_

[Project number and Title]

NOW, THEREFORE:

The condition of this obligation is such that if the Owner shall reject said offer, or in the alternate, accept  
the offer of the Principal and the Principal shall enter into a Contract with the Owner in accordance with the terms  
of such offer, and give such bond or bonds as may be specified in the solicitation or Contract Documents with good  
and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material  
furnished in the prosecution thereof as specified in the solicitation then this obligation shall be null and void,  
otherwise to remain in full force and effect.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Seal)

\_\_\_\_\_  
Name of Principal

\_\_\_\_\_  
Signature

Title \_\_\_\_\_

(Seal)

\_\_\_\_\_  
Name of Surety

\_\_\_\_\_  
Signature

Title \_\_\_\_\_



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**SAMPLE FORMS**

Request for Substitution  
Name of Corporation  
Weekly Quality Control Report Form

## ARTICLE 1 - Definitions

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

- 1.1\_ ADDENDUM (plural - Addenda) A written or graphic document, including Drawings and Specifications, issued by the Engineer during the bidding period which modify or interpret the bidding documents, by additions, deletions, clarifications or corrections which shall be considered and made a part of the bid proposal and the contract when executed.
- 1.2\_ ADDITION (to the contract sum) Amount added to the contract Sum by Change Order.
- 1.3\_ ADMINISTRATIVE RULES - Hawaii Administrative Rules for Chapter 103-D of the Hawaii Revised Statutes.
- 1.4\_ ADMINISTRATOR - The Public Works Administrator, Department of Accounting and General Services
- 1.5\_ ADVERTISEMENT - A public announcement soliciting bids or offers.
- 1.6\_ AMENDMENT - A written document properly executed by the Contractor and DOD issued to amend the existing contract between the State and the Contractor.
- 1.7\_ BAD WEATHER DAY - When weather or other conditions prevent a minimum of four hours of work with the Contractor's normal work force on controlling items of work at the site.
- 1.8\_ BENEFICIAL OCCUPANCY - The point of project completion when the State can use the constructed facility in whole or in part for its intended purpose even though substantial completion may not be achieved.
- 1.9\_ BID See OFFER
- 1.10\_ BID SECURITY - The security furnished by the bidder from which the State may recover its damages in the event the bidder breaches its promise to enter into a contract with the State and fails to execute the required bonds covering the work contemplated, if its proposal is accepted.
- 1.11\_ BIDDER - See Offeror
- 1.12\_ BIDDING DOCUMENTS (or SOLICITATION DOCUMENTS) - The advertisement solicitation notice and instructions, Offer requirements, Offer forms, and the proposed contract documents including all addenda, and clarifications issued prior to receipt of the Offer.
- 1.13\_ BULLETIN - A written notice to the Contractor requesting a price and / or time proposal for contemplated changes preparatory to the issuance of a field order or change order.
- 1.14\_ BY OR TO THE ENGINEER - To avoid cumbersome and confusing repetition of expressions in these General Conditions, it is provided that whenever the following words or words of like import are used, they shall be understood as if they were followed by the words "by the Engineer" or "to the Engineer", unless the context clearly indicates another meaning: contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected or condemned.
- 1.15\_ CALENDAR DAY - Any day shown on the calendar beginning at midnight and ending at midnight the following day. If no designation of calendar or working day is made, "day" shall mean calendar day.
- 1.16\_ CHANGE ORDER - A written order signed by the Engineer that establishes the full payment and final settlement of all claims for direct, indirect and consequential costs, including costs of delays, and establishes any adjustments to contract time related to the work covered and affected by one or more field orders, or for change work done or agreed to be done without issuance of a separate field order. A change order signed by all the parties to the contract constitutes a supplemental agreement.
- 1.17\_ COMPLETION - See SUBSTANTIAL COMPLETION and FINAL COMPLETION.
- 1.18\_ COMPTROLLER - The Comptroller of the State of Hawaii, Department of Accounting and General Services.

- 1.19\_ CONSULTANT - A person, firm or corporation having a contract with the State to furnish services with respect to the project
- 1.20\_ CONTRACT - The written agreement between the Contractor and the State of Hawaii by its Adjutant General, by which the Contractor is bound to furnish all labor, equipment, and materials and to perform the specified work within the contract time stipulated, and by which the State of Hawaii is obligated to compensate the Contractor therefore at the prices set forth therein. The contract shall include the Contract Documents and also any and all amendments and change orders which are required to complete the construction in an acceptable manner.
- 1.21\_ CONTRACT COMPLETION DATE - The calendar day on which all work on the project, required by the contract, must be completed. See CONTRACT TIME and FINAL COMPLETION.
- 1.22\_ CONTRACT DOCUMENTS - The Contract, Addenda (which pertain to the Contract Documents, Contractor's Proposal (including Wage Schedule, List of Subcontractors and other documentation accompanying the Bid and any post bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Contract, the Notice to Proceed, the Bonds, these GENERAL CONDITIONS, the SPECIAL CONDITIONS, the Specifications and the Drawings as the same are more specifically identified in the Contract together with all written Amendments, Change Orders, Field Orders, a written order for minor changes in the work and Engineer's written interpretations and clarifications issued on or after the effective date of the Contract.
- 1.23\_ CONTRACT PRICE - The amount designated on the face of the contract for the performance of work including allowances for extra if any.
- 1.24\_ CONTRACT TIME (or CONTRACT DURATION) - The number of calendar (or working) days provided for completion of the contract, inclusive of authorized time extensions. The number of days shall begin running on the effective date in the Notice to Proceed. If in lieu of providing a number of calendar (or working) days, the contract requires completion by a certain date, the work shall be completed by that date.
- 1.25\_ CONTRACTOR - Any individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of the work under the terms of the contract with the State of Hawaii, and acting directly or through its agents, or employees.
- 1.26\_ DEPARTMENT - The Department of Defense, State of Hawaii (abbreviated DOD).
- 1.27\_ DRAWINGS (or Plans) - The contract drawings in graphic or pictorial form, which show the design, location, character, dimensions and details of the Work to be done and which shall be a part of the Contract Documents.
- 1.28\_ ENGINEER - The Department of Defense Engineer, or the authorized person to act in the Engineer's behalf.
- 1.29\_ EQUAL OR APPROVED EQUAL - Whenever this term is used in the drawings or specifications, it shall be interpreted to mean a brand or article, prequalified in accordance with Section 6.3 SUBSTITUTION OF MATERIALS AND EQUIPMENT, that may be used in place of the one specified.
- 1.30\_ FIELD ORDER - A written order issued by the Engineer or the Engineer's authorized representative to the Contractor requiring the contract work to be performed in accordance with a change or changes in the work. A field order may (1) establish a price adjustment and/or time adjustment in an amount the Engineer believes is reasonable for the change; or (2) may declare that the Engineer does not intend to adjust contract time or price for the work; or (3) may request the Contractor to submit a proposal for an adjustment to the contract time and/or price by a certain date.
- 1.31\_ FINAL COMPLETION - The date set by the Engineer that all work required by the contract and any amendments or changes thereto is in full compliance with the contract.
- 1.32\_ FORCE ACCOUNT - Term used when Work is ordered to be done without prior agreements as to lump sum or unit price cost thereof and is to be billed for at cost of labor, materials and equipment, insurances, taxes, etc., plus an agreed percentage for overhead and profit.
- 1.33\_ GUARANTEE - Legally enforceable assurance of the duration of satisfactory performance of quality of a product or Work
- 1.34\_ GOODS - Materials. §103D-104

- 1.35\_ HAZARDOUS MATERIALS - Any and all radioactive materials, asbestos, polychlorinated biphenyls, petroleum, crude oil, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, toxic substances or materials cited in Hazardous Material Laws. Abandoned motor vehicles or parts thereof are not hazardous material.
- 1.36\_ HOLIDAYS - The days of each year which are set apart and established as State holidays pursuant to Chapter 8, Hawaii Revised Statutes.
- 1.37\_ INSPECTOR - The person assigned by the Engineer to make detailed inspections of contract performance and materials supplied for the work.
- 1.38\_ LAWS - All Federal, State, City and County Laws, ordinances, rules and regulations, and standard specifications including any amendments thereto effective as of the date of the call for sealed bids.
- 1.39\_ PERFORMANCE LIQUIDATED DAMAGES  
The amount prescribed in the General Conditions, Section 7.26 FAILURE TO COMPLETE THE WORK ON TIME to be paid to the State or to be deducted from any payments due or to become due the Contractor for each working day or calendar day (as applicable) delay in completing the whole or any specified portion of the work beyond the Contract Time.
- 1.40\_ LETTER OF AWARD - A written notice from the Engineer to the successful bidder(s) stating that its proposal has been accepted by the State.
- 1.41\_ MAJOR UNIT PRICE ITEM - A unit price item which, when extended on its estimated quantities in the proposal form, exceeds five percent (5%) of the total base bid proposal less any allowance and contingent items included in the proposal.
- 1.42\_ NON-CONFORMING WORK - Work that does not fulfill the requirements of the Contract Documents.
- 1.43\_ NOTICE TO CONTRACTORS - See Solicitation.
- 1.44\_ NOTICE TO PROCEED - A written notice from the Contracting Officer to the Contractor advising it of the date on which it is to begin the prosecution of the Work, which date shall also be the beginning of Contract Time.
- 1.45\_ POST CONTRACT DRAWINGS - Drawings issued after the award of the contract for the purpose of clarification and / or changes to the work indicated in the original drawings and which may be made a part of the contract.
- 1.46\_ PROJECT ACCEPTANCE DATE - The calendar day on which the Engineer accepts the project as sufficiently completed in compliance with the contract so that the State can occupy or utilize the Work for its intended use. See SUBSTANTIAL COMPLETION.
- 1.47\_ PROJECT CONTRACT LIMITS (or Contract Zone) - The portion of the site as delineated on the drawings which define the Contractor's primary area of operation for the prosecution of the work. It does not define the exact limits of all construction that may be required under the contract.
- 1.48\_ PROJECT GUARANTEE - A guarantee issued by the Contractor to the State. See GUARANTEE.
- 1.49\_ PROPOSAL (Bid) - See Offer (or Bid).
- 1.50\_ PROPOSAL FORM - See Offer Form (or Bid Form).
- 1.51\_ PUNCH LIST - A list compiled by the Engineer (or Contractor) stating work yet to be completed or corrected by the Contractor in order to substantially complete or finally complete the contract requirements.
- 1.52\_ QUESTIONNAIRE - The specified forms on which the bidder shall furnish required information as to its ability to perform and finance the work.
- 1.53\_ SHOP DRAWINGS - All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
- 1.54\_ SPECIAL CONDITIONS - Supplements or modifies the standard clauses of the GENERAL CONDITIONS setting forth conditions or requirements peculiar to the individual project under consideration, which are not thoroughly or satisfactorily covered, described or explained in these GENERAL CONDITIONS.
- 1.55\_ SPECIFICATIONS - That portion of the Contract Documents consisting of written descriptions for materials, equipment, construction systems, standards, workmanship, directions, provisions and requirements that

- pertain to the method and manner of performing the work and certain administrative requirements applicable thereto.
- 1.56\_ STATE - The State of Hawaii acting through its authorized representative.
- 1.57\_ SUBCONTRACT - Any written agreement between the Contractor and its subcontractors which contains the conditions under which the subcontractor is to perform a portion of the work for the Contractor.
- 1.58\_ SUBCONTRACTOR - An individual, partnership, firm, corporation, joint venture or other legal entity, as covered in Chapter 444, Hawaii Revised Statutes, which enters into an agreement with the Contractor to perform a portion of the work for the Contractor.
- 1.59\_ SUBSTANTIAL COMPLETION - The status of the project when the Contractor has completed all the work and 1) all utilities and services are connected and working, 2) all equipment is in acceptable working condition, 3) additional activity by the Contractor to correct punch list items as described herein will not prevent or disrupt use of the work or the facility in which the work is located, and 4) the building, structure, improvement or facility can be used for its intended purpose.
- 1.60\_ SUPERINTENDENT - The employee of the Contractor who is charged with the responsibility of all the Work.
- 1.61\_ SURETY - The qualified individual, firm or corporation other than the Contractor, which executes a bond with and for the Contractor to insure its acceptable performance of the contract.
- 1.62\_ UNUSUALLY SEVERE WEATHER Uncommonly harsh weather including but not limited to hurricanes, tornados, tropical storms and tropical depressions, or as otherwise defined in the SPECIAL CONDITIONS.
- 1.63\_ WORK - The furnishing of all labor, materials, equipment, and other incidentals necessary or convenient for the successful completion of the project and the execution of all the duties and obligations imposed by the contract.
- 1.64\_ WORKING DAY - A calendar day, exclusive of Saturdays, Sundays and State-recognized legal holidays for the month in question.

- 1.65\_ OFFER (or Bid) – The executed document submitted by an Offeror in response to a solicitation request, to perform the work required by the proposed contract documents, for the price quoted and within the time allotted.
- 1.66\_ OFFEROR (or BIDDER) – Any individual, partnership, firm, corporation, joint venture or other legal entity submitting directly or through a duly authorized representative or agent, an Offer for the work or construction contemplated.
- 1.67\_ OFFER FORM (or BID FORM) – The form prepared by the Department on which the Offeror submits the written offer or bid. By submitting an offer or bid, the Offeror adopt the language on the form as its own.
- 1.68\_ PROJECT START DATE – The date established in the Notice to Proceed when the Contractor shall begin prosecution of the work and the start of contract time.
- 1.69\_ SOLICITATION – An Invitation to Bid or Request for Proposals or any other document issued by the Department to solicit bids or offers to perform a contract. The solicitation may indicate the time and place to receive the bids or offers and the location, nature and character of the work, construction or materials to be provided.

**ABBREVIATIONS**

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

**BIDDING AND EXECUTION OF CONTRACT REQUIREMENTS**

**ARTICLE 2 - Proposal Requirements and Conditions**

- 2.1 QUALIFICATION OF BIDDERS**  
Prospective bidders must be capable of performing the

work for which bids are invited, and must be capable of entering into a public contract of \$25,000 or more.

#### 2.1.1 Notice of Intention to Bid

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

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

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

2.1.1.4 The Engineer may, in accordance with Section 103D-310 Hawaii Revised Statutes, require the prospective Bidder to submit answers to questions contained in the STANDARD QUALIFICATION QUESTIONNAIRE FOR PROSPECTIVE BIDDERS ON PUBLIC WORKS CONTRACTS, on the form provided by the Department, properly executed and notarized, setting forth a complete statement of the experience of such prospective Bidder and its organization in performing similar work and a statement of the equipment proposed to be used, together with adequate proof of the availability of such equipment, at least two (2) working days prior to the time advertised for the opening of bids. If the information in the questionnaire proves satisfactory,

the Bidder's proposal will be received. All information contained in the answers to the questionnaire shall be kept confidential. The questionnaire will be returned to the Bidder after it has served its purpose.

2.1.1.5 If upon review of the Questionnaire, or otherwise, the Bidder appears not fully qualified or able to perform the intended work, the Engineer shall, after affording the Bidder an opportunity to be heard and if still of the opinion that the Bidder is not fully qualified to perform the work, refuse to receive or to consider any bid offered by the prospective Bidder.

2.1.1.6 Failure to complete and submit the prequalification questionnaire by the designated deadline will be sufficient cause for the Department to disqualify a prospective Bidder.

#### 2.1.2 Compliance Certificate § 103D -310(c) HRS)

2.1.2.1 Contractors are required to provide proof of compliance in order to receive a contract of \$25,000 or more. To meet this requirement, Offerors may apply and register at the "Hawaii Compliance Express" website: <http://vendors.ehawaii.gov/hce/splash/welcome/html>

2.1.2.2 Tax clearances may be obtained by completing the Tax Clearance Application (Form A-6) and submitting it to the Hawaii State Department of Taxation (DOTAX) or the Internal Revenue Service (IRS). The application may be obtained from the DOTAX, or the IRS. The application may be mailed in or walked in to either the DOTAX or the IRS. Both tax agencies encourage the use of their mail-in process, which should be completed within twenty-one (21) calendar days. Tax clearance certificates will be issued to the applicant upon determination that the applicant has filed all tax returns due, and has paid all amounts owing on such returns, including penalty and interest.

2.1.2.3 Only original tax clearance certificates or certified copies will be accepted for this purpose. Failure to submit the required tax clearance certificates may be sufficient grounds for the Department to refuse to receive or consider the prospective bidder's proposal.

2.1.2.4 Tax clearance certificates are valid for six (6) months. The six-month period will begin with the later approval date stamped on the tax clearance. An original copy of a tax clearance that bears an original green certified copy stamp will be accepted by the Department for final payment. The period of validity is two months.

2.1.2.5 The tax clearances submitted with the bid proposals must be valid on the solicitation's first legal advertisement date or any date thereafter up to the bid opening date. Valid tax clearances submitted with the proposal will remain valid for the contract award and encumbrance.



2.1.2.6 Any person, firm or corporation that is not presently doing business in the State of Hawaii and submits a Notice of Intention to Bid must submit along with said Notice of Intention to Bid a certified letter stating that said person, firm or corporation is not doing business in the State of Hawaii and is not in default of any obligations due to the State or any of its political subdivisions.

2.1.2.7 If a business cannot obtain a tax clearance certificate because of tax delinquencies, it may submit a "special letter" from DOTAX and/or the IRS. The "special letter" may only be obtained if (1) the business has an existing installment agreement with the tax agency, or (2) the delinquency is the subject of an administrative or judicial appeal. The bidder is cautioned that the "special letter" from the IRS must be certified by DOTAX. All conditions applied to tax clearance certificates for this purpose are applicable to these "special letters". Instructions to obtain the "special letter" are available from each respective tax agency.

2.1.2.8 Various combinations of tax clearance certificates and "special letters" are acceptable for this purpose as follows: Tax clearance certificate signed by both tax agencies;

- (a) Individual tax clearance certificates from each tax agency, respectively;
- (b) Tax clearance certificate from one tax agency and a "special letter" from the other tax agency;
- (c) "Special letters" from both tax agencies.

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

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

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

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

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

## **2.3 CONTENTS OF PROPOSAL FORMS**

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

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

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

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

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

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

## **2.5 ADDENDA AND BID CLARIFICATIONS**

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

2.5.2 The Department may alter, increase or decrease the scope of the work or the contract time, provisions and

conditions by issuing a written addendum which sets forth such alterations, increase or decrease.

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

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

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

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

## **2.6 SUBSTITUTION OF MATERIALS AND EQUIPMENT BEFORE BID OPENING**

2.6.1 Brand names of materials or equipment are specified or shown on the drawings to indicate a quality, style, appearance or performance and not to limit competition. The Bidder shall base its bid on one of the specified brand names unless alternate brands are qualified as equal or better in an addendum. Qualifications of such proposed alternate brands shall be submitted in writing and addressed to the Engineer. The face of the envelope containing the request must be clearly marked "SUBSTITUTION REQUEST". The request may be hand carried to the Department of Defense, State of Hawaii, 3949 Diamond Head Road, Honolulu, HI 96816-4495, or mailed. In either case, the written request must be received no later than the time and date specified in the NOTICE TO BIDDERS. The written request will be time stamped by the Department. For the purpose of this section, the time designated by the time stamping device in the Engineering Office shall be official. If the written request is hand carried, the bearer is responsible to ensure that the request is time stamped by the Engineering Office.

2.6.2 Submit three (3) sets of the written request, technical brochures, and a statement of variances. Refer to the Appendix for the Sample "Request for Substitution."

2.6.3 Statement of Variances - The statement of variances must list all features of the proposed

substitution which differ from the drawings, specifications and / or product(s) specified and must further certify that the substitution has no other variant features. The brochure and information submitted shall be clearly marked showing make, model, size, options, etc., and must include sufficient evidence to evaluate each feature listed as a variance. A request will be denied if submitted without sufficient evidence. If after installing the substituted product, an unlisted variance is discovered, Contractor shall immediately replace the product with a specified product all at no cost to the State

2.6.4 Substitution Denial - Any substitution request not complying with the above requirements will be denied. Substitution requests sent to other agencies and received by the Engineering Office after the deadline above will be denied.

2.6.5 An addendum shall be issued to inform all prospective bidders of any accepted substitution in accordance with Section 2.5 ADDENDA AND BID CLARIFICATIONS.

2.6.6 For substitutions of materials and equipment after issuance of the Letter of Award, refer to Section 6.3 SUBSTITUTION OF MATERIALS AND EQUIPMENT AFTER BID OPENING.

## **2.7 PREPARATION OF PROPOSAL**

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

2.7.2 If the proposal is made by an individual, the person's name and post office address must be shown in the space provided. If made by a partnership the name and post office address of each member of the partnership must be shown and the proposal signed by all partners or evidence in the form of a partnership agreement must be submitted showing the authority of the partner to enter, on behalf of said partnership, into contract with the State. If made by a corporation the proposal must show the name, titles, and business address of the president, secretary and treasurer and also evidence in the form of a corporate resolution must be submitted showing the authority of the particular corporate representative to enter on behalf of said corporation into contract with the State. If made by a joint venture the name and post office address of each member of the individual firm, partnership or corporation

comprising the joint-venture must be shown with other pertinent information required of individuals, partnerships or corporations as the case may be. The proposal must be signed by all parties to the joint-venture or evidence in the form of a Joint-Venture Agreement must be submitted showing the authority of the joint-venture's representative to enter on behalf of said joint-venture into contract with the State.

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

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

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

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

2.8.1.2 Legal Tender; or

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

- (a) These instruments may be utilized only to a maximum of \$100,000.
- (b) If the required security or bond amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be accepted.
- (c) **CAUTION** - Bidders are cautioned that certificates of deposit or share certificates with an early withdrawal penalty must have a face value

sufficient to cover the maximum penalty amount in addition to the proposal guaranty requirement. If the certificate is made out to two names, the certificate must be assigned unconditionally to the Department of Defense.

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

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

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

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

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

**2.9 DELIVERY OF PROPOSALS** - The entire proposal shall be placed together with the bid security, in a sealed envelope so marked as to indicate the identity of the project, the project number, the date of bid opening and the name and address of the bidder and then delivered as indicated in the Notice to Contractors. Bids which do not comply with this requirement may not be considered. Proposals will be received up to the time fixed in the public notice for opening of bids and must be in the hands of the official by the time indicated. The words "SEALED BID" must be clearly written or typed on the face of the sealed envelope containing the proposal and bid security.

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

2.10.1 Withdrawal of Proposals:

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

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

2.10.1.3 A telegraphic message received by telephone by the office designated in the solicitation from the receiving telegraph company office, provided the telegraph company confirms the telephone message by sending a written copy of the telegram showing that the message was received at such office prior to the time and date set for the opening.

2.10.2 Modification of Proposals:

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

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

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

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

2.12.1 Non-compliance with Section 2.1 QUALIFICATION OF BIDDERS.

2.12.2 Evidence of collusion among bidders.

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

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

2.12.5 Lack of proper equipment and/or sufficient experience to perform the work contemplated, as revealed

by the Standard Questionnaire and Financial Statement for Bidders.

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

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

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

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

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

**2.13 PROTEST**

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

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

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

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

**ARTICLE 3 - Award and Execution of Contract**

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

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

3.2.1 If the proposal is unsigned.

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

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

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

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

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

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

3.2.8 Where there is an incomplete or ambiguous listing of joint contractors and/or subcontractors the proposal may be rejected. All work which is not listed as being performed by joint contractors and/or subcontractors must be performed by the bidder with its own employees. Additions to the list of joint contractors or subcontractors will not be allowed. Whenever there is a doubt as to the completeness of the list, the Bidder will be required to submit within five (5) working days, a written confirmation that the work in question will be performed with its own work force. Whenever there is more than one joint contractor and/or subcontractor listed for the same item of work, the Bidder will be required to either confirm in writing within five (5) working days that all joint contractors or subcontractors listed will actually be engaged on the project or obtain within five (5) working days written releases from those joint contractors and/or subcontractors who will not be engaged.

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

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

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

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

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

(a) Typographical errors;

(b) Transposition errors;

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

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

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

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

### **3.4 AWARD OF CONTRACT**

3.4.1 The award of contract, if it be awarded, will be made within ninety (90) consecutive calendar days after the opening of the proposals to the lowest responsible and responsive Bidder (including the alternate or alternates which may be selected by the Engineer in the case of alternate bids) whose proposal complies with all the requirements prescribed, but in no case will an award be made until all necessary investigations are made. The successful Bidder will be notified, by letter mailed to the address shown on the proposal, that its bid has been accepted and that it has been awarded the contract.

3.4.2 If the contract is not awarded within the ninety (90) days noted in paragraph 3.4.1 above, the Department may request the successful Bidder to extend the time for the acceptance of its bid. The Bidder may reject such a request without penalty; and in such case, the Department may at its sole discretion make a similar offer to the next lowest responsive and responsible bidder and so on until a bid is duly accepted or until the Department elects to stop making such requests.

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

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

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

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

**3.7 REQUIREMENT OF PERFORMANCE AND PAYMENT BONDS**

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

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

3.7.1.3 A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the State by a bank, a savings

institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

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

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

3.7.2 If the Contractor fails to deliver the required performance and payment bonds, the contractor's award shall be canceled, the Department shall have the remedies provided under Section 3.9 FAILURE TO EXECUTE THE CONTRACT and award of the contract shall be made to the next lowest responsible and responsive bidder.

**3.8 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS**

Contractors are hereby notified of the applicability of Section 11-205.5, HRS, which states that campaign contributions are prohibited from specified State or County government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body.

**3.9 EXECUTION OF THE CONTRACT**

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

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

**3.10 FAILURE TO EXECUTE THE CONTRACT**

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

3.10.2 After the Award - If the Bidder to whom a contract is awarded shall fail or neglect to furnish security within ten (10) calendar days after such award or within such further time as the Contracting Officer may allow, the State shall be entitled to recover from such Bidder its actual damages, including but not limited to the difference between the bid and the next lowest responsive bid, as well as personnel and administrative costs, consulting and legal fees and other expenses incurred in arranging a contract with the next low responsive bidder or calling for new bids. The State may apply all or part of the amount of the bid security to reduce its damages. If upon determination by the State of the amount of its damages the bid security exceeds that amount, it shall release or return the excess to the person who provided same.

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

### **3.11 NOTICE TO PROCEED**

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

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

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

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

## **GENERAL CONDITIONS ARTICLE 4 - Scope of Work**

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

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

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

#### **4.2.2 Oral Orders**

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

the filing of any claim by the Contractor. Unless the Contractor acts in accordance with this procedure, any such oral order shall not be treated as a change for which the Contractor may make a claim for an increase in the contract time or contract price related to such work.

4.2.2.2 No more than five (5) days after receipt of the written notice from the Contractor, a Field Order shall be issued for the subject work if the State agrees that it constitutes a change. If no Field Order is issued in the time established, it shall be deemed a rejection of Contractor's claim for a change. If the Contractor objects to the failure to issue a Field Order, it shall file a written protest with the Engineer within thirty (30) days after delivery to the Engineer of the Contractor's written notice of its intention to treat the oral order as a change. In all cases, the Contractor shall proceed with the work. The protest shall be determined as provided in Section 7.25 DISPUTES AND CLAIMS.

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

#### 4.2.4 Change Orders

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

4.2.4.2 The penal sum of the Surety Performance and Payment Bonds will be adjusted by the amount of each and every Change Order.

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

4.2.4.4 If the Contractor signs or executes the change order, this constitutes an agreement on the part of the Contractor with the terms and conditions of the change

order. A change order that is mutually agreed to and signed by the parties of the contract constitutes a contract modification.

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

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

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

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

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

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

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



performance liquidated damages will be assessed in accordance with Section 7.26 FAILURE TO COMPLETE THE WORK ON TIME.

4.3.4 No payment shall be allowed to the Contractor for pricing or negotiating proposed or actual changes.

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

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

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

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

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

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

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

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

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

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

4.4.1.7 In such other manner as the parties may mutually agree;

4.4.1.8 At the sole option of the Engineer, by the costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as specified in Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT and the force account provision of Section 8.3 PAYMENT FOR ADDITIONAL WORK; or

4.4.1.9 In the absence of an agreement between the two parties, by a unilateral determination by the Engineer of the reasonable and necessary costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as computed by the Engineer in accordance with applicable sections of Chapters 3-123 and 3-126 of the Hawaii Administrative Rules and Regulations, and Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.

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

#### **4.5 ALLOWANCES FOR OVERHEAD AND PROFIT HRS103D-501**

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

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

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

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

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

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

#### **4.6 PAYMENT FOR DELETED MATERIAL**

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

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

4.6.3 Uncancelled Materials - If orders for acceptable deleted material cannot be canceled at a reasonable cost, it will be paid for at the actual cost to the Contractor including an appropriate markup for overhead and profit as set forth in Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT. In such case, the material paid for shall become the property of the State and the cost of further storage and handling shall be paid for as provided in Section 4.4 PRICE ADJUSTMENT.

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

4.7.1 Where the quantity of a major unit price item in this contract is estimated on the proposal form and where

the actual quantity of such pay item varies more than fifteen percent (15%) above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party.

The adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. The adjustment shall be subject to Section 4.4 PRICE ADJUSTMENT and Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT. If the quantity variation is such as to cause an increase in the time necessary for completion, the Engineer shall, upon receipt of a written request for an extension of time within thirty (30) days of the item's completion, ascertain the facts and make such adjustment to the completion date as the Engineer finds justified.

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

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

#### **4.9 DIFFERING SITE CONDITIONS**

##### **§3-125-11 HAR**

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

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

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

4.9.2 After receipt of written notice, the Engineer shall promptly investigate the site, and if it is found that such conditions do materially differ and cause an increase in the Contractor's cost of, or the time required to, perform any part of the Work, whether or not changed as a result

of such conditions, an adjustment shall be made and the contract modified accordingly. Any adjustment in contract price made pursuant to this Section 4.9 shall be determined in accordance with Sections 4.4 PRICE ADJUSTMENT and 7.25 DISPUTES AND CLAIMS.

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

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

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

4.10.1.1 Reviewing and checking all such information and data,

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

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

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

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

4.10.3 If the Engineer determines a change in the Contract Documents is required, a Field Order or Change Order will be issued. Upon issuance of a duly authorized Field Order or Change Order regarding the disposition of a newly discovered utility, Contractor shall be responsible for damages to the utility, including any damage claims due to the disruption of service caused by the utility being damaged.

4.10.4 Restoration of Damaged Utilities - The Contractor shall repair and restore to pre-damaged

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

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

### **ARTICLE 5 - Control of Work**

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

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

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

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

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

#### **5.2 AUTHORITY OF THE INSPECTOR**

5.2.1 The Inspector shall observe and inspect the contract performance and materials. The Inspector does

not have any authority vested in the Engineer unless specifically delegated in writing.

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

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

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

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

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

##### 5.4.1.1 Shop Drawings

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

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

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

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

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

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

- (1) Date of Submission
- (2) Name of Project
- (3) Project Number
- (4) Location of Project
- (5) Name of submitting Contractor and Subcontractor
- (6) Revision Number

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

5.4.1.4 Descriptive Sheets and Other Submittals - When a submittal is required by the contract, the Contractor shall submit to the Engineer eight (8) complete sets of descriptive sheets such as shop drawings, brochures, catalogs, illustrations, calculation, material safety data sheets (MSDS), certificates, reports, warranty, etc., which will completely describe the material, product, equipment,

furniture or appliances to be used in the project as shown in the drawings and specifications and how it will be integrated into adjoining construction. When submittals are specified to be submitted under Web Based Construction Management System, the number of complete sets will be as specified or as directed by the Engineer. Prior to the submittal, the Contractor shall review and check all submittal sheets for conformity to the contract requirements and indicate such conformity by marking or stamping and signing each sheet. Where descriptive sheets include materials, systems, options, accessories, etc. that do not apply to this contract, non-relevant items shall be crossed out so that all remaining information will be considered applicable to this contract.

It is the responsibility of the Contractor to submit descriptive sheets for review and acceptance by the Engineer as required at the earliest possible date after the date of award in order to meet the construction schedule. Delays caused by the failure of the Contractor to submit descriptive sheets as required will not be considered as justifiable reasons for contract time extension.

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

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

5.4.2 Submittal Variances - The Contractor shall include with the submittal, written notification clearly identifying all deviations or variances from the contract drawings, specifications and other Contract Documents. The notice shall be in a written form separate from the submittal. The variances shall also be clearly indicated on the shop drawing, descriptive sheet, material sample or color sample. Failure to so notify of and identify such variances shall be grounds for the subsequent rejection of the related work or materials, notwithstanding that the submittal was accepted by the Engineer. If the variances are not acceptable to the Engineer, the Contractor will be

required to furnish the item as specified or indicated on the contract documents at no additional cost or time.

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

5.4.3.1 The acceptance by the Engineer of the Contractor's submittal relates only to their sufficiency and compliance with the intention of the contract. Acceptance by the Engineer of the Contractor's submittal does not relieve the Contractor of any responsibility for accuracy of dimensions, details, and proper fit, and for agreement and conformity of submittal with the contract drawings and specifications. Nor will the Engineer's acceptance relieve the Contractor of responsibility for variance from the contract documents unless the Contractor, at the time of submittal, has provided notice and identification of such variances required by this section. Acceptance of a variance shall not justify a contract price or time adjustment unless the Contractor requests such an adjustment at the time of submittal and the adjustment are explicitly agreed to in writing by the Engineer. Any such request shall include price details and proposed scheduling modifications. Acceptance of a variance is subject to all contract terms, stipulations and covenants, and is without prejudice to any and all rights under the surety bond.

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

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

**5.5 COORDINATION OF CONTRACT DOCUMENTS** - It is the intent of the Contract Documents to describe a functionally complete Project (or

part thereof) to be constructed in accordance with the Contract Documents. The Contract Documents are complementary: any requirement occurring in one document is as binding as though occurring in all. In the event of conflict or discrepancy the priorities stated in the following subparagraphs shall govern:

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

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

5.5.3 Specifications shall govern over drawings.

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

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

5.5.5 Drawings:

5.5.5.1 Schedules shall govern over all other notes and drawings.

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

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

5.5.5.4 Larger scale drawings shall govern over smaller scale drawings.

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

5.5.5.6 In cases of discrepancies in the figures or drawings, the discrepancies shall be immediately referred to the Engineer without whose decision said discrepancy shall not be corrected by the Contractor save at its own risk and in the settlement of any complications arising

from such adjustment without the knowledge and consent of the Engineer, the Contractor shall bear all extra expense involved.

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

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

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

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

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

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

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

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

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

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

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

5.8.1 Furnishing Drawings and Specifications - Contractor to supply copies of the Contract Drawings and Specifications. Contractor shall have and maintain at least one copy of the Contract Drawings and Specifications on the work site, at all times. Contractor shall cooperate with the Engineer, the Inspector(s), and other contractors in every possible way.

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

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

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

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

5.8.3 Engineering Work - The Contractor shall properly and accurately lay out the work, perform all engineering work, and furnish all engineering materials and equipment required to establish and maintain all lines, grades, dimensions and elevations called for in the

drawings or required in the progress of construction, unless otherwise noted in the contract documents. The Contractor will be held definitely and absolutely responsible for any errors in lines, grades, dimensions and elevations and shall at once, on instruction from the Engineer, correct and make good such errors or any errors, or faults in the work resulting from errors in engineering performed under the requirements of its contract to the entire satisfaction of the Engineer. Full compensation for the work shall be included in the prices paid for contract items of work. No additional allowance will be made for the correction of incorrect engineering work.

5.8.3.1 The Engineer shall furnish the requisite bench elevations.

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

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

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

5.8.4 Use of Structure or Improvement - The Department shall have the right, at any time during construction of the structure or improvements, to enter same for the purpose of installing by government labor or by any other Contractor or utility any necessary work in connection with the installation of facilities, it being mutually understood and agreed, however, that the Contractors, utilities and the Department will, so far as possible work to the mutual advantage of all, where their several works in the above mentioned or in unforeseen instances touch upon or interfere with each other.

As a convenience to those involved, the Engineer shall allocate the work and designate the sequence of construction in case of controversy between Contractors on separate projects under State jurisdiction.

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

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

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

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

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

5.9.2 Authority to Suspend Operations - The Inspector shall have the authority to suspend operations of any work being improperly performed by issuing a written order giving the reason for shutting down the work. Should the Contractor disregard such written order, the work done thereafter will not be accepted nor paid for.

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

5.9.4 Federal Agency Inspection - Projects financed in whole or in part with Federal funds shall be subject to

inspection and corrective requirements at all times by the Federal Agency involved at no cost to the State.

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

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

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

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

## **5.11 VALUE ENGINEERING INCENTIVE**

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

5.11.1 The Value Engineering Incentive Clause applies to all Value Engineering Change Proposals (cost reduction proposals, hereinafter referred to as (VECP) initiated and developed by the Contractor for changing the drawings, designs, specifications or other requirements of this contract. This clause does not, however apply to any VECP unless it is identified as such by the Contractor at the time of its submission to the Engineer.

5.11.2 Value Engineering Change Proposal - All VECP must:

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



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

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

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

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

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

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

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

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

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

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

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

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

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

5.11.6.1 Design calculations;

5.11.6.2 The design criteria used; and

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

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

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

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

5.11.8.1 "This data or information or both shall not be disclosed outside the Department or be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this VECF. This restriction shall not limit the Department's right to use this data or information or both if obtained from another source, or is otherwise available, without limitations. If this VECF is accepted by the Department by issuance of a change order after the use of this data or information or both in such an evaluation, the Department shall have the right to duplicate, use and disclose any data or information or

both pertinent to the proposal as accepted in any manner and for any purpose whatsoever and have others so do.”

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

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

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

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

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

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

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

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

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

5.12.1.2 Becomes insolvent; or

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

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

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

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

5.12.2 Notice of Replacing Subcontractor – The contractor shall provide a written notice to the Contracting Officer when it wishes to replace a subcontractor, including in the notice, the reasons for replacement. The contractor agrees to defend, hold harmless and indemnify the State against all claims, liabilities, or damages whatsoever, including attorneys fees arising out of or related to the replacement of a subcontractor. The contractor may not replace the subcontractor until the Contracting Officer approves of the replacement.

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

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

## **ARTICLE 6 - Control of Materials and Equipment**

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

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

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

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

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

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

### **6.3 SUBSTITUTION AFTER CONTRACT AWARD**

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

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

6.3.2 Substitution After Contract Award - Subject to the Contracting Officer's determination; material,

equipment, article or system with a variant feature(s) may be allowed as a substitution, provided it is in the State's best interest. The State may deny a substitution; and if a substitution is denied, the contractor is not entitled to any additional compensation or time extension.

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

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

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

6.3.2.4 If the specified material and / or equipment inadvertently lists only a single manufacturer.

6.3.3 A substitution request after Contract Award shall be fully explained in writing. Contractor shall provide brochures showing that the substitute material and / or equipment is equal or better in essential features and also provide a matrix showing comparison of the essential features. Contractor shall justify its request and include quantities and unit prices involved, respective supplier's price quotations and such other documents necessary to fully support the request. Any savings in cost will be credited to the Department. Contractor shall absorb any additional cost for the substitute item(s) or for its

installation. Submitting a substitution request, does not imply that substitutions, for brand name specified materials and equipment, will be allowed. The Engineer may reject and deny any request deemed irregular or not in the best interest of the Department. A request for substitution shall not in any way be grounds for an extension of contract time. At the discretion of the Engineer, a time extension may be granted for an approved substitution.

#### **6.4 ASBESTOS CONTAINING MATERIALS -**

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

#### **6.5 TEST SAMPLES**

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

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

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

#### **6.6 MATERIAL SAMPLES**

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

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

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

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

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

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

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

covered to protect it from the weather and damage. Stored materials shall be located to allow prompt inspection.

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

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

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

**7.1 PROSECUTION OF THE WORK**

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

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

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

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

7.1.4.1 Under no circumstances shall the Contractor commence work on site until it has notified the Engineer of its intentions and has been advised by the Engineer in writing that the project site is available to the Contractor. The project site will not be made available until the Contractor has complied with commencement requirements under Section 7.2 COMMENCEMENT REQUIREMENTS.

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

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

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

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

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

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

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

7.2.4 Schedule of Prices to be accepted for the agreed Monthly Payment Application. Unless the proposal provides unit price bids on all items in this project, the successful Bidder will be required, after the award of contract, to submit a schedule of prices for the various items of construction included in the contract. For projects involving more than a single building and / or facility, the breakdown cost shall reflect a separate schedule of prices for the various items of work for each building and/or facility. The sum of the prices submitted for the various items must equal the lump sum bid in the

Bidder's proposal. This schedule will be subject to acceptance by the Engineer who may reject same and require the bidder to submit another or several other schedules if in the Engineer's opinion the prices are unbalanced or not sufficiently detailed. This schedule of prices shall be used for the purpose of determining the value of monthly payments due the Contractor for work installed complete in place; and may be used as the basis for determining cost and credit of added or deleted items of work, respectively.

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

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

7.2.6 Until such time as the above items are processed and approved, the Contractor shall not be allowed to commence on any operations unless authorized by the Engineer.

### 7.3 INSURANCE REQUIREMENTS

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

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

7.3.3 Certificate(s) of Insurance acceptable to the State shall be filed with the Engineer prior to commencement of the work. Certificates shall identify if the insurance company is a "captive" insurance company or a "Non-Admitted" carrier to the State of Hawaii. The best's rating must be stated for the "Non-Admitted" carrier. Certificates shall contain a provision that coverage's being certified will not be cancelled or materially changes

without giving the Engineer at least thirty (30) days prior written notice. If the State is to be an Additional Insured on any of the required insurance, it shall be so noted on the certificate. Should any policy be canceled before final acceptance of the work by the State, and the Contractor fails to immediately procure replacement insurance as specified, the State, in addition to all other remedies it may have for such breach, reserves the right to procure such insurance and deduct the cost thereof from any money due to the Contractor.

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

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

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

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

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

7.3.7.2 General Liability - The Contractor shall obtain General Liability insurance with a limit of not less than

\$2,000,000 per occurrence and in the Aggregates. The General liability insurance shall include the State as an Additional Insured. The required limit of insurance may be provided by a single policy or with a combination of primary and excess policies. Refer to SPECIAL CONDITIONS for any additional requirements.

7.3.7.3 Auto Liability - The Contractor shall obtain Auto Liability Insurance covering all owned, non-owned and hired autos with a combined single Limit of not less than \$1,000,000 per occurrence. The required limit of insurance may be provided by a single policy or with a combination of primary and excess policies. Refer to SPECIAL CONDITIONS for any additional requirements.

7.3.7.4 Property Insurance (Builders Risk)

- (1) New Building(s) - The Contractor shall obtain Property Insurance covering building(s) being constructed under this Contract. The limit shall be equal to the completed value of the building(s) and shall insure against all-loss excluding earthquakes and floods. The coverage shall be provided by a company authorized to write insurance in the State of Hawaii as an insurer.
- (2) Building Renovation and / or Installation Contract - The Contractor shall obtain Property Insurance with a limit equal to the completed value of the work or property being installed and shall insure against all-loss excluding earthquakes and floods. The coverage shall be provided by a company authorized to write insurance in the State of Hawaii as an insurer. Refer to SPECIAL CONDITIONS for any additional requirements.
- (3) The Contractor is not required to obtain property insurance for contracts limited to site development

#### 7.4 PERMITS AND LICENSES

7.4.1 The State or its representative may process Federal (e.g. Corps of Engineers), State and County Permit applications. The Contractor shall pick up the pre-processed Permits at the appropriate governmental agency and pay the required fees. Other permits necessary for the proper execution of the work such as utility connection permits, elevator installation permits etc., unless processed by the State and paid for by the Contractor, shall be obtained and paid for by the Contractor.

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

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

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

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

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

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

#### 7.7 PREVAILING WAGES - (§ 104-2 HRS)

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

7.7.2 Wage Rate Schedule - The wage rate schedule is not physically enclosed in the bid documents. However, the wage rate schedule is incorporated herein by reference and made a part of the Bid and Contract Documents. Said wage rate schedule may be obtained from the Contracts Office, Department of Accounting and General Services, 1151 Punchbowl Street, Room 422, Honolulu, Hawaii or, via the FAX-ON-DEMAND system of the Department of Labor and Industrial Relations, phone number (808) 586-8695. When the bid documents are made available on respective neighbor islands, copies of the wage rate schedule may also be obtained from the office of the respective neighbor island DAGS District Office.

Contractor to the Engineer with its monthly payment requests. The *Monthly Report of Contractor's Participation - Form 2* is available on the DLIR website at: <http://hawaii.gov/labor/wdd>.

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

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

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

7-9A.3.3 Proceedings to debar or suspend pursuant to HRS §103D-702.

7.9A.4 If events such as "acts of God", acts of public enemy, acts of the State or any other governmental body in its sovereign or contractual capacity, fires, floods, epidemics, freight embargoes, unusually severe weather, or strikes or other labor disputes prevent the Contractor from submitting the *Monthly Report of Contractor's Participation - Form 2*, the Contractor shall not be penalized as provided herein, provided the Contractor completely and expeditiously complies with the certification process when the event is over.

## **7.10 OVERTIME AND NIGHT WORK**

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

7.10.2 Overtime Notification - Contractor shall notify the Engineer in writing at least two (2) working days prior to doing overtime and night work, to insure proper inspection will be available. The notification shall address the specific work to be done. A notification is not required when overtime work and night work are included as normal working hours in the contract and in the contractor's construction schedule.

7.10.3 In the event that work other than that contained in the above notification is performed and for which the Engineer determines State inspection services were

necessary but not available because of the lack of notification, the Contractor may be required to remove all such work and perform the work over again in the presence of State inspection personnel.

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

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

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

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

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

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

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

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

7.11.3 Payment for Inspection Services - The monies due the Department for staff and inspection work and use



of vehicles and equipment as determined in subsection 7.11.2 shall be deducted from the monies due or to become due the Contractor. In any and all events, the Contractor shall not pay the Department's employees directly.

## **7.12 LIMITATIONS OF OPERATIONS**

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

7.12.2 In the event that other contractors are also employed on the job site, the Contractor shall arrange its work and dispose of materials so as not to interfere with the operations of the other contractors engaged upon adjacent work. The Contractor shall join its work to that of others and existing buildings in a proper manner, and in accordance with the drawings and specifications, and perform its work in the proper sequence in relation to that of others, all as may be directed by the Engineer.

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

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

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

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

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

Department for the completion of the work in the event that the Contractors should be in default therein.

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

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

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

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

7.13.4 Change of Name - When a Contractor requests to change the name in which it holds a contract with the State, the Engineer shall, upon receipt of a document indicating such change of name (for example: an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting Contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.

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

7.13.6 Notwithstanding the provisions of paragraphs 7.13.3.1 through 7.13.3.3 above, when a Contractor holds contracts with more than one purchasing agency of the State, the novation or change of name agreements herein authorized shall be processed only through the Department of Defense, State of Hawaii.

## **7.14 LAWS TO BE OBSERVED**

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

7.14.2 The Contractor shall defend, protect, hold harmless and indemnify the State and its Departments and Agencies and all their officers, representatives, employees

or agents against any claim or liability arising from or based on the violation of any such laws, ordinances, rules and regulations, orders or decrees, whether such violation is committed by the Contractor or its Subcontractor(s) or any employee of either or both. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the Contractor shall forthwith report the same to the Engineer in writing.

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

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

**7.16 SANITARY, HEALTH AND SAFETY PROVISIONS**

7.16.1 The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements of the State and local Boards of Health, or other bodies or tribunals having jurisdiction. Unless otherwise stated in the drawings or specifications, the Contractor shall install toilet facilities conveniently located at the job site and maintain same in a neat and sanitary condition for the use of the employees on the job site for the duration of the contract. The toilet facilities shall conform to the requirements of the State Department of Health. The cost of installing, maintaining and

removing the toilet facilities shall be considered incidental to and paid for under various contract pay items for work or under the lump sum bids as the case may be, and no additional compensation will be made therefore. These requirements shall not modify or abrogate in any way the requirements or regulations of the State Department of Health.

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

**7.17 PROTECTION OF PERSONS AND PROPERTY**

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

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

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

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

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

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

7.17.4 All damage, injury or loss to any property referred to in paragraphs 7.17.1.2 and 7.17.1.3 caused by the fault or negligence or damage or loss attributable to acts or omissions directly or indirectly in whole or part by the Contractor a subcontractor or any one directly or

indirectly employed by them, or by anyone for whose acts they might be liable, shall be remedied promptly by the Contractor.

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

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

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

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

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

## **7.18 ARCHAEOLOGICAL SITES**

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

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

shall remove the fencing upon completion of construction, or as directed by the Engineer.

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

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

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

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

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

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

Contractor under this contract considered necessary by the Engineer to cover such just claims until satisfactory proof of payment or the establishment of a payment plan is presented.

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

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

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

7.20.2 Character and Proficiency of Workers - All workers shall possess the proper license and / or certification, job classification, skill and experience necessary to properly perform the work assigned to them.

All workmen engaged in special work or skilled work such as bituminous courses or mixtures, concrete pavement or structures, electrical installation, plumbing installation, or in any trade shall have sufficient experience in such work and in the operation of the equipment required to properly and satisfactorily perform all work. All workers shall make due and proper effort to execute the work in the manner prescribed in these GENERAL CONDITIONS, otherwise, the Engineer may take action as prescribed herein.

7.20.2.1 Any worker employed on the project by the Contractor or by any subcontractor who, in the opinion of the Engineer, is not careful and competent, does not perform its work in a proper and skillful manner or is disrespectful, intemperate, disorderly or neglects or refuses to comply with directions given, or is otherwise objectionable shall at the written request of the Engineer, be removed forthwith by the Contractor or subcontractor employing such worker and shall not be employed again in any portion of the work without the written consent of the Engineer. Should the Contractor or subcontractor continue to employ, or again employ such person or persons on the project, the Engineer may withhold all payments which are or may become due, or the Engineer may suspend the work until the Engineer's orders are followed, or both.

7.20.3 Insufficient Workers - A sufficient number of workers shall be present to ensure the work is accomplished at an acceptable rate. In addition, the proper ratio of apprentice to journey worker shall be maintained to ensure the work is properly supervised and performed.

In the event that the Engineer finds insufficient workers are present to accomplish the work at an acceptable rate of progress or if a adequate number of journey workers are not present and no corrective action is taken by the Contractor after being informed in writing, the Engineer may terminate the contract as provided for under Section 7.27 TERMINATION OF CONTRACT FOR CAUSE.

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

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

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

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

## **7.21 CONTRACT TIME**

7.21.1 Time is of the essence for this contract.

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

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

7.21.3.1 Extensions - For increases in the scope for work caused by alterations and additional work made under Section 4.2 CHANGES, the Contractor will be granted a time extension only if the changes increase the time of performance for the Contract. If the Contractor believes that an extension of time is justified and is not adequately

provided for in a Field Order, it must request the additional time sought in writing when the detailed cost breakdown required by Section 4.2 CHANGES, is submitted. The Contractor must show how the time of performance for the critical path will be affected and must also support the time extension request with schedules and statements from its subcontractors, suppliers, and/or manufacturers. Compensation for any altered or additional work will be paid as provided in Section 4.2 CHANGES.

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

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

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

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

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

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

(a) State specifically the reason or reasons for the delay and fully explain in a detailed chronology the effect of this delay to the work and/or the completion date.

(b) Submit copies of purchase order, delivery tag, and any other pertinent documentation to support the time extension request.

(c) Cite the period of delay and the time extension requested.

(d) A statement either that the above circumstances have been cleared and normal working conditions restored as of a certain day or that the above circumstances will continue to prevent completion of the project.

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

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

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

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

(a) State specifically the reason or reasons for the delay. Explain in a detailed chronology the effect of this delay to the other work and / or the completion date.

(b) Submit copies of purchase order(s), factory invoice(s), bill(s) of lading, shipping manifest(s), delivery tag(s) and any other pertinent correspondence to support the time extension request.

(c) Cite the start and end date of the delay and the days requested therefore. The delay shall not exceed the difference between the originally scheduled delivery date versus the actual delivery date.

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

7.21.7 Delays For Suspension of Work - Delay during periods of suspension of the work by the Engineer shall be computed as follows:

7.21.7.1 When the performance of the work is totally suspended for one or more days (calendar or working days, as appropriate) by order of the Engineer in accordance with paragraphs 7.24.1.1, 7.24.1.2, 7.24.1.4 or 7.24.1.6 the number of days from the effective date of the Engineer's order to suspend operations to the effective date of the Engineer's order to resume operations shall not be counted as contract time and the contract completion date will be adjusted. Should the Contractor claim for additional days in excess of the suspension period, Contractor shall provide evidence justifying the additional time. During periods of partial suspensions of the work, the Contractor will be granted a time extension only if the partial suspension affects the critical path. If the Contractor believes that an extension of time is justified for a partial suspension of work, it must request the extension in writing at least five (5) working days before the partial suspension will affect the critical operation(s) in progress. The Contractor must show how the critical path was increased based on the status of the work and must also support its claim, if requested, with statements from its subcontractors. A suspension of work will not constitute a waiver of pre-existing Contractor delay.

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

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

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

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

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

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

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

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

## 7.22 CONSTRUCTION SCHEDULE

7.22.1 The Contractor shall submit its detailed construction schedule to the Engineer prior to the start of the work. The purpose of the schedule is to allow the Engineer to monitor the Contractor's progress on the work. The schedule shall account for normal inclement weather, unusual soil or other conditions that may influence the progress of the work, schedules and coordination required by any utility, off or on site fabrications, and all other pertinent factors that relate to progress.

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

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

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

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

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

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

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

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

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

7.24.1.3 Failure of the Contractor to:

(1) Correct conditions unsafe for the general public or for the workers;

(2) Carry out orders given by the Engineer;

(3) Perform the work in strict compliance with the provisions of the contract; or

(4) Provide a qualified Superintendent on the jobsite as described under Section 5.8 COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT.

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

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

7.24.1.6 The convenience of the State.

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

7.24.3 Payment §3-125-7 HAR

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

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

(a) To the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or

(b) For which an adjustment is provided for or excluded under any other provision of this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.25.4.1 Date of the protested order, decision or action;

7.25.4.2 The nature and circumstances which caused the claim;

7.25.4.3 The contract provision that support the claim;

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

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

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

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

the Project Acceptance Date or the date of termination of the Contractor, whichever comes first.

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

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

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

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

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

7.25.10.1 If the contractor delivers a written request for a final decision concerning the controversy, the Adjutant General shall issue a final decision within 90 days after receipt of such a request; provided that if the Adjutant General does not issue a written decision within 90 days or within such longer period as may be agreed upon by



the parties, then the contractor may proceed as if an adverse decision had been received. Both parties to this contract agree that the period of up to 30 days to appeal the Contracting Officer's decision to the Adjutant General shall not be included in the 90 day period to issue a final decision.

7.25.11 Payment and Interest - The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting Contractor action concerning appeal. Such payments shall be without prejudice to the rights of either party. Interest on amounts ultimately determined to be due to a Contractor shall be payable at the Statutory rate applicable to judgments against the State under Chapter 662, HRS from the date of receipt of a properly certified final written statement of actual adjustment required until the date of decision; except, however, that if an action is initiated in circuit court, interest under this Section 7.25 shall only be calculated until the time such action is initiated. Interest on amounts due the State from the Contractor shall be payable at the same rate from the date of issuance of the Engineer's notice to the Contractor. Where such payments are required to be returned by a subsequent decision, interest on such payments shall be paid at the statutory rate from the date of payment.

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

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

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

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

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

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

7.26.1.4 The Engineer shall assess the total amount of liquidated damages in accordance with the amount stated in the Offer Form and provide written notice of such assessment to the Contractor.

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

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

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

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

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

#### 7.27.3 Costs and Charges

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

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

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

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

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

7.28.2 Contractor's Obligations - The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the State's approval. The Engineer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the State. The Contractor must still complete the work not terminated by the notice of termination.

7.28.3 Right to Construction and Goods - The Engineer may require the Contractor to transfer title and delivery to the State in the manner and to the extent directed by the Engineer, the following:

7.28.3.1 Any completed work; and

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

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

#### 7.28.4 Compensation

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

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

7.28.4.3 Absent complete agreement, the Engineer shall pay the Contractor the following amounts, less any payments previously made under the contract.

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

(b) Subcontractors shall be paid a markup of ten percent (10%) on their direct job costs incurred to the date of termination. No anticipated profit or consequential damage will be due or paid to any subcontractor. These costs must not include payments made to the Contractor for subcontract work during the contract period.

(c) In any case, the total sum to be paid the Contractor shall not exceed the total contract price reduced by the amount of any sales of construction supplies, and construction materials.

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

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

**7.30 FINAL CLEANING** - Before final inspection of the work, the Contractor shall clean all ground occupied by the Contractor in connection with the Work of all rubbish, excess materials, temporary structures and equipment, and all parts of the work must be left in a neat and presentable condition to the satisfaction of the Engineer. However, the Contractor shall not remove any

warning and directional signs prior to the formal acceptance by the Engineer. Full compensation for final cleaning will be included in the prices paid for the various items of work or lump sum bid, as the case may be, and no separate payment will be made therefore.

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

7.31.1 Substantial Completion:

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

(a) When in compliance with the above requirements, the Contractor shall notify the Engineer in writing that project is Substantially Complete and ready for a Final Inspection. Along with the Substantial Completion notification, the Contractor shall provide its Punch list(s) with the status of the deficiencies and dates when the deficiencies were corrected. The Project Inspector and / or the Engineer shall make a preliminary determination whether project is Substantially Complete.

(b) If the Project is not Substantially Complete, the Engineer shall inform the Contractor. The Contractor shall identify deficiencies which must be corrected, update its Punch list, make the necessary corrections and repeat the previous step. After completing the necessary work, the Contractor shall notify the Engineer in writing that Punch list deficiencies have been corrected and the project is ready for a Final Inspection.

(c) If the Project is Substantially Complete, the Engineer shall schedule a Final Inspection within fifteen (15) days of the Contractor's notification letter or as otherwise determined by the Engineer.

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

- (1) Field-Posted As-Built Drawings.
- (2) Maintenance Service Contract and two (2) copies of a list of all equipment.

- (3) Operating and maintenance manuals.
- (4) Air conditioning test and balance reports.
- (5) Any other final submittal required by the technical sections of the contract.

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

7.31.2.1 The Engineer shall confirm the list of deficiencies noted by the Contractor's punch list(s) and will notify the Contractor of any other deficiencies that must be corrected before final settlement.

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

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

## **7.32 PROJECT ACCEPTANCE DATE**

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

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

7.32.3 The date of Project Acceptance shall determine:

7.32.3.1 End of Contract Time.

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

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

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

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

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

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

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

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

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

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

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

7.33.1.1 All written guarantees required by the contract.

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

7.33.1.3 Certificate of Plumbing and Electrical Inspection.

7.33.1.4 Certificate of Building Occupancy.

7.33.1.5 Certificates for Soil Treatment and Wood Treatment.

7.33.1.6 Certificate of Water System Chlorination.

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

7.33.1.8 All other documents required by the Contract.

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

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

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

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

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

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

#### **7.35 GUARANTEE OF WORK**

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

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

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

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

7.35.3 Manufacturer's and Installer's Guarantee- Whenever a manufacturer's or installer's guarantee on any product specified in the respective Specification sections, exceeds one year, this guarantee shall become part of this contract in addition to the Contractor's guarantee. Contractor shall complete the guarantee forms in the name of the Department and submit such forms to the manufacturer within such time required to validate the guarantee. Contractor shall submit to the Department a photocopy of the completed guarantee form for the Department's record as evidence that such guarantee form was executed by the manufacturer.

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

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

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

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

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

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

### **7.37 RIGHT TO AUDIT RECORDS**

7.37.1 Pursuant to Section 103D-317 HRS the State, at reasonable times and places, may audit the books and records of a Contractor, prospective contractor, subcontractor and prospective subcontractor relating to the Contractor's or subcontractor's cost or pricing data. The books and records shall be maintained by the Contractor and subcontractor(s) for a period of four (4) years from the date of final payment under the contract.

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

7.37.3 Additionally, Sections 231-7, 235-108, 237-39 and other HRS chapters through reference, authorizes the Department of Taxation to audit all taxpayers conducting business within the State. Contractors must make

available to the Department of Taxation all books and records necessary to verify compliance with the tax laws.

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

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

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

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

## **ARTICLE 8 - Measurement and Payment**

### **8.1 MEASUREMENT OF QUANTITIES**

8.1.1 All work completed under the Contract shall be measured by the Engineer according to United States standard measures, or as stated in this Contract. The method of measurement and computations to be used in

determination of quantities of material furnished and of work performed under the contract shall conform to good engineering practice. These measurements shall be considered correct and final unless the Contractor has protested same to the Engineer and has demonstrated the existence of an error by actual physical measurement before the work has progressed in a manner which would prohibit a proper check.

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

**8.2 NO WAIVER OF LEGAL RIGHTS** - The Engineer shall not be precluded or estopped by any measurements, estimate or certificate made either before or after the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement estimate or certificate is untrue or incorrectly made, or rejecting the work or materials that do not conform in fact to the contract. The Engineer shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor and its sureties such damages as the Department may sustain by reason of the Contractor's failure to comply with the terms of the contract. Neither the acceptance by the Engineer or any representative of the Engineer, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, or any possession taken by the Engineer, shall operate as a waiver of any portion of the contract, or of any power herein reserved, or any right to damage herein provided. A waiver of any notice requirement or breach of the contract shall not be held to be a waiver of any other notice requirement or subsequent breach.

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

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

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

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

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

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

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

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

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

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

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

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

#### 8.3.4.5 Equipment

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

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

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

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

(2) For machinery or special equipment (other than small tools as herein defined in clause 8.3.4.5.(h) rented by the Contractor or a related entity specifically for the

Force Account work, the use of which has been authorized by the Engineer; The Contractor will be paid the actual rental cost for the machinery or equipment, including mobilization and demobilization costs. A receipt from the equipment supplier shall be submitted to the Engineer.

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

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

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

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

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

(5.3) In the event the Force Account work is completed in less than 8 hours, equipment



- rental shall nevertheless be paid for a minimum 8 hours.
- (5.4) For the purpose of determining the rental period the continuous and consecutive days shall be the normal 8-hour shift work day, Monday through Friday excluding legal holidays. Any work day to be paid less than 8 hours shall not be considered as continuous, except for equipment removed from rental for fuel and lubrication.
- (5.5) No additional premium beyond the normal rates used will be paid for equipment over 8 hours per day or 40 hours per week.
- (6) All rental rates for machinery and equipment shall include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs, maintenance, tire wear, depreciation, storage, and all other incidentals.
- (7) All machinery and equipment shall be in good working condition and suitable for the purpose for which the machinery and equipment is to be used.
- (8) Individual pieces of equipment or tools having a replacement value of one thousand dollars (\$1,000) or less, whether or not consumed by use, shall be considered to be small tools and included in the allowed markup for overhead and profit and no separate payment will be made therefore.
- (9) The total of all Force Account rental charges accrued over the duration of the contract for a specific item of equipment shall not exceed the replacement cost of that equipment.
- (9.1) The Contractor shall provide the cost of replacement to the Engineer prior to using the equipment. If the Engineer does not agree with the replacement cost, the Engineer shall set the replacement cost. The Contractor may contest the replacement cost pursuant to Section 7.25 DISPUTES AND CLAIMS.
- (10) Should the item of equipment be rented from an unrelated entity, the rental cost will be treated as an equipment cost under paragraph 8.3.4.5.
- (11) Transportation and/or Mobilization: The following provisions shall govern in determining the compensation to be paid to the Contractor for use of equipment or machinery on the Force Account method:
- (11.1) The location from which the equipment is to be moved or transported shall be approved by the Engineer.
- (11.2) Where the equipment must be transported to the site of the force account work, the Department will pay the reasonable cost of mobilizing and transporting the equipment, including its loading and unloading, from its original location to the site of force account work. Upon completion of the work the Department will pay the reasonable cost of mobilizing and transporting the equipment back to its original location or to another location, whichever cost is less.
- (11.3) The cost of transporting the equipment shall not exceed the rates established by the Hawaii State Public Utilities Commission. If such rates are nonexistent, then the rates will be determined by the Engineer based upon the prevailing rates charged by established haulers within the locale.
- (11.4) Where the equipment is self-propelled, the Department will pay the cost of moving the equipment by its own power from its original location to the site of the force account work. Upon completion of the work the Department will pay the reasonable cost of moving of the Equipment back to its original or another location, whichever cost is less.
- (11.5) At the discretion of the Engineer, when the Contractor desires to use such equipment for other than Force Account work, the costs of mobilization and transportation shall be prorated between the Force Account and non Force Account work.
- (12) Pickup trucks, vans, storage trailers, unless specifically rented for the Force Account work, shall be considered incidental to the Force Account work and the costs therefore are included in the markup allowed under Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT.
- 8.3.4.6 State Excise (Gross Income) Tax and Bond - A sum equal to the current percentage rate for the State excise (Gross Income) tax on the total sum determined in paragraphs 8.3.4.1, 8.3.4.2, 8.3.4.3 and 8.3.4.4 above, and the bond premium shall be added as compensation to the Contractor. The actual bond premium not to exceed one percent (1%) shall be added to items covered by paragraphs 8.3.4.1, 8.3.4.2, 8.3.4.3 and 8.3.4.4 when applicable.

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

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

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

- (a) Laborers - Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman and also the amount of fringe benefits payable if any.
- (b) Equipment - Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- (c) Materials
  - (c.1) Quantities of materials, prices and extensions
  - (c.2) Costs of transporting materials, if such cost is not reflected in the prices of the materials.
  - (c.3) Statements shall be accompanied and supported by receipted invoices for all materials used and transportation charges. However, if materials used on the Force Account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractors shall submit an affidavit certifying that such materials were taken from stock and that the amount claimed represents the actual cost to the Contractor.
- (d) Insurance - Cost of property damage, liability and worker's compensation insurance premiums, unemployment insurance contributions, and social security tax.

#### **8.4 PROGRESS AND / OR PARTIAL PAYMENTS**

8.4.1 Progress Payments - The Contractor will be allowed progress payments on a monthly basis upon

preparing the Monthly Payment Application forms and submitting them to the Engineer. The monthly payment shall be based on the items of work satisfactorily completed and the value thereof at unit prices and/or lump sum prices set forth in the contract as determined by the Engineer and will be subject to compliance with Section 7.9 PAYROLLS AND PAYROLL RECORDS.

8.4.2 In the event the Contractor or any Subcontractor fails to submit certified copies of payrolls in accordance with the requirements of Section 7.9 PAYROLLS AND PAYROLL RECORDS, the Engineer may retain the amount due for items of work for which payroll affidavits have not been submitted on a timely basis notwithstanding satisfactory completion of the work until such records have been duly submitted. The Contractor shall not be due any interest payment for any amount thus withheld.

8.4.3 Payment for Materials - The Contractor will also be allowed payments of the manufacturer's, supplier's, distributor's or fabricator's invoice cost of accepted materials to be incorporated in the work on the following conditions:

8.4.3.1 The materials are delivered and properly stored at the site of Work; or

8.4.3.2 For special items of materials accepted by the Engineer, the materials are delivered to the Contractor or subcontractor(s) and properly stored in an acceptable location within a reasonable distance to the site of Work.

8.4.4 Partial payments shall be made only if the Engineer finds that:

8.4.4.1 The Contractor has submitted bills of sale for the materials or otherwise demonstrates clear title to such materials.

8.4.4.2 The materials are insured for their full replacement value to the benefit of the Department against theft, fire, damages incurred in transportation to the site, and other hazards.

8.4.4.3 The materials are not subject to deterioration.

8.4.4.4 In case of materials stored off the project site, the materials are not commingled with other materials not to be incorporated into the project.

#### **8.5 PROMPT PAYMENT §3-125-23 HAR**

8.5.1 Any money paid to a Contractor for work performed by a subcontractor shall be disbursed to such subcontractor within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and

conditions of the subcontract and there are no bona fide disputes on which the Engineer has withheld payment.

8.5.2 Upon final payment to the Contractor, full payment to all subcontractors shall be made within ten (10) days after receipt of the money, provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

8.5.3 All sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the contracting officer to the contractor and subsequently, upon receipt from the contracting officer, by the contractor to the subcontractor within the applicable time periods specified in subsection 8.5.2 and section 103-10 HRS.

8.5.3.1 Where a subcontractor has provided evidence to the contractor of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in subsection (8.5.5) of this section, and;

8.5.3.1.a Has provided to the contractor an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 8.6 RETAINAGE; or

8.5.3.1.b The following has occurred:

8.5.3.1.b.1 A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to contractor and the surety, as provided for in section 103D-324 HRS; and

8.5.3.1.b.2 The subcontractor has provided to the contractor:

8.5.3.1.b.2.1 An acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the contractor.

8.5.3.1.b.2.2 Any other bond acceptable to the contractor; or

8.5.3.1.b.2.3 Any other form of mutually acceptable collateral.

8.5.4 If the contracting officer or the contractor fails to pay in accordance with this section, a penalty of one and one-half per cent per month shall be imposed upon the outstanding amounts due that were not timely paid by the responsible party. The penalty may be withheld from future payment due to the contractor, if the contractor was the responsible party. If a contractor has violated subsection 8.5.2 three or more times within two years of the first violation, the contractor shall be referred by the

contracting officer to the contractor license board for action under section 444-17(14) HRS.

8.5.5 Final Payment Request. A properly documented final payment request from a subcontractor, as required by subsection 8.5.3, shall include:

8.5.5.1 Substantiation of the amounts requested;

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

8.5.5.2.a The amounts requested are only for performance in accordance with the specification, terms, and conditions of the subcontract;

8.5.5.2.b The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

8.5.5.2.c The payment request does not include any amounts that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and

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

8.5.6 The Engineer shall return any final payment request that is defective to the contractor within seven days after receipt, with a statement identifying the defect.

8.5.7 A payment request made by a contractor to the Engineer that includes a request for sums that were withheld or retained from a subcontractor and are due to a subcontractor may not be approved under subsection 8.5.3 unless the payment request includes:

8.5.7.1 Substantiation of the amounts requested; and

8.5.7.2 A certification by the contractor, to the best of the contractor's knowledge and belief, that:

8.5.7.2.a The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

8.5.7.2.b The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the contract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

8.5.7.2.c The payment request does not include any amounts that the contractor intends to withhold or retain

from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

8.5.8 The Engineer shall return any final payment request that is defective to the contractor within seven days after receipt, with a statement identifying the defect.

8.5.9 This section shall not be construed to impair the right of a contractor or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under subsection 8.5.3 of this section; provided that any such payments withheld shall be withheld by the Engineer.

**8.6 RETAINAGE** – The Department will retain a portion of the amount due under the contract to the contractor, to ensure the proper performance of the contract.

8.6.1 The sum withheld by the Department from the contractor shall not exceed five percent (5%) of the total amount due the contractor and that after fifty percent (50%) of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the Engineer may continue to withhold as retainage, sums not exceeding five percent (5%) of the amount due the contractor.

8.6.2 The retainage shall not include sums deducted as liquidated damages from moneys due or that may become due the contractor under the contract.

8.6.3 General Obligation Bonds – The contractor may withdraw retainage monies in whole or in part by providing a general obligation bond of the State or its political subdivisions suitable to the Department. The contractor shall endorse over to the Department and deposit with the Department any general obligation bond suitable to the Department, but in no case with a face value less than the value established by law, of the amount to be withdrawn. The Department may sell the bond and use the proceeds in the same way as it may use monies directly retained from progress payments or the final payment.

8.6.4 Any retainage provided for in this section or requested to be withheld by the contractor shall be held by the Engineer.

8.6.5 A dispute between a contractor and subcontractor of any tier shall not constitute a dispute to which the State or any county is a party, and there is no right of action against the State or any county. The State and a county may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

8.6.6 The retention amount withheld by the contractor from its subcontractor shall be not more than the same percentage of retainage as that of the contractor (also applies to subcontractors who subcontract work to other subcontractors) where a subcontractor has provided evidence to the contractor of:

8.6.6.1 A valid performance and a payment bond for the project that is acceptable to the contractor and executed by a surety company authorized to do business in this State;

8.6.6.2 Any other bond acceptable to the contractor; or

8.6.6.3 Any other form of collateral acceptable to the contractor.

8.6.7 A written notice of any withholding shall be issued to a subcontractor, with a copy to the procurement officer, specifying the following:

8.6.7.1 The amount to be withheld;

8.6.7.2 The specific causes for the withholding under the terms of the subcontract; and

8.6.7.3 The remedial actions to be taken by the subcontractor to receive payment of the amounts withheld.

8.6.8 The provisions of this section shall not be construed to require payment to subcontractors of retainage released to a contractor pursuant to an agreement entered into with the contracting officer meeting the requirements of subsection 8.6.3.

**8.7 WARRANTY OF CLEAR TITLE** - The Contractor warrants and guarantees that all work and materials covered by progress payments made thereon shall be free and clear of all liens, claims, security interests or encumbrances, and shall become the sole property of the Department. This provision shall not, however, be construed as an acceptance of the work nor shall it be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Department to require the fulfillment of all the items of the contract.

## **8.8 FINAL PAYMENT**

8.8.1 Upon final settlement, the final payment amount, less all previous payments and less any sums that may have been deducted in accordance with the provisions of the contract, will be paid to the Contractor, provided the Contractor has submitted a Tax Clearance Certificate from the Department of Taxation and the Internal Revenue Service to the effect that all taxes levied or

accrued under Federal and State Statutes against the contractor have been paid.

8.8.2 Sums necessary to meet any claims of any kind by the State may be retained from the sums due the Contractor until said claims have been fully and completely discharged or otherwise satisfied.

**8.9 CLAIMS ARISING OUT OF PAYMENT FOR REQUIRED WORK** - If the Contractor disputes any determination made by the Engineer regarding the amount of work satisfactorily completed, or the value thereof, or the manner in which payment therefore is made or calculated, it shall notify the Engineer in writing of the specific facts supporting the Contractor's position. Such notice shall be delivered to the Engineer no later than thirty (30) days after the Contractor has been tendered payment for the subject work, or, if no payment has been tendered, not later than fifty (50) days after it has submitted the Monthly Payment Application required under Section 8.4 PROGRESS PAYMENTS herein to the Engineer for the work that is the subject of the dispute. The delivery of the written notice cannot be waived and shall be a condition precedent to the filing of the claim. No claim for additional compensation for extra work or change work shall be allowed under this provision, unless the notice requirements of Article 4 SCOPE OF WORK have been followed. Acceptance of partial payment of a Monthly Payment Application amount shall not be deemed a waiver of the right to make a claim described herein provided the notice provisions are followed. The existence of or filing of a payment claim herein shall not relieve the Contractor of its duty to continue with the performance of the contract in full compliance with the directions of the Engineer. Any notice of claim disputing the final payment made pursuant to Section 8.8 FINAL PAYMENT must be submitted in writing not later than thirty (30) days after final payment that is identified as such has been tendered to the Contractor.

#### **ARTICLE 9 - CONFIDENTIALITY OF PERSONAL INFORMATION**

9.1 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.

#### 9.2 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.

#### 9.3 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.

9.4 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.

9.5 Records Retention.

- (1) Upon any termination of this Contract, 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 three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall not be disclosed without the prior written approval of the STATE. After the three (3) year retention period has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS.

ADDITIONAL GENERAL CONDITIONS FOR  
CONSTRUCTION CONTRACTS

*The following sections of the Hawaii Administrative Rules, Chapter §3-125 are hereby incorporated and made a part of the General Conditions.*

CHANGES FOR CONSTRUCTION CONTRACTS - §HAR 3-125-4

1. Change Order. The procurement officer, at any time, and without notice to any surety in a signed writing designated or indicated to be a change order, may make changes in the work within the scope of the contract as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the contractor will perform the work as changed, as though it had been part of the original contract. Minor changes in the work may be directed by the procurement officer with no change in contract price or time or performance.
2. 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 may be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of this contract. Failure of the parties to agree to an adjustment shall not excuse a contractor from proceeding with the contract as changed, provided that the State promptly and duly makes such provisional adjustments in payments or time for the direct costs of the work as changed as the State deems reasonable. The right of the contractor to dispute the contract price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the notice requirements for disputes and claims established by the contract or these rules.
3. Time Period for Claim. Within thirty days after receipt of a written change order under paragraph (1), unless such period is extended by the procurement officer in writing, the contractor shall file a notice of intent to assert claim for an adjustment. The requirement for timely written notice cannot be waived and shall be a condition precedent to the assertion of a claim.
4. Claim barred after final payment. No claim by the contractor for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this contract.
5. Claims not barred. In the absence of such a change order, nothing in this clause shall restrict the contractor's right to pursue a claim under the contract or for breach of contract.

## PRICE ADJUSTMENT FOR CONSTRUCTION CONTRACTS - §HAR 3-125-13.

1. Price adjustment. Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways;
  - a. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - b. By unit prices specified in the contract or subsequently agree upon;
  - c. Whenever there is a variation in quantity for any work covered by any line item in breakdown costs provided by the contractor pursuant to contractual pre-work submittal requirements, by the procurement officer, at the procurement officer's discretion, adjusting the lump sum price proportionately;
  - d. In such other manner as the parties may mutually agree;
  - e. At the sole option of the procurement officer, by the costs attributable to the event or situation covered by the change, plus appropriate profit or fee; or
  - f. In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126 (of the Hawaii Administrative Rules).
  
2. Determining the cost or credit. In determining the cost or credit to the State resulting from a change, the allowances for all overhead, extended overhead resulting from adjustments to contract time (including home office and field overhead) and profit combined, shall not exceed the percentages set forth below:
  - a. For the contractor, for any work performed by its own labor forces, fifteen per cent of the cost;
  - b. For each subcontractor involved, for any work performed by its own forces, fifteen per cent of the cost;
  - c. For the contractor or any subcontractor, for work performed by their subcontractors, ten per cent of the amount due the performing subcontractor.
  
3. Percentages for fee and overhead. Not more than three line item percentages for fee and overhead, not to exceed the maximum percentages shown above, will be allowed regardless of the number of tier subcontractors.

## PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS – §HAR 3-125-23

1. Prompt payment clause. Any money, other than retainage, paid to a contractor shall be dispersed to subcontractors within ten 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, upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be



made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

### CHANGES TO THE GENERAL CONDITIONS

1. Under ARTICLE 1 – DEFINITIONS, insert the following:

“1.70 CONTRACTING OFFICER REPRESENTATIVE (COR): The Department of Defense Project Manager (PM).”

2. Under ARTICLE 2 - PROPOSAL REQUIREMENTS AND CONDITIONS, modify section 2.6 - SUBSTITUTION OF MATERIALS AND EQUIPMENT BEFORE BID OPENING, by renaming section 2.6 - SUBSTITUTION BEFORE CONTRACT AWARD and deleting subsections 2.6.1, through 2.6.6 and substitute the following three new subsections and related paragraphs 2.6.1 through 2.6.3:

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

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

2.6.3 Offerors shall prepare their Offer forms based on the performance requirements of the materials, equipment, articles or systems noted on the drawings and specifications. If trade names, makes, catalog numbers or brand names are specified, Offerors shall infer that these items indicate the quality, style, appearance or performance of the material, equipment, article, or systems to be used in the project. The products and equipment of manufacturers listed throughout the specifications and other manufacturers are acceptable provided they meet or exceed the materials and construction requirements specified and are installed as specified.”

3. Under Article 6, delete subsections 6.3.2.4 and 6.3.3.

(S A M P L E)

Date: \_\_\_\_\_

Engineering Officer  
Department of Defense  
State of Hawaii  
3949 Diamond Head Road  
Honolulu, Hawaii 96816-4495

Dear Sir:

Subject: REQUEST FOR SUBSTITUTION

PROJECT TITLE & JOB NO.: \_\_\_\_\_

\_\_\_\_\_

In accordance with the requirements of the Special Provisions and as stated on the Specifications, we hereby submit for substitution, \_\_\_\_\_ sets of technical brochures and statement of variances for your review and approval for the item(s) shown below.

<u>ITEM</u>	<u>SPECIFIED BRAND</u>	<u>SUBSTITUTE BRAND</u>	<u>MODIFICATION/VARIANT FEATURES</u>
-------------	----------------------------	-----------------------------	--

I further certify that my request for substitution of the above item(s) has no other variant features.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME OF COMPANY AND TITLE

- NOTE:
1. Use own letterhead
  2. Submit one (1) original and two (2) copies
  3. If no variant feature indicate "None"

WEEKLY QUALITY CONTROL REPORT FORM

PROJECT: \_\_\_\_\_

PROJECT NO.: \_\_\_\_\_

WEEK OF: \_\_\_\_\_

WORK PERFORMED: \_\_\_\_\_

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

INSPECTION REPORT: \_\_\_\_\_

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

ATTACH ANY ADDITIONAL INFORMATION

DATE PREPARED: \_\_\_\_\_

INSPECTOR: \_\_\_\_\_

VERIFIED BY PRIME CONTRACTOR: \_\_\_\_\_

## **SCOPE-OF-WORK & NOTES**

**PROJECT TITLE: LEAD & ASBESTOS REMEDIATION AT  
BIRKHIMER EOC, OAHU  
STATE OF HAWAII  
DEPARTMENT OF DEFENSE**

**PROJECT LOCATION: Diamond Head Crater  
4180 Diamond Head Road  
Honolulu, Hawaii 96816**

1. **SCOPE-OF-WORK:** Remediation of walls with lead paint in loose and flaky, and up to one foot beyond in all directions, deteriorated condition, and associated lead dust/debris. After receipt of clearance from the Project Monitor, prime and repaint with non-lead containing product these bare wall surfaces to match the existing adjacent paint color. Refer to attached drawings and specifications.

Removal of non-asbestos-containing sheet flooring with asbestos-containing black mastic in the Kitchen/Dining Room (Break Room) and encapsulation of the bare area. Removal of non-asbestos-containing sheet flooring and mastic at the Back Entry Hallway. Refer to attached drawings and specifications.

After receipt of clearance from the Project Monitor, furnish and install new non-asbestos containing vinyl floor tiles in the areas mentioned above.

- a. Vinyl Tile: Deja New Smooth Concrete (or approved equivalent)
- b. Color: Anthracite
- c. Tile Size: 24 x 24
- d. Include Rubber transitions on all perimeters and doorways

## 2. **NOTES**

- a. Perform operations and furnish equipment, fixtures, appliances, tools, materials, related items, and labor necessary to execute, complete and deliver the work as required by the Contract Documents (including the attached project drawings and specifications).
- b. **CONTRACTOR'S LICENSE:** To be eligible to submit a Bid, the Bidder must possess a valid State of Hawaii Contractor's license classification(s): C-33 Painting and State of Hawaii Department of Health Lead & Asbestos Abatement Contractor registrations.
- c. **CAUTION NOTICE / WORK RESTRICTIONS**
  - 1) The Contractor is advised that Birkhimer EOC will be in operation and shall remain accessible to the building's occupants throughout the entire duration of the project. This continuing operation of the building will restrict the Contractor's work. NO additional compensation or time will be made to the Contractor for failure to acknowledge and account for the requirements of this section in his bid.
  - 2) The Contractor shall consult with the Project Contact Person to review the site conditions and other factors, which in turn may be affected by the Contractor's execution of work.

- 3) The Contractor shall schedule and perform his work and operations to conform to the requirements of the building and in such a manner as to minimize inconvenience, to minimize hazards and disturbance upon the building's occupants, and to ensure their safety.
  - 4) As the building will remain operational throughout the entire duration of the project, safe access and egress around the project site shall be maintained at all times. Disruptions of access, etc. shall be coordinated with the Project Contact Person. Disruptions shall also be identified in the Contractor's Project Schedule.
  - 5) The Contractor shall provide construction aids as necessary to maintain normal operations of the building and to protect the public and the staff.
- d. The Contractor Days and Hours of Work:
- 1) The building's normal hours of operation are from 6:00 a.m. to 3:30 p.m., Monday through Friday, excluding Federal and State Holidays.
  - 2) The Contractor's normal hours of work is from 7:00 a.m. to 3:00 p.m. Monday through Friday.
  - 3) Work proposed to be performed outside of the building's normal business hours shall be coordinated a minimum of 48-hours in advance with the Project Contract Person to ensure State personnel is available to monitor the Contractor's operations.
  - 4) Work in the Air Handling Room will be conducted outside of normal business hours to avoid the need for portable A/C units.
- e. The Contractor is also cautioned that the Diamond Head and Fort Ruger campus is occupied by The Adjutant General, Deputy Adjutant General, their immediate staff, and other high-level military and civilian personnel. In addition, the building is frequently visited by dignitaries of the U.S. Government and other nations. Therefore, the Contractor's employees and those of their Subcontractors shall be respectful and on their best behavior while on the premises.
- f. **PHASING:** The work shall be accomplished in a single phase.
- g. **GENERAL NOTES:**
- 1) A Building Permit is not required for this project. However, a courtesy 10-day notification to the State of Hawaii, Department of Health, Indoor and Radiological Health Branch, Asbestos and Lead Sections will be required.
  - 2) Within 7-calendar days after receipt of the Notice to Proceed, the State will convene a Pre-Construction Meeting, at which time the Contractor shall submit a proposed Project Schedule for discussion and acceptance.
  - 3) The Contractor shall schedule all work to minimize disruption to the operations of the building's users.
  - 4) Dimensions noted are approximate. The Contractor shall verify all dimensions prior to the ordering of materials and performance of work.
  - 5) Damage inflicted on the existing facility as a result of the Contractor's operations shall be repaired and restored to the original condition, to the satisfaction of the Project Contact Person, at no additional cost to the State.
  - 6) Parking:
    - (a) Parking will be made available for the Contractor. Any stalls that will be blocked shall be coordinated/approved with the HI-EMA Project Contact Person.
    - (b) Unauthorized vehicles parked in areas outside of that permitted will be subject to towing at the Contractor's expense.
    - (c) No ADA stalls will be blocked.
    - (d) Fire lane access will be maintained at all times.

7) Site Access:

- (a) The Contractor shall coordinate access to the site with the Project Contact Person.
- (b) All work that involves closing of sections within the facility can only be approved by the HI-EMA Administrator or Executive Officer.
- (c) Work at the front door may temporarily prevent ingress and egress. Building occupants will know in advance when work at the front door will occur. Signs will be posted so building occupants know to utilize the back door for egress in case of fire or other emergency.
- (d) Work at the back door should be coordinated so as to not prevent ingress and egress. Building occupants will know in advance when work at the back door will occur.
- (e) In the event of the State Emergency Operations Center being activated, all Contractors must vacate the premises within 1 hour. No equipment or vehicles may be left on the premises.
- (f) Keep access roads to the project site free of dirt and debris. Provide, erect, and maintain lights, barriers, signs, etc. to protect pedestrians, etc. Obey facility traffic and safety regulations.
- (g) Place protective sheeting or other appropriate materials as may be necessary to protect existing construction and equipment to remain from damage. Any damage created by the Contractor's operations shall be repaired and restored to its prior existing condition, to satisfaction of the Project Contact Person.

8) Contractor's Storage and Staging Areas:

- (a) The Contractor shall coordinate areas for storage and staging with the Project Contact Person. The area immediately outside the back door can be utilized.
- (b) Additional space for storage and staging may be limited. Therefore, the Contractor shall make arrangements as may be necessary for additional storage and staging requirements off-site. No additional compensation or additional time will be allowed for such arrangements.

9) Toilet and Wash Facilities:

- (a) Use of the building's toilet facilities will be as directed by the Project Contact Person. Facilities shall be kept clean. Abuse of this privilege may result in the Contractor providing their own toilet and wash facilities at no additional cost to the State.

10) Odor, Noise and Dust Control:

- (a) As the building will remain operational during the duration of work, the Contractor shall institute and maintain odor, noise, and dust controls. Construction activities, which in the opinion of the Project Contact Person is deemed to be excessive, shall be performed outside of the facility's normal business hours. The use of radios or similar devices is prohibited.

11) Other Conditions:

- (a) All lead-contaminated paint/debris and asbestos-contaminated debris will be cleaned up and containerized at least twice daily.
- (b) Comply with the ban on smoking and other uses of tobacco products, alcoholic beverages, and other illegal substances at all times.

**12) HAZARDOUS MATERIALS:**

- (a) All paints encountered at the site are assumed to contain lead.

- (b) The black mastic under the linoleum in the Break Room/Kitchen contains 3% Chrysotile asbestos.
- (c) The Contractor shall inform employees and Subcontractors of the presence of the hazardous materials.
- (d) All work associated in the handling, disturbance, removal, and disposal of hazardous materials shall be performed by a Contractor with the appropriate license and certifications, in accordance with all applicable Federal, State, and Local Laws, Ordinances, Codes, Rules and Regulations.
- (e) Personal air monitoring will be conducted by the Contractor on their own workers. Area air monitoring will be conducted by a Third-Party Consultant hired by the DOD.

## SECTION 13281 – ENGINEERING CONTROL OF ASBESTOS-CONTAINING MATERIAL

### PART 1 – GENERAL

#### 1.01 SUMMARY

- A. The asbestos work shall include all labor, materials, and equipment necessary to complete the safe and proper containment, separating, handling, treatment, encapsulation, removal, demolition, clean-up, storage, transportation, and disposal procedures for ACM and associated waste, and incidental work, as required, in conjunction with the flooring replacement at the Kitchen/Dining Room (Break Room and Back Entry Hallway at Birkhimer EOC. Refer to the Contract Documents for the complete Project Description. Specifically, the work includes, but is not limited to the following: full containment of the abatement areas, use of negative pressure in the abatement areas, isolation of the ventilation system, use of wet methods, use of non-toxic mastic remover and encapsulants, and personal air monitoring.
- B. Furnish and Install New Vinyl Tiles in the areas mentioned above.
  - 1. Vinyl Tile: Deja New Smooth Concrete (or approved equivalent)
  - 2. Color: Anthracite
  - 3. Tile Size: 24 x 24
  - 4. Include Rubber transitions on all perimeters and doorways
- C. The Contractor acknowledges that he alone is responsible for the asbestos work and for enforcing personnel protective requirements, and that this specification provides only a minimum acceptable standards. The Contractor shall comply with all applicable Federal, State and local regulations regarding asbestos.
- D. The Contractor shall coordinate all work with the General Contractor and the DOD Construction Engineer.
- E. Sampling and laboratory analysis confirmed the presence of 3% Chrysotile asbestos in the mastic under the sheet flooring in the Kitchen/Dining Room (Break Room). Asbestos was not detected in the sheet flooring and cove base/mastic in the Kitchen/Dining Room (Break Room). Asbestos was not detected in the sheet floorings/mastics and cove bases/mastics in the Back Entry Hallway. Refer to the *“Final Letter Report, Limited Lead and Asbestos Survey, Birkhimer EOC, Oahu, Hawaii, dated November 19, 2021, included in the Specifications.*

#### 1.02 APPLICABLE STANDARDS AND GUIDELINES

All work under this contract, and any other trade work conducted with the project, shall be done in strict accordance with all applicable federal, state, and local regulations, standards, and codes governing asbestos handling, treatment, encapsulation, removal, demolition, transportation, and disposal of asbestos, as required. The most recent edition of any relevant document shall be in effect. Where conflict or any inconsistency among requirements or with this specification exists, the more stringent requirements shall apply. All regulations shall govern these specifications, except that any more stringent specification or any specification providing greater protection against asbestos



exposure, injury, loss, or liability shall control to the extent permitted by regulation. Any question regarding conflict or inconsistency between specifications and/or regulations should be referred to the DOD Construction Engineer. Ignorance of the above requirements or of any applicable State and local regulations resulting in additional cost to the Contractor shall not be paid by DOD.

Specific Statutory and Regulatory Requirements include, but are not limited to the following:

- A. Toxic Substances Control Act, Title II, Asbestos Hazard Emergency Response Act (AHERA)
- B. 40 Code of Federal Regulations (CFR) 61, National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart A (General Provisions) and Subpart M (National Emission Standard for Asbestos)
- C. 40 CFR 172 Transportation, Hazardous Materials Regulations
- D. 40 CFR 763 Asbestos Model Accreditation Plan
- E. 29 CFR 1910.134 Respiratory Protection (General Industry)
- F. 29 CFR 1910.1001 Asbestos (General Industry)
- G. 29 CFR 1926.103 Respiratory Protection
- H. 29 CFR 1926.1101 Asbestos (Construction Industry)
- I. Hawaii Administrative Rules (HAR) 11-501, Asbestos Requirements
- J. HAR 11-503, Fees for Asbestos Removal and Certifications
- K. HAR 11-504, Asbestos Abatement Certification Program
- L. HAR 12-145, 12-145.1, HIOSH Construction Standards, Asbestos
- M. HAR 12-206, HIOSH Health Standards, Asbestos
- N. Chapter 16-77, Subchapter 19, DCCA Asbestos Contractors
- O. Guidance for Controlling Asbestos-Containing Materials in Buildings, (Purple Book), EPA

### **1.03 DEFINITIONS**

- A. **Abatement:** Procedure to control fiber release from asbestos-containing building materials, or to remove them entirely.
- B. **Air Monitoring:** The process of measuring the fiber content of a specific, known, volume of air in a stated period of time. For this project, the most current version of National Institute for Occupational Safety and Health (NIOSH) 7400 shall be used for asbestos air monitoring.

- C. Amended Water: Water to which a surfactant has been added to reduce water surface tension and thereby provide a more rapid penetration.
- D. Asbestos: Naturally occurring silicate mineral with long, thin fibrous crystals. Properties include insulating, flexible, average tensile strength, and resistance to fire, heat, and electrical and chemical damage.
- E. Authorized Visitor: The DOD Construction Engineer, his representatives, air monitoring personnel, or a representative of any regulatory or other agency having jurisdiction over the project.
- F. Certified Industrial Hygienist: Person certified by the American Board of Industrial Hygiene. Person educated, trained, and certified in recognizing and evaluating workplace hazards and stress (in this instance, asbestos abatement and related work), and expert in providing methods and means of removing or correcting such hazards and stresses within the work environment.
- G. Competent Person: An employee specially trained in an EPA AHERA Supervisor training course, who is capable of identifying existing asbestos hazards in the workplace and selecting the appropriate control strategy for asbestos exposure, and who has the authority to take prompt corrective measures to eliminate them. The duties of the competent person are defined in HIOSH 12-145.1 (29 CFR 1926.1101 (o)).
- H. Contractor: Individual and/or legal entity and its subcontractors and employees of the contractor and subcontractor awarded the contract.
- I. Control Area: An area where unwanted toxic or harmful substances exist.
- J. Engineer: Owner's representative for this project for work that pertains to ACM only.
- K. Excursion Limit (EL): The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 1.0 fiber per cubic centimeter of air (1 f/cc) as averaged over a sampling period of thirty (30) minutes, as determined by the method prescribed in Appendix A to 29 CFR 1926.1101, or by an equivalent method.
- L. Fixed Object: A unit of equipment or furniture in the work area that cannot be removed from the work area without dismantling.
- M. High Efficiency Particulate Air (HEPA) Filter: A High Efficiency Particulate Air filter capable of trapping and retaining 99.97% of asbestos fibers greater than 0.3 micron in length.
- N. High Efficiency Particulate Air (HEPA) Vacuum Equipment: Vacuuming equipment that utilizes a HEPA filter.
- O. Holding Area: A secure area used for the storage of double-bagged ACM/Assumed ACM before removal from the project site to an approved disposal site.

- P. **Monitoring Specialist:** Person under the supervision of the Qualified Consultant who is trained in health and safety requirements for asbestos exposure and air monitoring.
- Q. **Permissible Exposure Limit (PEL):** Maximum amount or concentration of a chemical that a worker may be exposed to under OSHA regulations. The PEL for asbestos is 0.1 fiber per cubic centimeter, as determined from an 8-hour time weighted average (TWA).
- R. **Personal Monitoring:** Contractor's sampling of asbestos in air concentrations within the breathing zone of an employee to determine the 8-hour TWA. The samples shall be representative of the employee's work tasks. The breathing zone shall be considered an area within 12 inches of the nose or mouth of the employee.
- S. **Qualified Consultant:** Independent third-party, not an employee of the Contractor or on the Contractor's payroll, who is hired by the DOD and who is educated and trained in recognizing and evaluating workplace hazards and providing guidance on the methods and means of removing or correcting such hazards within the work environment. For this contract, the workplace hazards are work related to ACM/Assumed ACM removal and demolition.
- T. **Regulated Area or Work Area:** An area established by the Contractor to demarcate areas where ACM/Assumed ACM removal from buildings is conducted, ACM/Assumed ACM removal (designated as Class I, II, or III asbestos work in 29 CFR 1926.1101) is conducted, and any adjoining area where debris and waste from such asbestos work accumulate; and a work area within which airborne concentrations of asbestos exceed, or there is a reasonable possibility they may exceed, the permissible exposure limit. Requirements for regulated areas are set out in paragraph (e) of 29 CFR 1926.1101.
- U. **Surfactant:** A chemical wetting agent added to water to improve penetration, thus reducing the quantity of water required for a given operation or area.
- V. **Time Weighted Average (TWA):** Average exposure to a contaminant or condition to which workers may be exposed without adverse effect over a period such as in an 8-hour day or 40-hour week.

#### **1.04 SUBMITTALS:**

Final payment will not be made until copies of all submittals have been furnished to and accepted by the Engineer. Submit in accordance with the Submittal Procedures prior to starting the asbestos disturbance work:

- A. **Notice:** Not fewer than 10 working days before commencement of asbestos disturbance work, send "Notification of Demolition and Renovation" in accordance with 40 CFR 61.145 of Subpart M, of the proposed asbestos work with copies to the DOD Construction Engineer and to the State of Hawaii Department of Health (DOH) Indoor and Radiological Health, Asbestos Section, Honolulu, Hawaii.

- B. Work Plan: The Contractor shall submit for approval a site-specific Work Plan thoroughly describing in detail all work procedures and precautions to be taken and illustrating locations for equipment to be used during the asbestos work. The plan must be written and signed by a State of Hawaii DOH-Certified Asbestos Project Designer. The plan shall include:
1. Work Methods and Procedures:
    - a. Sequence of work and performance schedule, in coordination with other trades. The detailed schedule shall include actual start and completion dates for each phase of the asbestos work and shall be prepared using bar graph method or Critical Path Method (CPM) showing project activities from beginning to completion and identifying any critical interfaces such as product delivery, coordination of various work items and with other trades, etc. The schedule shall be formulated on day/week basis. The schedule shall be updated weekly, and 8 copies submitted to the DOD Construction Engineer.
    - b. Work area preparation and setup, including the asbestos work control area, staging areas, entrances and exits to the work area, location of decontamination units, location of waste storage area, etc.
    - c. Sampling and documentation of existing conditions prior to construction.
    - d. Asbestos handling, treatment, encapsulation, removal, transportation, and disposal, as required.
    - e. Materials, equipment, and tools, including personal protective equipment, respirators, and cartridges/filters.
    - f. Air monitoring.
    - g. Decontamination procedures.
    - h. Cleanup and clearance.
    - i. Waste transportation and disposal.
  2. Documentation (Certificates for all workers on the site should be submitted prior to asbestos work. No one is allowed in the controlled areas or allowed to handle wastes until these certificates are supplied.):
    - a. Contractor Qualifications: Current Contractor License (C-19) from the State Department of Commerce and Consumer Affairs (DCCA) and asbestos entity registration from the State of Hawaii DOH.
    - b. NESHAP Compliance: Compliance with the requirements of EPA's NESHAP regulation is required for this project.

- c. Insurance: Proof of Workman's Compensation and General Liability Insurance, which covers lead, asbestos, and pollution.
  - d. Asbestos Training: Documentation of experience, assigned responsibilities during the project, and asbestos removal training, based on 29 CFR 1926.1101, HIOSH 12-145 and 12-145.1, and current EPA regulatory requirements.
  - e. Respiratory Protection: Written program and current documentation of training and fit-testing for all personnel who will enter the asbestos work area wearing negative-pressure respirators.
  - f. Medical Examination: Current clearance of comprehensive medical examination from a physician, including current Certificate of Respiratory Exam (pulmonary testing) and the ability to wear a respirator.
  - g. Qualified Consultant Qualifications: Name, address, telephone number, and certifications.
  - h. Testing Laboratory Qualifications: Name, address, telephone number, and certifications, including EPA National Voluntary Laboratory Accreditation Program (NVLAP) or the American Industrial Hygiene Association (AIHA).
  - i. Proposed Disposal Landfill Waste Acceptance: Name, address, telephone number, and type of waste accepted.
  - j. Waste Disposal/Shipment Record: Submit copies of all the waste disposal landfill's asbestos waste shipment records, trip tickets, and disposal receipts for all asbestos-containing waste materials removed from the asbestos work area.
  - k. Emergency Response and Evacuation Plan: Written program and training.
  - l. Rental Equipment: When rental equipment is used in asbestos work areas or to transport asbestos-contaminated waste, a written notification concerning intended use of the rental equipment must be provided to the rental agency with a copy submitted to the DOD Construction Engineer.
3. Manufacturer's Data: Manufacturer's specifications, installation instructions and field test procedures for each material and all equipment related to asbestos handling and include other data as may be required to show compliance with these specifications and proposed uses, to include, but not limited to the following:
- a. Personal protective equipment (e.g., clothing, etc.).
  - b. Respirators and Cartridges/Filters: NIOSH approvals.

- c. HEPA Vacuums and Dust Collection Systems: Conform to ANSI Z9.2-2006, *Fundamentals Governing the Design and Operation of Local Exhaust Systems*.
  - d. Surfactant and Chemical Agents: including all laboratory data, mixing and application instructions.
  - e. Tapes and Adhesives: including all laboratory data.
  - f. Specialized tools
- C. Respiratory Protection Program: Written program meeting the requirements of 29 CFR 1910.134(b)(d)(e).
- F. Emergency Response and Evacuation Plan: To include consideration of fire explosion; toxic atmospheres; electrical hazards; slips, trips, and falls; confined spaces; and heat-related injury. In non-life-threatening situations, the injured or incapacitated employee shall decontaminate following normal procedures, with assistance from coworkers, if necessary, before exiting the asbestos work area to obtain proper medical treatment. In life threatening situations, worker decontamination shall take least priority after measures to stabilize the injured worker, remove the injured worker from the asbestos work area, and secure proper medical treatment.
- G. Final Report: At the completion of all asbestos work, the Contractor shall submit for approval a Final Report. The Final Report shall include:
- 1. The project name, Abatement Contractor, Abatement Contractor license number, EPA waste generator number, work duration, material removed, respiratory protection employed, waste manifest signed by the Contractor, waste transporter, and landfill operator, and total quantity of waste, TCLP reports, employee exposure air sample results, and results of the most current Proficiency Analytical Testing (PAT) round results for the laboratory conducting the employee exposure air sample analysis.
  - 2. Certification of the Abatement Contractor's employees.
  - 3. Visitor/Worker Entry Log: The daily log of all personnel including the Contractor's employees and agents who enter the work area while asbestos abatement operations are in progress, until final clearance is received from the Qualified Consultant. The log shall be certified by the Qualified Consultant.
  - 4. Clearance certifications received from the Qualified Consultant.
  - 5. A statement signed by the Contractor that all asbestos abatement, removal, and disposal were completed in compliance with this specification, Federal and State regulations, and the approved Work Plan.

## **PART 2 – PRODUCTS**

The Contractor shall ensure that all materials and equipment used for this project are asbestos-free. Provide or fabricate suitable tools and equipment for the asbestos work procedures.

- A. Plastic Sheeting: Minimum thickness is 6-mil polyethylene film.
- B. Plastic Bags: Minimum thickness 6-mil polyethylene film labeled as specified hereinafter.
- C. Tapes: Tape shall be capable of sealing joints of adjacent sheets of polyethylene and for attaching polyethylene sheets to finished or unfinished surfaces of dissimilar materials and capable of adhering under both dry and wet conditions, including the use of amended water. Silver cloth duct tape, minimum 2 inches wide; red or NATO orange tape, minimum 2 inches wide for exit arrows; and double-faced foam tapes, by Nashua, 3-M, Arno, or approved equal.
- D. Adhesives: Adhesives shall be capable of sealing lapped sheets of polyethylene together or to finished or unfinished surfaces of dissimilar materials. Adhesives shall adhere under both dry and wet conditions. Use 3-M tapes #76, #77, or approved equal.
- E. Surfactant (Wetting Agent): 50 percent polyoxyethylene ester and 50 percent polyoxyethylene ether, or equivalent, and shall be mixed with water to provide a concentration of one ounce, or more as needed, of surfactant to 5 gallons of water. (An equivalent surfactant shall be understood to mean material with a surface tension of 29 dynes/cm as tested in its properly mixed concentration, using ASTM method D 1331-56 (R 1980), "Surface and Interfacial Tension of Solutions of Surface-Active Agents.")
- F. Warning Labels and Signs: As required by OSHA regulations 29 CFR 1926.1101 and HIOSH 12-145.1. Labels for asbestos debris must also meet the requirements of HIOSH 12-145.1. The generator's name and address must be attached or included in bagged or wrapped asbestos debris.
- G. Other Materials: Provide all other materials, such as, but not limited to lumber, plywood, nails, fasteners, metal studs, hardware, sealants, and caulking which may be required to properly prepare and complete this project.
- H. Personnel Protection Equipment: The Contractor shall have all the required sets of coveralls required for this project on island prior to the start of work. There will be no time extension for the unavailability of coveralls or related equipment.
  - 1. The Contractor acknowledges he alone is responsible for instruction and for enforcing personnel protection requirements and that these specifications provide only a minimum acceptable standard.
  - 2. Provide workers with personally issued and marked respiratory equipment approved by NIOSH and accepted by OSHA and HIOSH. All work related to the removal, wrapping, and bagging of ACM/Assumed ACM shall be performed in NIOSH-approved half-face respirators equipped with HEPA cartridges.

3. Workers loading and unloading asbestos debris at the project site and landfill shall wear NIOSH-approved respirators that provide adequate respiratory protection.
4. No bearded or unshaven person(s) shall be allowed on site to perform asbestos work.
5. Provide workers with sufficient sets of disposable protective full body clothing consisting of material impenetrable by asbestos fibers and of the proper size for each individual to accommodate movement without tearing. Such clothing shall consist of full body coveralls, footwear, gloves, and headgear. Provide hard hats as required by applicable safety regulations. Disposable clothing shall not be allowed to accumulate and shall be disposed of as asbestos-contaminated waste. Protective clothing shall be worn by all personnel within the work area from the start of the removal until the work area has received its final clearance.
6. No visitors shall be allowed in asbestos work areas, except as authorized by the DOD Construction Engineer. Provide authorized visitors with suitable disposable protective full body clothing consisting of asbestos-impenetrable material of the proper size to accommodate movement without tearing. Such clothing shall consist of full body coveralls, shoes with shoe covers, gloves, and headgear, including hard hats and insulated rubber boots when required. The Contractor shall include in his bid the expense of a total of 2 changes of clothing per day for each day of asbestos work for visitor's use. The quantity shall accumulate and may be used at any time during asbestos work at the discretion of the DOD Construction Engineer.
7. Additional safety equipment (e.g., hardhats meeting the requirements of ANSI Z89.1-1981, eye protection meeting the requirements of ANSI Z87.1-1979, safety shoe covering meeting the requirements of ANSI Z41.1-1967, disposable PVC gloves), shall be provided to all workers and authorized visitors as needed.
  - I. Water Sprayer: Airless or a pressure sprayer for amended water application as applicable.

### **PART 3 – EXECUTION**

#### **3.01 POTENTIAL ASBESTOS HAZARD**

- A. The disturbance or dislocation of asbestos-containing materials may cause asbestos-containing dust to be released into the atmosphere, thereby creating a potential health hazard to the workers and the general public. Apprise all workers, supervisory personnel, subcontractors, consultants, authorized visitors, occupants, and neighbors who will be at or near the job site of the seriousness of the hazard and of proper work and protective procedures, which must be followed.
- B. Where in the performance of the asbestos work, workers, supervisory personnel, subcontractors, or consultants who may encounter, disturb, or otherwise function



in the immediate vicinity of any identified asbestos-containing materials, take appropriate, continuous, possible safeguards, precautions, and protective measures as necessary to protect all workers and the general public from the potential hazard of exposure to respirable airborne asbestos fibers. Such measures shall include the procedures and methods described in the regulations of applicable federal, state, and local agencies. All possible safeguards, precautions, and protective measures shall be utilized to prevent exposure of any individual to asbestos fibers.

- C. If any previously-untested building components are suspected to contain asbestos and located in areas impacted by the work, the Contractor shall notify the DOD Construction Engineer who will have the option of ordering a minimum of three (3) bulk samples and as many as seven (7) bulk samples (depending on the quantity of the suspect material) to be obtained at the Contractor's expense and delivered to a laboratory accredited under the National Institute of Standards and Technology (NIST) "National Voluntary Laboratory Accreditation Program (NVLAP)" and analyzed by PLM at no additional cost to the Government. Any additional components identified as ACM that have been approved by the DOD Construction Engineer for removal shall be removed by the Contractor and will be paid for by an equitable adjustment to the contract price. Sampling activities undertaken to determine the presence of additional ACM shall be conducted by personnel who have successfully completed the EPA Model Accreditation Plan (MAP) "Building Inspector" training course required by 40 CFR 763, Subpart E, Appendix C.

### **3.03 WORK AREA PREPARATION**

- A. Notice and Protection of Occupants: Post caution signs in and around the work area to comply with 29 CFR 1926.1101, HIOSH regulation 12-145.1, and all other Federal, State, and local requirements. Signs shall be posted at a distance sufficiently far enough away from the work area to permit the reader to take the necessary protective measures to avoid exposure.
- B. Safeguarding of Property: Take all cautions necessary to ensure there is no asbestos contamination of areas not included in the work area. The Contractor shall take whatever steps may be necessary to safeguard his work and also the property of the DOD and other individuals in the vicinity of his work area during the execution of this Contract. He shall be responsible for and make good on any and all damages caused by his or his employees' negligence. No structure will be loaded such that the weight of the load will endanger the structure.
- C. Site Security: The Contractor shall be solely responsible for security of the work area and in proximity of Contractor's equipment and materials. Entry into the regulated area during disturbance of ACM/Assumed ACM is restricted to authorized, trained, and protected personnel. These may include the Contractor's employees, employees of subcontractors, the DOD Construction Engineer and his representatives, State and local inspectors, and any other designated individuals. A list of authorized personnel shall be established prior to job start.
- D. Entry Log shall be maintained of all personnel other than the Contractor's employees and agents who enter the work area while asbestos work is in

progress until after final clearance is received. A sample form is provided in this Section. The log shall contain the following information as a minimum and certified copies shall be submitted to the DOD Construction Engineer weekly:

1. Date of visit
  2. Visitor's name, employer, business address, and telephone number
  3. Time of entry and exit from work area
  4. Purpose of visit
  5. Type of protective clothing and respirator worn
- E. Product Handling: Deliver materials to the site in original packages, containers, or bags fully identified with manufacturer's name, brand, and lot number. Store materials in a dry well-ventilated space, under cover, off the ground, and away from surfaces subject to dampness or condensation as approved by the DOD Construction Engineer. Material that becomes contaminated with asbestos shall be disposed of in accordance with applicable regulations. Replacement materials shall be stored outside the regulated work area until asbestos work is completed.

### **3.04 REMOVAL OF ACM/ASSUMED ACM AND WASTE**

During asbestos abatement work, acceptable industry standard dust control methods shall be used to control dust such as, set-up and erection of barriers; erection of decontamination units (if use); and establishment of a "Regulated Area" for the isolation of the work area from the rest of the container yard, buildings, and surrounding areas. Existing domestic water service to the work area may be used during construction; the location of tie-in shall be approved by the DOD Construction Engineer. Clean and adequately wet ACM/Assumed ACM in place with amended water during removal to control dust.

### **3.05 AIR MONITORING**

The air monitoring requirements conforming to all applicable Federal, State, and local regulations are incorporated into this Section and Section 13288 TESTING AND AIR MONITORING. Where conflict or any inconsistency among requirements or with this specification exists, the more stringent requirements shall apply.

- A. The DOD shall obtain the services of an independent air monitoring firm and shall pay for area sampling and analytical services called for in this Section. All work performed by said air monitoring and testing firm shall be under the supervision of a Certified Industrial Hygienist (CIH). Personnel performing air monitoring must have taken and successfully passed the NIOSH 582 course. The testing laboratory must submit a certified letter of proficiency in AIHA/NIOSH PAT program, and the analytical method prescribed by 29 CFR 1926.1101 Appendix A of the OSHA regulations, the most current NIOSH 7400 method, or approved substitute per OSHA revisions 29 June 1995 (Federal Register, Vol. 60, No. 125).

- B. Throughout the entire removal and cleaning operations, air monitoring shall be conducted to ensure that the Contractor is in compliance. The purpose of the independent air monitoring firm's work will be to clear the workplace after final cleaning of the work area, and to detect faults in the work area such as:
1. **Monitoring Prior to Actual Removal:** The DOD's Monitoring Specialist will provide area monitoring and establish the background fiber level one day prior to the masking and sealing operations. A minimum of three samples will be taken.
  2. **Monitoring during Asbestos Removal:** The Contractor will provide personal monitoring to establish the TWA during disturbance of asbestos. Thereafter, providing the same type of work is being performed and the results do not exceed the PEL, the Contractor will provide area monitoring as directed by the Contractor's CIH. If monitoring inside or outside the asbestos work area shows that airborne asbestos fiber concentrations exceed background fiber levels, stop all work, notify the DOD Construction Engineer immediately, correct the condition(s) causing the increase and get the DOD Construction Engineer's approval prior to restarting the work.
- C. **Monitoring Results:** Air sample analyses shall be completed, and results reviewed by the industrial hygienist within 24 to 36 hours after sample acquisition. The DOD Construction Engineer shall however have the right to request monitoring results within any reasonable time period. The industrial hygienist shall notify the Contractor and the DOD Construction Engineer immediately of any exposures to asbestos fibers in excess of the PEL. The testing laboratory shall submit all certified monitoring results to the DOD Construction Engineer within one workday.
- D. **Asbestos Fiber Concentrations in the Work Area:** The maximum permissible exposure to airborne concentrations of asbestos fibers within the controlled work area when under respirator shall be in accordance with HIOSH 12-145.1. The Contractor shall ensure that no one is exposed to an airborne concentration of asbestos in excess of 1.0 fiber per cubic centimeter of air (1.0 f/cc) as averaged over a sampling period of 30 minutes. The work shall stop whenever these limits are exceeded, and the Contractor shall remedy the condition prior to commencing the work. The expense resulting from the delays shall be the Contractor's responsibility and shall not be paid by DOD.

### **3.06 CLEANUP AND CLEARANCE**

- A. Cleaning shall include the pre-cleaning, wet wiping, and HEPA vacuuming of affected surfaces.
- B. Should the contractor fail to commence work to clean up and make the work area asbestos free within one working day after the clean-up thereof has been requested by the Engineer, and thereafter to expeditiously complete the said clean up, the Engineer may without further notice and without termination of contract, do the clean-up and deduct the cost thereof from the contract price.

- C. Equipment Cleaning: All contaminated equipment and tools used for asbestos work shall be cleaned on-site by wet wiping.
- D. Visual Clearance:
  - 1. The Qualified Consultant shall visually inspect the affected surfaces for residual and accumulated dust before the eventual removal of the asbestos control area.
  - 2. If the Qualified Consultant requests recleaning due to visual dust, the process will be repeated until the clearance is obtained. The Contractor shall not remove the asbestos regulated area or roped-off perimeter and warning signs prior to the DOD Construction Engineer's receipt of the Qualified Consultant's asbestos clearance certification. Any additional clearance inspection initiated by the Contractor or required due to failure of the first clearance inspection, shall be at the Contractor's expense.
- E. Final Cleanup: Remove asbestos work signage. Signage applicable to job site safety and the performance of the remaining portions of the work shall remain as applicable. Completely remove all protective covering used to protect the work area. Collect asbestos fragments, then bag and dispose of as asbestos waste.

**3.07 HANDLING, ENCAPSULATION, REMOVAL, TRANSPORTATION, AND DISPOSAL OF ACM/ASSUMED ACM WASTE**

- A. Dispose of the removed ACM/Assumed ACM and used protective clothing as asbestos-contaminated waste.
- B. As the asbestos work progresses and waste is generated, the Contractor shall transport to the authorized pre-designated disposal site all waste generated periodically based on on-site storage capacity or at the end of the project, in accordance with EPA regulations, as approved by the DOD Construction Engineer.
- C. ACM/Assumed ACM and contaminated material shall be adequately wetted and double wrapped in 6 mil thick polyethylene or double-bagged (6 mil thick plastic bag) with OSHA label prescribed by the 29 CFR 1926.1101 (k)(8)(iii). The label shall state,

"DANGER  
CONTAINS ASBESTOS FIBERS  
MAY CAUSE CANCER  
CAUSES DAMAGE TO LUNGS  
DO NOT BREATHE DUST  
AVOID CREATING DUST"

The outside of all containers shall be clean before leaving the work area. A label with the name of the waste generator and location from which the waste was generated shall be clearly indicated on the outside of the wrap or bag per the November 20, 1990, NESHAP Revision, Final Rule, Waste Disposal Section describing marking, labeling, and offsite disposal

requirements. Shipment records shall be maintained using forms described in this latest NESHAP Revision.

- D. Vehicles used for transporting waste to the disposal sites shall bear warning signs and markings as described in the November 20, 1990, NESHAP Revision, Final Rule, Waste Disposal Section and have a completely enclosed, lockable storage compartment. Storage compartments shall be plastic and sealed with a minimum of one layer of 6 mil polyethylene sheeting on the sides and top and two layers of 6 mil polyethylene on the floor (bed). If allowed by HIOSH, waste materials, except those with sharp edges, properly double-bagged, may be transported to the disposal site without being placed in drums, if the transporting vehicle is prepared as specified above, subject to more stringent requirements by HIOSH. The compartments shall be thoroughly wet-cleaned and/or HEPA-vacuumed, following the disposal of each load at the disposal sites at an approved location with electrical power as required. At the conclusion of the asbestos work, or before transport vehicles are used for other purposes, the polyethylene sheeting shall be properly removed and disposed of as contaminated waste. After this has been accomplished, compartments shall once again be wet-cleaned and HEPA-vacuumed in order to eliminate all debris.
- E. Workers unloading bags at the disposal sites shall be dressed in full body protective clothing and dual cartridge respirators with HEPA filters.
- F. Waste disposal waste shipment record shall be properly completed to assure custody and disposal of all ACM/Assumed ACM and asbestos-contaminated waste at approved disposal sites. The waste disposal landfill Asbestos forms shall be kept on file as directed by the DOD Construction Engineer with copies submitted to the DOD Construction Engineer the next working day after each trip.

NOTE: PRIOR TO BID, IT IS THE CONTRACTOR'S RESPONSIBILITY TO ASSURE THAT THE LANDFILL USED FOR DISPOSAL OF ASBESTOS-CONTAINING OR ASBESTOS-CONTAMINATED WASTE IS APPROVED FOR THAT PURPOSE. IF NOT APPROVED, THE CONTRACTOR SHALL DETERMINE AN ALTERNATE PROPER WASTE DISPOSAL METHOD.

- G. Bagged and/or wrapped waste must be placed, not dropped, at the site of burial. Dumping of bags from the containers or truck will not be allowed. However, if it is acceptable to the landfill, if the bags are torn, the entire container may be buried.
- H. The Contractor shall pay a waste disposal charge for the use of any landfills. All expenses for landfills shall be the complete responsibility of the Contractor. The Contractor shall give 24-hour advance notice of all deliveries to the landfill(s). Delivery time shall be as directed by the landfill operator.

ENTRY LOG  
(Sample)

DATE

PROJECT

SUPT.

ALL PERSONNEL MUST SIGN-IN AND SIGN-OUT EACH TIME THEY ENTER AND EXIT THE WORK AREA. PLEASE PRINT CLEARLY.

NAME EMPLOYER Name, Address*, Phone* ISSUED**	TIME IN	TIME OUT	PURPOSE OF VISIT*	TYPE OF PPE
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\*NOT required of Contractor's employees

\*\* Type of PPE (Personal Protective Equipment) Issued to include list of protective clothing worn and type of respirator used (Type "C", half-face/dual cartridge, etc.)

ASBESTOS DISPOSAL FORM  
(sample)

Date:

Owner or Operator of Landfill

Name

Address

City

State

Zip

Phone

Name of Landfill

Name

Address

City

State

Zip

Phone

Hauler

Approximate Volume of Asbestos Received

Type of Container(s) Used

Asbestos Container labeled?

YES

NO

I certify that the above statements are true and that the landfill has been approved for the disposal of asbestos. The delivered material will be covered within 6 inches (15 cm.) of non-asbestos material within 24 hours.

Landfill Owner-Operator

END OF SECTION

## SECTION 13282 – LEAD-CONTAINING PAINT CONTROL MEASURES

### PART 1 GENERAL

#### 1.01 SUMMARY

A. The lead work shall all labor, materials, and equipment necessary to complete the safe and proper containment, handling, treatment, encapsulation, removal, demolition, clean-up, transportation, and disposal procedures of deteriorated (loose and flaky) lead paint and associated dust and waste, and incidental work, as required, at Birkhimer EOC. All possible safeguards, precautions, and protective measures shall be utilized to prevent exposure of any individual to lead particulates. The lead paint work to be completed include, in the following order:

1. Removal and disposal of deteriorated (loose and flaky) lead paint, down to the substrate, up to one foot in all directions around the extent of the loose and flaky paint.
2. Cleaning of lead-containing dust from floor/carpeting and office furniture in the immediate areas.

The Contractor may use chemical strippers, high-efficiency particulate air (HEPA) vacuum shrouded tools, or manual scraping, or other techniques to remove lead-containing paint, if all work is performed in accordance with all applicable requirements for worker protection and environmental protection.

The Contractor acknowledges that he alone is responsible for the lead paint disturbance work and for enforcing personnel protective requirements, and that this specification provides only a minimum acceptable standard. The Contractor shall comply with all requirements of 29 Code of Federal Regulations (CFR) 1926.62, Hawaii Occupational Safety and Health Division (HIOSH) 12-148.1, and all applicable Environmental Protection Agency (EPA) regulations regarding lead-containing paints and painted materials. Specifically, the work includes, but is not limited to the following: full containment around the scraping operation at each of the work areas, use of negative pressure in the work areas, isolation of the ventilation system, use of wet methods, use of shrouded tools (HEPA filter), use of non-toxic mastic removers, and personal air monitoring.

- B. The Contractor shall coordinate all work with the General Contractor and the DOD Construction Engineer.
- C. Sampling and laboratory analysis confirmed the presence of lead throughout the project site. The Contractor shall assume any untested paint to contain lead. Refer to the "Final Letter Report, Limited Lead and Asbestos Survey, Birkhimer EOC, Oahu, Hawaii, dated November 19, 2021, included in the Specifications.
- D. For areas where paint will be removed from the substrate, the Contractor shall perform TCLP test(s) on the aggregated paint waste (not for each area). The Contractor shall bid the project based on the assumption that disposal as hazardous waste is not required.



## **1.02 APPLICABLE STANDARDS AND GUIDELINES**

All work under this contract, and any other trade work conducted with the project, shall be done in strict accordance with all applicable federal, state, and local regulations, standards, and codes governing lead handling, treatment, encapsulation, removal, demolition, transportation, and disposal of lead, as required. The most recent edition of any relevant document shall be in effect. Where conflict or any inconsistency among requirements or with this specification exists, the more stringent requirements shall apply. All regulations shall govern these specifications, except that any more stringent specification or any specification providing greater protection against lead exposure, injury, loss, or liability shall control to the extent permitted by regulation. Any question regarding conflict or inconsistency between specifications and/or regulations should be referred to the Engineer. Ignorance of the above requirements or of any applicable State and local regulations resulting in additional cost to the Contractor shall not be paid by the Owner.

Specific Statutory and Regulatory Requirements include, but are not limited to the:

- A. Section 402 of the Toxic Substances Control Act (TSCA).
- B. 49 Code of Federal Regulations (CFR) 171-179 DOT Hazardous Materials Transportation.
  - 1. 40 CFR 261 Identification and Listing of Hazardous Waste
  - 2. 40 CFR 262 Hazardous Waste Determination.
  - 3. 40 CFR 239-282 Resource Conservation and Recovery Act (RCRA)
- C. 40 CFR 745 Lead-Based Paint Poisoning Prevention in Certain Residential Structures
- D. 40 CFR 745.61, National Emissions Standards for Hazardous Air Pollutants (Lead-Based Paint Hazards)
- E. 29 CFR 1910.134 Respiratory Protection.
  - 1. 29 CFR 1910.1025 Lead (General Industry)
  - 2. 29 CFR 1926.62 Lead (Construction Industry)
  - 3. 29 CFR 1926.103 Respiratory Protection
  - 4. Hawaii Administrative Rules (HAR) 11-41 Lead-Based Paint Activities
  - 5. HAR 12-148.1 Lead Exposure in Construction

## **1.03 DEFINITIONS**

- A. Action Level (AL): Employee exposure averaged over an 8-hour period, without regard to the use of respirators, to a particular airborne concentration. OSHA

requirements become effective at this level. The AL for lead is 30 micrograms per cubic meter of air.

- B. **Air Monitoring:** Process of measuring the content of a specific, known volume of air in a stated period of time. For this project, National Institute for Occupational Safety and Health (NIOSH) Method 7082 shall be used for lead air monitoring.
- C. **Authorized Visitor:** Engineer, Qualified Consultant, their representatives, air monitoring personnel, or a representative of any regulatory or other agency having authority over the project.
- D. **Contractor:** Individual and/or legal entity and its subcontractors and employees of the contractor and subcontractor awarded the contract
- E. **Control Area:** An area where unwanted toxic or harmful substances exist.
- F. **High Efficiency Particulate Air (HEPA) Filter:** Filter capable of trapping and retaining 99.97% of particulates greater than 0.3 micron in diameter.
- G. **Engineer:** DOD's representative for this project for work that pertains to lead-containing materials only.
- H. **Lead:** Metallic lead, all inorganic lead compounds, and inorganic lead soaps. Excluded are all other organic lead compounds.
- I. **Lead-Based Paint:** A paint or other surface coating containing lead equal to or in excess of 1.0 milligram per square centimeter of painted surface or 0.5 percent by weight.
- J. **Lead-Containing Paint:** A paint or other surface coating containing measurable quantities of lead.
- K. **Monitoring Specialist:** Person under the supervision of the Qualified Consultant who is trained in health and safety requirements for lead exposure and air monitoring. The Monitoring Specialist should have at least two (2) years of experience on similar lead projects, having experience in the sampling for employee and ambient air, and monitoring for compliance with applicable regulations and work plans.
- L. **Permissible Exposure Limit (PEL):** Maximum amount or concentration of a chemical that a worker may be exposed to under OSHA regulations. The PEL for lead is 50 micrograms per cubic meter over an 8-hour time weighted average.
- M. **Personal Monitoring:** Contractor's sampling of lead in air concentrations within the breathing zone of an employee to determine the 8-hour time weighted average. The samples shall be representative of the employee's work tasks. The breathing zone shall be considered an area within 12 inches of the nose or mouth of the employee.
- N. **Qualified Consultant:** Independent third-party, who is hired by the DOD and who is educated and trained in recognizing and evaluating workplace hazards and providing guidance on the methods and means of removing or correcting such

hazards within the work environment. For this contract, the workplace hazards are work related to lead-containing material removal and demolition. The Qualified Consultant should have at least five (5) years of experience on similar projects, having experience with managing wastes and hazardous wastes for construction and demolition projects, and being familiar with the applicable regulations pertaining to these activities.

- O. Time Weighted Average (TWA): Average exposure to a contaminant or condition to which workers may be exposed without adverse effect over a period such as in an 8-hour day or 40-hour week.

#### **1.04 SUBMITTALS:**

Submit in accordance with Section 01 33 00 Submittal Procedures prior to starting the lead disturbance work:

- A. Notice: Not fewer than 5 working days before commencement of lead abatement work, send "Notification of Lead-Based Paint Abatement Activities" in accordance with HAR Chapter 11-41, of the proposed lead work with copies to the Engineer and to the State of Hawaii Department of Health (DOH) Indoor and Radiological Health, Lead Based Paint Section, Honolulu, Hawaii.
- B. Work Plan: The Contractor shall submit in accordance with Submittal Procedures prior to starting work a project work plan for the lead paint work, to include:
  - 1. Work Methods and Procedures:
    - a. Sequence of work and performance schedule, in coordination with other trades.
    - b. Work area preparation and setup, including the lead work control area, staging areas, entrances and exits to the work area, location of decontamination units, locations of ambient air sampling pumps, location of waste storage area, etc.
    - c. Lead paint handling, treatment, removal, transportation, and disposal, as required.
    - d. Materials, equipment, and tools, including personal protective equipment, respirators, and cartridges/filters.
    - e. Air monitoring.
    - f. Decontamination procedures.
    - g. Cleanup and visual clearance.
    - h. Toxicity Characteristic Leaching Procedure (TCLP) sampling and analysis.
    - i. Waste transportation and disposal.

2. Documentation (Certificates for all workers on the site should be submitted prior to lead work. No one is allowed in the controlled areas or allowed to handle wastes until these certificates are supplied.):
  - a. Insurance: Proof of Workman's Compensation and General Liability Insurance, which covers lead, asbestos, and pollution.
  - b. Lead Training: Documentation of experience, assigned responsibilities during the project, and lead removal training, based on EPA's Lead Renovation, Repair, and Painting Rule (RRP Rule), 29 CFR 1926.62, HIOSH 12-148.1, and current EPA regulatory requirements. In addition, each worker in the lead control area should have site-specific awareness training to inform them of the hazards of the site, the work plan provisions, and the means of protecting themselves.
  - c. Respiratory Protection: Written program and current documentation of training and fit-testing for all personnel who will enter the work area wearing negative-pressure respirators.
  - d. Medical Examination: Current clearance of comprehensive medical examination, including blood lead monitoring, zinc protoporphyrin (ZPP) testing, and the ability to wear a respirator.
  - e. Qualified Consultant Qualifications: Name, address, telephone number, and certifications.
  - f. Testing Laboratory Qualifications: Name, address, telephone number, and certifications, including EPA National Lead Laboratory Accreditation Program (NLLAP) by either the American Association for Laboratory Accreditation (A2LA) or the American Industrial Hygiene Association (AIHA), and the Environmental Lead Proficiency Analytical Testing (ELPAT) Program.
  - g. Proposed Disposal Landfill Waste Acceptance: Name, address, telephone number, and type of waste accepted.
  - h. Emergency Response and Evacuation Plan: Written program and training.
3. Manufacturer's Data: Specifications, installation instructions, and field test procedures for each material and all equipment related to lead work, to include, but not limited to the following:
  - a. Personal protective equipment (e.g., clothing, etc.).
  - b. Respirators and Cartridges/Filters: NIOSH approvals.
  - c. Specialized tools, dust collection, vacuum systems, chemical agents, as applicable

- C. Respiratory Protection Program: Written program meeting the requirements of 29 CFR 1910.134(b)(d)(e).
- D. Emergency Response and Evacuation Plan: To include consideration of fire explosion; toxic atmospheres; electrical hazards; slips, trips, and falls; confined spaces; and heat-related injury. In non-life threatening situations, the injured or incapacitated employee shall decontaminate following normal procedures, with assistance from co-workers if necessary, before exiting the work area to obtain proper medical treatment. In life threatening situations, worker decontamination shall take least priority after measures to stabilize the injured worker, remove the injured worker from the work area, and secure proper medical treatment.
- E. Final Clearance Report: The Contractor shall submit after completing work in accordance with Submittal Procedures a project final clearance report for the lead paint work, to include:
  - 1. Statement signed by the Contractor that all lead disturbance and disposal was completed in compliance with federal, state, and local regulations, this specification, and the approved Work Plan.
  - 2. Contractor license number, work duration, respiratory protection and decontamination procedures employed, employee exposure and ambient air sample results, and results of the current Proficiency Analytical Testing (PAT) Program results for the laboratory conducting the air analysis.
  - 3. Visual clearance certification received from the Qualified Consultant.
  - 4. EPA waste generator number, material removed, total quantity of waste, and TCLP lead reports. All Hazardous Waste (HW) disposal-related documentation (e.g., Uniform Hazardous Waste Manifests, waste profile sheets, etc.) should be provided to DOD for review prior to any HW leaving the project site.
  - 5. Waste shipping and disposal manifests of all waste material signed and accepted by the waste disposal facility, to include names and addresses of the Contractor, the Transporter, the Facility, and information on the type and number of waste containers.
  - 6. Visitor/Worker Entry Log: The daily log of all personnel who enter the work area while lead disturbance operations are in progress and until final clearance is received. The log shall include, as a minimum: Date of visit/worker entry; Visitor/Worker's name, employer, business address, and telephone number; Time of entry and exit from work area; Purpose of visit; Type of protective clothing and respirator worn; and Certificate of release signed and filed with the contractor.

## **PART 2 – PRODUCTS**

- A. Respirators and Cartridges/Filters: Use appropriate respirators and cartridges/filters, which meet all requirements of OSHA 29 CFR 1926.62 and HIOSH 12-148.1.

- B. Personal Protective Clothing: Use appropriate personal protective clothing (disposable coveralls/suits, boots, gloves, eye protection, etc.) as required by OSHA 29 CFR 1926.62 and HIOSH 12-148.1.
- C. Paint Removal Materials: Use appropriate tools, containment systems, chemical agents, vacuum systems, and environmental protection materials to fully collect and contain all lead-containing residues from the area during handling of paint coatings.

## **PART 3 – EXECUTION**

### **3.01 POTENTIAL LEAD HAZARD**

- A. The disturbance or dislocation of lead-containing materials may cause lead-containing dust to be released into the atmosphere, thereby creating a potential health hazard to the workers and the public. Apprise all workers, supervisory personnel, subcontractors, consultants, authorized visitors, occupants, and neighbors who will be at or near the job site of the seriousness of the hazard and of proper work and protective procedures, which must be followed.
- B. Where in the performance of the work, workers, supervisory personnel, subcontractors, or consultants who may encounter, disturb, or otherwise function in the immediate vicinity of any identified lead-containing materials, take appropriate continuous measures as necessary to protect all workers and the public from the potential hazard of exposure to respirable airborne lead dust. Such measures shall include the procedures and methods described in the regulations of applicable federal, state, and local agencies. All possible safeguards, precautions, and protective measures shall be utilized to prevent exposure of any individual to lead particulates

### **3.02 WORK AREA PREPARATION**

- A. Notice and Protection of Occupants: Inform occupants of the lead disturbance work. Protect occupants, spaces, and surrounding area from possible contamination.
- B. Lead Work: During lead disturbance work, acceptable industry standard dust control methods shall be used to control dust such as, providing dust screens; using negative pressure enclosures; remove paint using manual methods, or chemical strippers; and using HEPA vacuum shrouded tools, as applicable. Seal any penetrations to the affected work area with 6-mil polyethylene plastic sheeting and duct tape, if necessary. Separate the work area from non-work areas using two layers of 6-mil poly sheeting, if necessary. Completely contain and control all paint debris from leaving the work area.
- C. Safeguarding of Property: Take all cautions necessary to ensure there is no lead contamination of areas not included in the work area. The Contractor shall take whatever steps may be necessary to safeguard his work and also the property of the Owner and other individuals in the vicinity of his work area during the execution of this Contract. He shall be responsible for and make good on any and all damages caused by his or his employees' negligence. No structure will be loaded such that the weight of the load will endanger the structure.

- D. Treatment of Surfaces: During work, acceptable industry standard dust control methods shall be used to control dust (such as wetting items to be disturbed, by misting; provide dust screens; remove items in large, whole pieces; avoid crushing and pulverizing removal methods; encapsulate material prior to disturbance; use amended water; and containerize wet waste material). Prevent contamination spreading to the surrounding public and residential area.
- E. Barriers: Standard barriers such as plastic sheeting containment, construction warning tape, etc. shall be used to prevent employees, occupants, and the general public access on to the work site.
- F. Ensure that all personnel working on site during the work are properly trained and protected as required by law.
- G. Daily Cleanup: HEPA vacuum and wet clean surfaces and surrounding ground within the work area daily. Do not allow lead-painted/coated debris, paint chips, and dust to accumulate. Restrict the spread of dust and debris. Keep waste from being distributed over the general area. Do not dry sweep or use compressed air to clean the area.

### **3.03 AIR MONITORING**

The air monitoring requirements conforming to all applicable Federal, State, and local regulations are incorporated into this Section and Section 13288 TESTING AND AIR MONITORING. Where conflict or any inconsistency among requirements or with this specification exists, the more stringent requirements shall apply.

- A. Personal: The Contractor shall be responsible for his employees' personnel protection, personal air monitoring, and required certifications. Contractor shall collect daily personal air samples on at least 25% of the personnel performing disturbance work with the most exposure for a minimum of the first three days of disturbance work.
- B. Ambient: The Qualified Consultant will develop the sampling locations and frequencies. The exact location of these sites shall be determined by the Monitoring Specialist, consist of three locations (one upwind and two downwind of the work area), and be performed for 8-hours during of the actual disturbance of the lead-containing material.
- C. Monitoring may be discontinued if the analytical laboratory results of three consecutive days of monitoring representative of each of the operations involving potential lead exposure (e.g., abrasive blasting, scraping, manual demolition, paint removal, etc.) return negative, and the procedures resulting in this negative determination are sufficiently maintained for the duration of the project.

### **3.04 REMEDIATION INCIDENTALLY INVOLVING INTACT LEAD-CONTAINING PAINT**

- A. Perform work as specified herein. Use procedures and equipment required to limit occupational exposure and environmental contamination with lead when remediation is performed in accordance with 29 CFR 1926.62 and as specified herein.

- B. Disturbance of intact lead-containing paint as a result of remediation activities shall be kept to a minimum. Water spray, vacuuming, and other engineering controls shall be used to minimize airborne lead dust. Care shall be taken to avoid pulverizing, scraping, or crumbling lead-painted debris.
- C. The Contractor will remove the deteriorated (loose and flaky) paint and dust utilizing the methods and procedures as described in the Contractor's approved work plan. In general, the Contractor will not utilize methods that will create a release of airborne lead dust.

### **3.03 CLEANUP AND CLEARANCE**

- A. **Waste Segregation:** During the course of the work, the Contractor shall separate non-hazardous waste material (e.g., plastic sheeting, disposable tools, disposable protective suits, etc.) from potentially hazardous waste material (e.g., lead paint chips, debris, trash, etc.). The lead-containing waste must be placed in UN-approved (49 CFR 178) and appropriately labeled containers. The containers with lead-containing waste shall be removed from the immediate work area and shall be stored onsite for TCLP testing.
- B. **Final Cleanup:** When the lead work has been completed, the area will be cleaned of all visible lead paint contamination by vacuuming with a HEPA-filtered vacuum cleaner followed by wet mopping, where applicable.
- C. **Visual Clearance:**
  - 1. The Qualified Consultant shall visually inspect the affected surfaces for residual lead paint chips and accumulated dust before the eventual removal of the lead control area.
  - 2. If the Qualified Consultant requests recleaning due to visual dust or residual paint chips, the process will be repeated until the clearance is obtained. The Contractor shall not remove the lead control area or roped-off perimeter and warning signs prior to the Engineer's receipt of the Qualified Consultant's lead clearance certification. Any additional clearance inspection initiated by the Contractor or required due to failure of the first clearance inspection, shall be at the Contractor's expense.

### **3.04 TCLP SAMPLING AND ANALYSIS FOR WASTE DISPOSAL.**

- A. The Contractor shall be responsible for collecting representative samples of different waste streams and analyzing the samples for eight RCRA metals by TCLP analysis. The TCLP test result must be compared to the EPA limits (40 CFR 261.24), to determine if the demolition debris can be disposed of at a local landfill and/or metal recycling company approved for such purposes.
- B. The Contractor shall be responsible for obtaining waste disposal approval from the landfill.



### 3.05 WASTE TRANSPORTATION AND DISPOSAL

- A. Hazardous Waste: If any wastes are found to be classified as a hazardous waste, the owner will be notified within 24 hours and all hazardous wastes labeled, stored, and secured in accordance with applicable regulations.

Local waste landfill facilities do not accept RCRA hazardous waste. All hazardous waste must be disposed of at an EPA-approved U.S. mainland RCRA hazardous waste disposal facility. All hazardous waste must be removed from the project site within 90 days of the waste being created for disposal.

- B. Non-hazardous Waste: Non-hazardous lead waste and debris may be disposed of at the local waste landfill facility that is State-approved to accept such waste.
1. Notify Non-hazardous Waste Landfill Operator: The Contractor shall advise the Non-hazardous Waste landfill operator, at least 24 hours prior to transportation, of the material to be delivered.
  2. Provide the Non-hazardous Waste Landfill Operator with applicable TCLP results, which indicate that the waste material is non-hazardous.
  3. If the TCLP results indicate that the wastes are hazardous waste, the Contractor, within three (3) days, shall securely store, label, and handle the materials in accordance with EPA regulations for hazardous waste. The Qualified Consultant shall ensure that the hazardous waste regulations are being followed for these wastes.

END OF SECTION

## **SECTION 13288 – TESTING AND AIR MONITORING**

### **PART 1 – GENERAL**

#### **1.01 SUMMARY**

- A. In performing this project, all necessary safeguards, precautions, and protective measures shall be utilized by the Contractor to prevent exposure to hazardous substances by any individual. All Contractor actions taken during remediation shall follow all applicable Federal, State, and local regulations, as well as industry and sound industrial hygiene practice, to ensure that asbestos and lead are not released to the uncontrolled work/public areas.
- B. This Section pertains to monitoring related to Section 13281 Engineering Control of Asbestos-Containing Materials and Section 13282 Lead Paint Control Measures.
- C. Daily area air monitoring, testing, and visual inspections shall be provided by the Qualified Consultant (Element Environmental, LLC unless otherwise stated) hired by the DOD for the purpose of:
  - 1. Verifying the Contractor's compliance with the specifications and applicable regulations; and
  - 2. Ensuring that the DOD's legally required documentation is collected.

#### **1.02 DEFINITIONS**

- A. Contracting Officer/Engineer: The DOD employee responsible for administering the construction contract and ensuring that the Contractor's work is conducted according to the contract documents and is in compliance with applicable laws, rules, regulations, etc.
- B. Contractor: Individual and/or legal entity and its subcontractor(s) and employees of the contractor and subcontractor(s) awarded the contract. The abatement Contractor(s) shall be certified by the State, with a Competent Person who is State-certified Contractor Supervisors and on-site workers who are State-certified Workers.
- C. Project Designer: The State-certified person of firm who prepared the plans and specifications to remove and dispose of the asbestos-containing material and/or lead paint and debris/dust.
- D. Qualified Consultant: The State-certified Project Monitor hired by the DOD who will perform air monitoring and inspections during remediation work and shall have the authority to require engineering controls of the Contractor.

### **PART 2 – PRODUCTS (NOT USED)**

## **PART 3 – EXECUTION**

### **3.01 CONTRACTOR RESPONSIBILITIES**

- A. The Contractor shall coordinate the remediation work schedule with the Contracting Officer/Engineer and the Qualified Consultant for the testing/air monitoring and inspection/clearance requirements during disturbance of asbestos or lead.
- B. The Contractor shall be responsible for his employees' personnel protection, personal air monitoring and necessary records as required by OSHA, HIOSH, DOH, and all other applicable laws and regulations. The Contractor shall provide daily progress reports and a final report with all required documentation to the Contracting Officer/Engineer.
- C. All air monitoring reports shall include all field data, laboratory reports, test results, and other pertinent information about the daily work activities.
- D. Air monitoring and testing, necessary in order to follow up on work by the Contractor or rejected as not conforming to the requirements, shall be the responsibility of the DOD. However, the full cost of such additional monitoring and testing shall be borne by the Contractor and shall be deducted from the final contract payment.

### **3.02 QUALIFIED CONSULTANT DUTIES**

- A. Interface with the Contracting Officer/Engineer, Contractor, Project Designer, and representatives of regulatory agencies during site visits. In case of emergencies, act quickly in conjunction with the Contractor with appropriate response actions.
- B. Photographic Record of Project: Record the remediation work with representative photos. All photographs shall become the property of the DOD and are to be accompanied by a detailed log.
- C. Project Log: Maintain daily field reports detailing all key remediation activities and work practices employed during remediation. Incorporate the contents of the daily field reports with other project data into a Final Report.
- D. Visual Inspections/Final Clearance: Perform regular inspections of all work areas during asbestos/lead remediation/disturbance and prior to air testing in each area to verify that all materials scheduled for remediation were removed and each area was properly cleaned.
- E. Air Monitoring: The DOD's Qualified Consultant shall perform area air monitoring during asbestos/lead remediation/disturbance, in accordance with Section 3.03 below.
  - 1. Select lead paint chip, lead dust wipe, and asbestos sampling was conducted at the project site. Laboratory reports are included at the end of these specifications.
  - 2. Work Area Samples: Low volume samples shall be taken in the containment work areas. Area air samples shall be taken in the work areas to ensure that the

persons entering the work area are wearing proper respiratory protection. If monitoring of the remediation work areas shows airborne concentrations have reached the predetermined specified TWA ALs, the Qualified Consultant shall stop all work, notify the Contracting Officer/Engineer immediately, have the Contractor correct the condition(s) causing the increase and ensure that the Contractor obtains the Contracting Officer/Engineer's approval prior to restarting the work.

3. Area Air Samples: High volume area air samples shall be taken outside of the containment work areas.
  4. Laboratory analysis by PCM (asbestos) analysis using NIOSH 7400 Method. Laboratory analysis by FAAS (lead) analysis using NIOSH 7082 Method.
  5. Final Clearance: Visual inspections will be conducted at the completion of the work in each work area. Containment in each work area shall not be removed until Final Clearance has been obtained for that area. Final Clearance for lead shall also consist of wipe samples.
- F. Relay to the Contracting Officer/Engineer any discrepancies in the Contractor's actions with provisions in the contract documents.
- G. Daily Testing Records: At the conclusion of every day's monitoring, make available copies of all records to the Contracting Officer/Engineer. At the completion of remediation of each work area (or group of work areas), results of area samples shall be reported for acceptance by the Contracting Officer/Engineer.

END OF SECTION

**Final Letter Report  
Limited Lead and Asbestos Survey**

**Birkhimer EOC, Oahu, Hawaii**



Prepared for:

State of Hawaii, Department of Defense  
Engineering Office  
3949 Diamond Head Road  
Honolulu, Hawaii 96816

Prepared by:



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98-030 Hekaha Street, Unit 9  
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November 2021





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November 19, 2021

Mr. James Barbour, Engineer III  
Engineering Office  
State of Hawaii Department of Defense  
3949 Diamond Head Road  
Honolulu, Hawaii 96816-4492

Subject: **Limited Lead and Asbestos Survey  
Birkhimer Emergency Operations Center (EOC), Oahu, Hawaii  
Consultant Services Contract No. 65364, Change Order No. 5  
E2 Project 190025**

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Dear Mr. Barbour:

Element Environmental, LLC (E2) is pleased to submit this Limited Lead and Asbestos Survey report for the State of Hawaii Department of Defense (DOD) Birkhimer EOC. The Scope of Work (SOW) is generally based on E2's accepted fee proposal dated February 17, 2019 and revised September 28, 2021. The DOD provided E2 with access to the project site. Select photographs are included in Appendix A, and analytical laboratory reports are provided in Appendix B.

The DOD wants to remediate loose and flaky lead paint hazards inside Birkhimer EOC, particularly along interior portions of the exterior building wall, along the Back Entry Hallway, along a hall and in adjacent occupied office spaces, and in spaces that are heavily trafficked.

### **Previous Sampling**

EnviroQuest, Inc. conducted a more comprehensive asbestos, lead-based paint, and PCB survey of Birkhimer EOC in October 2016 (Project 10551, dated November 2016). The survey found the black mastic under the flooring in the Kitchen and Dining Room (combined area of 900 SF) contained 3% Chrysotile asbestos. All paint samples tested were in intact condition.

### **Lead Paint Chip Sampling**

The paint chip sampling conducted on April 15, 2019 in accordance with U.S. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead Based Paint (LBP) Hazards in Housing and Hawaii Administrative Rules (HAR) 11-41. The lead paint survey consisted of the collection of 18 paint chip samples from deteriorated (loose and flaky) painted wall and ceiling components, targeted by DOD management as they have the highest potential to flake and contribute to the lead dust within the building.

Bernice Baleté (#PB-0449), the lead inspector who completed the sampling, is certified by the State of Hawaii Department of Health (HDOH) Lead Activities Inspector Certification Program. E2 is also a HDOH-certified lead activities entity (#PBF-0032).

SGS Forensic Laboratories (SGS, formerly Forensic Analytical Laboratories) provided the lead analytical services. SGS is accredited by the American Industrial Hygiene Association (AIHA)

under the Environmental Laboratory Accreditation Program (ELAP). Samples were analyzed by Atomic Absorption Spectrometry (AAS), in accordance with United States Environmental Protection Agency (EPA) Method 3050B/7000B.

Lead paint results (Table 1 and Figure 1) were compared to standard presence/absence criteria for lead, i.e., paint containing 0.5% or more by weight or 5,000 milligrams per kilogram (mg/kg) or more of total lead were considered LBP. Paint with any detectable amount of lead is considered lead-containing paint (LCP). Both LBP and LCP are worker protection issues.

**TABLE 1: LEAD PAINT AND WIPE SAMPLE RESULTS**

Sample ID	Location	Material	Condition	Lead Paint Result (%w/w)	Lead Paint Chip Result (mg/kg)	Lead Dust Wipe Result (µg/sf)
BT-L01	Pacific Disaster Center (TeleComm)	light yellow concrete wall	poor	ND (< 0.006)	ND (< 60)	NS
BT-L02	EAS Studio A	off-white concrete wall	poor	ND (< 0.006)	ND (< 60)	NS
BT-L03	EAS Studio B	off-white concrete wall	poor	0.007	70	NS
BT-L04	EAS Control Room	off-white concrete wall	poor	0.011	110	NS
BT-L05	IDF.4 (electrical cabinet)	light yellow concrete wall	poor	ND (< 0.006)	ND (< 60)	NS
BT-L06	Air Conditioner Room	light yellow concrete wall	poor	4.0	40,000	NS
BT-L07 / W07	Front Entry	light yellow concrete wall	poor	1.1	11,000	150
BT-L08 / W08	Front Entry	light yellow concrete wall	poor	0.83	8,300	29
BT-L09	Front Entry	white concrete ceiling	poor	0.38	3,800	NS
BT-L10	Generator Room	light green concrete wall	poor	0.13	1,300	NS
BT-L11	Generator Room	light green concrete wall	poor	0.031	310	NS
BT-L12 / W12	Janitor Room (Transformer Room)	light green concrete wall	poor	1.5	15,000	440
BT-L13 / W13	Pump Room	light green concrete wall	poor	0.36	3,600	190
BT-L14	Pump Room	white concrete ceiling	poor	0.41	4,100	NS
BT-L15 / W15	Back Entry Hallway	light yellow concrete wall (covered with plastic)	poor	0.50	5,000	18
BT-L16 / W16	Kitchen	light yellow concrete wall	poor	0.036	360	5
BT-L17	State Warning Point cubicles (Operations)	light yellow concrete wall	poor	0.006	60	NS
BT-L18	Hall by EAS/Badge cubicles	light yellow concrete wall (covered with plastic)	poor	ND (< 0.03)	ND (< 300)	NS

Notes: BT = Birkhimer Tunnel, L = lead

mg/kg = milligram per kilogram

%w/w = percent lead weight over sample weight

µg/sf = microgram per square foot

ND (< RL) = not detected above (the laboratory reporting limit (RL))

NS = not sampled (carpeted)

Lead-Containing Paint (LCP) = lead content greater than RL, but less than 0.5% by weight or 5,000 mg/kg

Lead-Based Paint (LBP) = lead content equal to or greater than 0.5% by weight or 5,000 mg/kg

Lead Dust Hazard Action Level = lead content equal to or greater than 10 µg/sf for floors



## Lead Dust Wipe Sampling

The dust wipe sampling consisted of the collection of six wipe samples from a subset of those locations where paint chip samples were collected and where the floors were not carpeted. Bernice Balete (#PB-0449) completed the sampling on May 21, 2020. SGS provided the lead analytical services. Five of six results (Table 1) exceeded the HUD lead dust hazard action level of 10 micrograms per square foot ( $\mu\text{g}/\text{sf}$ ) for floors.

## Asbestos Bulk Sampling

The asbestos survey was conducted on August 25, 2021 in accordance with U.S. EPA 40 Code of Federal Regulations (CFR) 763 Asbestos and HDOH, HAR 11-501 Asbestos Requirements. The asbestos survey consisted of the collection of bulk samples from flooring and mastic to be removed and replaced in the Break Room (Kitchen/Dining Room) and Back Entry Hallway. Homogeneous Areas (HAs), which are suspect asbestos-containing materials (ACM) that appear uniform in color, texture, and function, were identified.

Bernice Balete (#PB-0449), the asbestos inspector who completed the sampling, is certified in accordance with the inspector training requirements of the Asbestos Hazard Emergency Response Act (AHERA) and the HDOH Asbestos Inspector Certification Program (HAR 11-504). E2 is a HDOH-registered asbestos entity (#A-0120).

SGS is registered with the HDOH, Indoor and Radiological Health Branch, Asbestos Section. SGS is accredited by the AIHA under the Industrial Hygiene Laboratory Accreditation Program (IHLAP) for asbestos/fiber microscopy core; and the National Voluntary Laboratory Accreditation Program (NVLAP) for bulk asbestos fiber analysis. Samples were analyzed by polarized light microscopy (PLM) with dispersion staining (visual estimation), in accordance with U.S. EPA Interim Method of the Determination of Asbestos in Bulk Samples, Appendix E, Subpart E, 40 CFR 763, EPA Method 600/R-93-116, Visual Area Estimation, for standard building materials.

Asbestos bulk results (Table 2 and Figure 2) were compared to the standard presence/absence criteria for asbestos, i.e., materials containing over 1% asbestos are considered ACM. provide asbestos results. The laboratory reports also indicate other fibrous components.

**TABLE 2: ASBESTOS BULK SAMPLE RESULTS**

HA ID	Material Location	Material Description (Lab Description)	Total % Asbestos
BT-C-01	Lobby	Ceiling Insulation ( <i>tan fibrous material</i> )	ND
<b>BT-F-01</b>	<b>Break Room</b>	Sheet Flooring/Mastic (beige and brown "stones", distinct lines/cream) <b>(black mastic)</b>	<b>2-3% Chrysotile</b>
BT-F-02	Back Entry Hallway	Sheet Flooring/Mastic (beige and cream "stones", distinct lines/cream)	ND
BT-F-03	Back Entry Hallway	Sheet Flooring/Mastic (gray and cream "stones", indistinct lines/cream)	ND
BT-M-01	Break Room	Vinyl Base/Mastic (4" beige/brown)	ND
BT-M-02	Back Entry Hallway	Vinyl Base/Mastic (4" brown/cream)	ND

**Notes:**

BT = Birkhimer Tunnel, C = ceiling, F = floor, M = miscellaneous

ND = none detected

Asbestos-Containing Materials (ACM) = asbestos content greater than 1%

## Conclusions

**Lead:** Lead was found in most of the samples collected from the project site during this field effort. Deteriorated (loose and flaking) LCP/LBP will require proper handling, removal, and/or disposal in accordance with OSHA Lead in Construction Standard 29 CFR 1926.62 and the Hawaii Occupational Safety and Health Division (HIOSH) 12-148.1, among other applicable Federal and State rules and regulations. Appropriate worker protection measures for lead should be taken during the remediation work to limit lead exposure of personnel and releases to the environment. Interim measures that should be implemented now may include, but are not limited to the following:

- provide awareness training for workers in these buildings so that they are aware of the potential hazards and the means of protecting themselves;
- provide blood lead testing for any concerned employees of these buildings;
- provide signage warning workers in areas with elevated lead dust;
- prohibit dry sweeping in areas with elevated lead in the dust and instead wet mist dust to minimize airborne lead;
- wet wipe any furniture with significant dust accumulation before use;
- ensure surfaces and areas used to store, prepare, or consume food are clean; and
- consider procuring a high-efficiency particulate air (HEPA) vacuum for cleaning.

Appropriate worker and occupant protection measures should be taken during the lead remediation work. Representative Toxicity Characteristic Leaching Procedure (TCLP) samples of the waste streams will need to be collected and analyzed prior to landfill acceptance. In addition, future demolition/construction documents should include appropriate plans and specifications to address abatement, handling, treatment, removal, recycling, storage, transportation, and/or disposal of any other suspect lead-painted surfaces not sampled due to inaccessibility or hidden from view.

**Asbestos:** Inaccessible and/or hidden suspect asbestos materials not sampled during this field effort or uncovered during the abatement work should be assumed ACM and managed as such until sampled and proven otherwise. ACM that will be encountered and/or generated during possible future renovations at the project site will require proper handling, removal, and/or disposal by trained workers in accordance with the Occupational Safety and Health Administration (OSHA) Asbestos Standard 29 CFR 1926.1101, EPA National Emission Standard for Asbestos 40 CFR 61-Subpart M, and 40 CFR 763 Asbestos, among other applicable Federal and State rules and regulations. At least ten (10) working days before demolition or disturbance of friable asbestos above reportable quantities, a "Notification of Demolition and Renovation" must be sent to the HDOH. The landfill should be consulted as to their requirements and procedures for the disposal of ACM at their facility.

We appreciate the opportunity to have worked with you on this project. Should you have any questions or require additional information related to this project, please do not hesitate to call me at (808) 864-3952.

Sincerely,  
Element Environmental, LLC



Ryan S. Yamauchi, P.E.  
President

#### Attachments

Table 1: Lead Paint and Wipe Sample Results

Table 2: Asbestos Bulk Sample Results

Figure 1: Approximate Lead Paint and Wipe Sample Locations

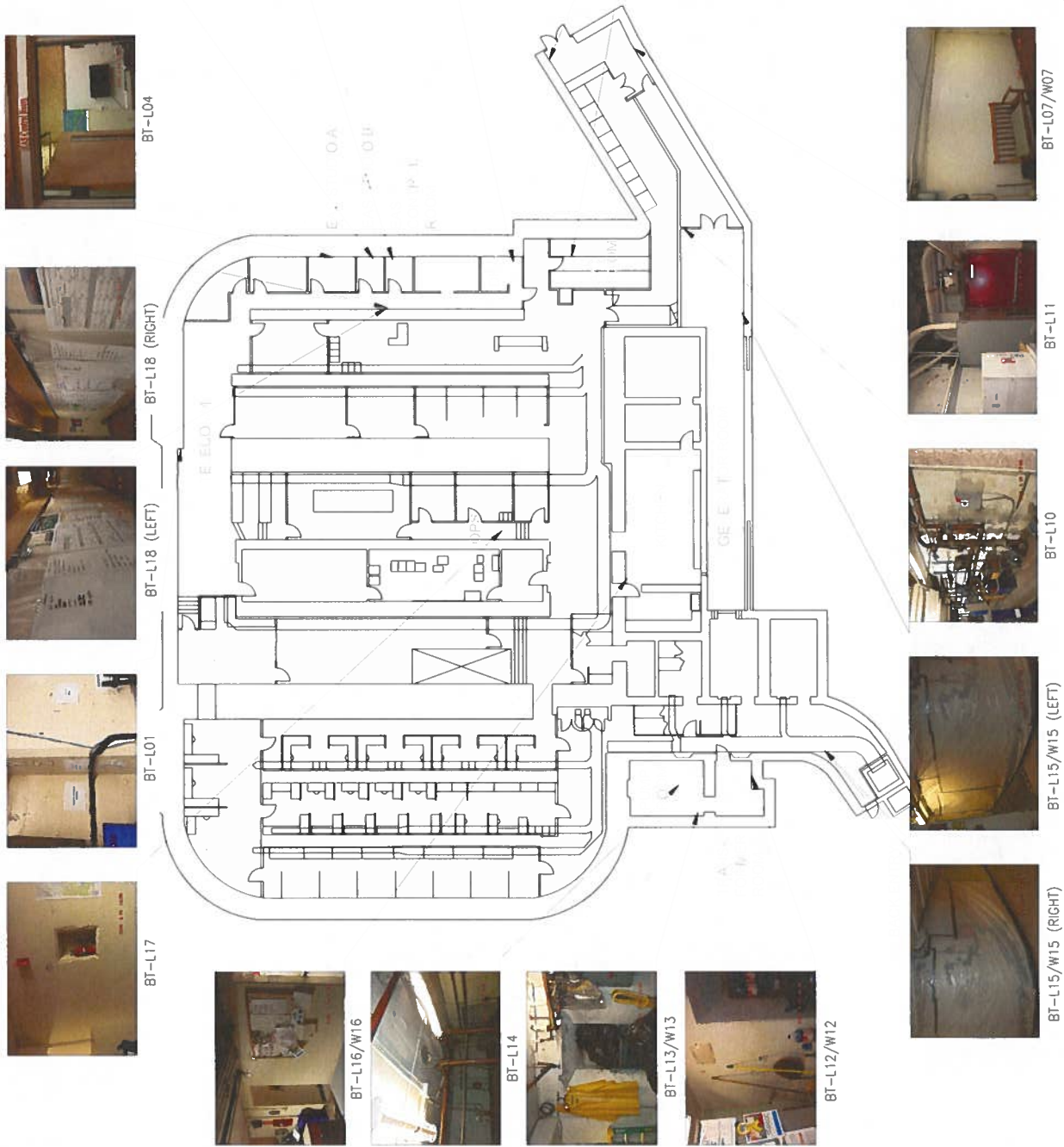
Figure 2: Approximate Asbestos Bulk Sample Locations

Appendix A: Site Photographs

Appendix B: Analytical Laboratory Reports



TRUE NORTH  
SCALE: 1"=15'



BT-L02



BT-L03



BT-L05



BT-L08/W08 & L09



BT-L06



BT-L04



BT-L18 (RIGHT)



BT-L18 (LEFT)



BT-L01



BT-L17



BT-L16/W16



BT-L14



BT-L13/W13



BT-L12/W12



BT-L07/W07



BT-L11



BT-L10



BT-L15/W15 (LEFT)

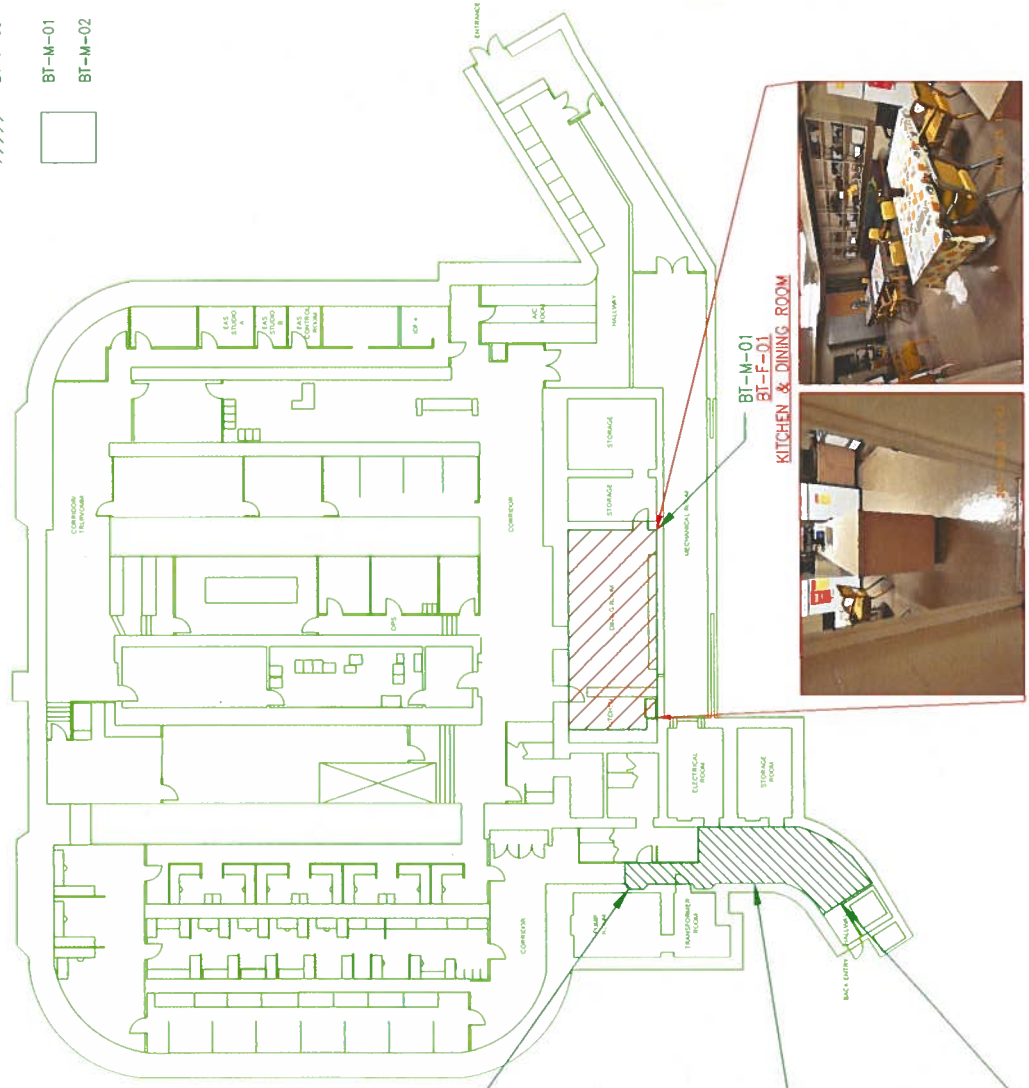


BT-L15/W15 (RIGHT)

environmental engineering water resources	
PROJECT TITLE LIMITED LEAD SURVEY, BIRCKHEIMER TUNNEL STATE OF HAWAII, DEPARTMENT OF DEFENSE	SURVEY DATES APRIL 15, 2019 & MAY 21, 2020
FIGURE TITLE APPROXIMATE LEAD PAINT & WIPE SAMPLE LOCATIONS	
SURVEY DATES APRIL 15, 2019 & MAY 21, 2020	FIGURE NO 1

LEGEND

-  BT-F-01  
SHEET FLOORING/MASTIC  
(MASTIC CONTAINS 3% CHRYSOTILE ASBESTOS)
-  BT-F-02  
SHEET FLOORING/MASTIC (ND FOR ASBESTOS)
-  BT-F-03  
SHEET FLOORING/MASTIC (ND FOR ASBESTOS)
-  BT-M-01  
VINYL BASE/MASTIC (ND FOR ASBESTOS)
-  BT-M-02  
VINYL BASE/MASTIC (ND FOR ASBESTOS)



BT-F-03 & M-02  
BACK ENTRY HALLWAY



BT-F-02 & M-02  
BACK ENTRY HALLWAY



BT-M-01  
BT-F-01  
KITCHEN & DINING ROOM



BT-F-02 & M-02  
BACK ENTRY HALLWAY

 <b>element environmental llc</b> environmental - engineering - water resources	
PROJECT TITLE LIMITED LEAD AND ASBESTOS SURVEY, BIRKHAMER ECC STATE OF HAWAII, DEPARTMENT OF DEFENSE	
FIGURE TITLE <b>APPROXIMATE ASBESTOS BULK          HOMOGENEOUS AREAS</b>	
SURVEY DATE AUGUST 25, 2021	FIGURE NO. 2

TRUE NORTH  
SCALE 1"=15'

**APPENDIX A**  
**Site Photographs**





**Birkhimer Tunnel, Diamond Head, Oahu, Hawaii  
(April 15, 2019 and May 21, 2020)**



Photo 1 – Non-Lead L-01 (close-up)



Photo 2 – Non-Lead L-01 (panoramic)



Photo 3 – Non-Lead L-02 (close-up)



Photo 4 – Non-Lead L-02 (panoramic)



Photo 5 – LCP L-03 (close-up)



Photo 6 – LCP L-03 (panoramic)

**Birkhimer Tunnel, Diamond Head, Oahu, Hawaii  
(April 15, 2019 and May 21, 2020)**



Photo 7 – LCP L-04 (close-up)



Photo 8 – LCP L-04 (panoramic)



Photo 9 – Non-Lead L-05 (close-up)

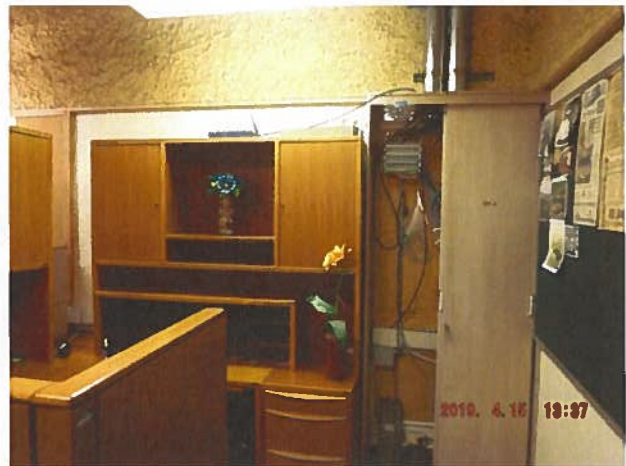


Photo 10 – Non-Lead L-05 (panoramic)



Photo 11 – LBP L-06 (close-up)



Photo 12 – LBP L-06 (panoramic)

**Birkhimer Tunnel, Diamond Head, Oahu, Hawaii  
(April 15, 2019 and May 21, 2020)**



Photo 13 – LBP L-07 (close-up)



Photo 14 – LBP L-07 (panoramic)



Photo 15 – LBP L-08 (close-up)



Photo 16 – LBP L-08 (panoramic)



Photo 17 – LCP L-09 (close-up)



Photo 18 – LCP L-09 (panoramic)

Birkhimer Tunnel, Diamond Head, Oahu, Hawaii  
(April 15, 2019 and May 21, 2020)



Photo 19 – LCP L-10 (close-up)



Photo 20 – LCP L-10 (panoramic)



Photo 21 – LCP L-11 (close-up)



Photo 22 – LCP L-11 (panoramic)



Photo 23 – LBP L-12 (close-up)



Photo 24 – LBP L-12 (panoramic)

**Birchimer Tunnel, Diamond Head, Oahu, Hawaii  
(April 15, 2019 and May 21, 2020)**



Photo 25 – LCP L-13 (close-up)



Photo 26 – LCP L-13 (panoramic)



Photo 27 – LCP L-14 (close-up)



Photo 28 – LCP L-14 (panoramic)



Photo 29 – LBP L-15 (close-up)



Photo 30 – LBP L-15 (panoramic)

Birkhimer Tunnel, Diamond Head, Oahu, Hawaii  
(April 15, 2019 and May 21, 2020)

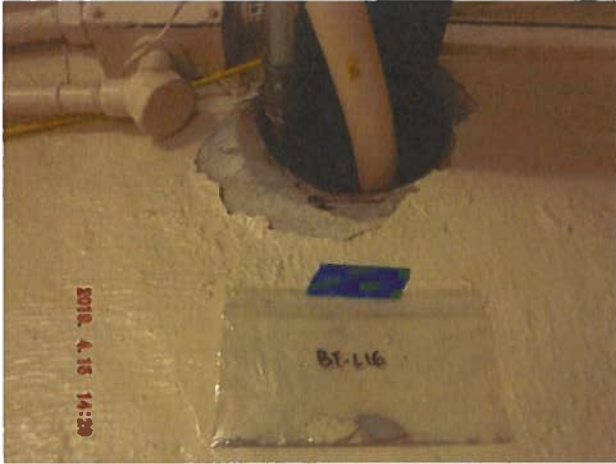


Photo 31 – LCP L-16 (close-up)



Photo 32 – LCP L-16 (panoramic)



Photo 33 – LCP L-17 (close-up)



Photo 34 – LCP L-17 (panoramic)



Photo 35 – Non-Lead L-18 (close-up)



Photo 36 – Non-Lead L-18 (panoramic)

**Birkhimer Tunnel, Diamond Head, Oahu, Hawaii  
(April 15, 2019 and May 21, 2020)**



Photo 37 – Lead Dust Hazard W-07



Photo 38 – Lead Dust Hazard W-08



Photo 39 – Lead Dust Hazard W-12



Photo 40 – Lead Dust Hazard W-13



Photo 41 – Lead Dust Hazard W-15



Photo 42 – Non-Lead Dust Hazard W-16





Birkhimer EOC, Oahu, Hawaii - Asbestos  
(August 25, 2021)



Photo 1 - BT-C-01A (Close-up)



Photo 2 - BT-C-01A (Panoramic)



Photo 3 - BT-C-01B (Close-up)



Photo 4 - BT-C-01B (Panoramic)



Photo 5 - BT-C-01C (Close-up)



Photo 6 - BT-C-01C (Panoramic)

Birkhimer EOC, Oahu, Hawaii - Asbestos  
(August 25, 2021)



Photo 7 - BT-C-01D (Close-up)



Photo 8 - BT-C-01D (Panoramic)



Photo 9 - BT-C-01E (Close-up)



Photo 10 - BT-C-01E (Panoramic)



Photo 11 - BT-C-01F (Close-up)



Photo 12 - BT-C-01F (Panoramic)

Birkhimer EOC, Oahu, Hawaii - Asbestos  
(August 25, 2021)



Photo 13 - BT-C-01G (Close-up)



Photo 14 - BT-C-01G (Panoramic)

Birkhimer EOC, Oahu, Hawaii - Asbestos  
(August 25, 2021)



Photo 15 - BT-F-01A (Close-up)



Photo 16 - BT-F-01A (Panoramic)



Photo 17 - BT-F-01B (Close-up)



Photo 18 - BT-F-01B (Panoramic)



Photo 19 - BT-F-01C (Close-up)



Photo 20 - BT-F-01C (Panoramic)

Birkhimer EOC, Oahu, Hawaii - Asbestos  
(August 25, 2021)



Photo 21 - BT-F-02A (Close-up)



Photo 22 - BT-F-02A (Panoramic)



Photo 23 - BT-F-02B (Close-up)



Photo 24 - BT-F-02B (Panoramic)



Photo 25 - BT-F-02C (Close-up)



Photo 26 - BT-F-02C (Panoramic)

Birkhimer EOC, Oahu, Hawaii - Asbestos  
(August 25, 2021)



Photo 27 - BT-F-03A (Close-up)



Photo 28 - BT-F-03A (Panoramic)



Photo 29 - BT-F-03B (Close-up)



Photo 30 - BT-F-03B (Panoramic)



Photo 31 - BT-F-03C (Close-up)



Photo 32 - BT-F-03C (Panoramic)

Birkhimer EOC, Oahu, Hawaii - Asbestos  
(August 25, 2021)



Photo 33 - BT-M-01A (Close-up)



Photo 34 - BT-M-01A (Panoramic)



Photo 35 - BT-M-01B (Close-up)



Photo 36 - BT-M-01B (Panoramic)



Photo 37 - BT-M-01C (Close-up)



Photo 38 - BT-M-01C (Panoramic)

Birkhimer EOC, Oahu, Hawaii - Asbestos  
(August 25, 2021)



Photo 39 - BT-M-02A (Close-up)



Photo 40 - BT-M-02A (Panoramic)



Photo 41 - BT-M-02B (Close-up)



Photo 42 - BT-M-02B (Panoramic)



Photo 43 - BT-M-02C (Close-up)



Photo 44 - BT-M-02C (Panoramic)



**APPENDIX B**  
**Analytical Laboratory Reports**



# Metals Analysis of Paints

(AIHA-LAP, LLC Accreditation, Lab ID #101629)

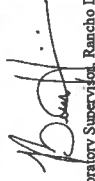
Element Environmental, LLC  
Bernice Balet  
98-030 Hekaha Street  
Unit 9  
Aiea, HI 96701

Client ID: L1617  
Report Number: M209931  
Date Received: 04/17/19  
Date Analyzed: 04/24/19  
Date Printed: 04/24/19  
First Reported: 04/24/19

Job ID / Site: 190025; Birkhimer Tunnel, Diamond Head, Oahu, Hawaii  
Date(s) Collected: 04/15/19  
Total Samples Submitted: 18  
Total Samples Analyzed: 18

Sample Number	Lab Number	Analyte	Result	Result Units	Reporting Limit*	Method Reference
BT-L01	LM168578	Pb	< 0.006	wt%	0.006	EPA 3050B/7000B
BT-L02	LM168579	Pb	< 0.006	wt%	0.006	EPA 3050B/7000B
BT-L03	LM168580	Pb	0.007	wt%	0.006	EPA 3050B/7000B
BT-L04	LM168581	Pb	0.011	wt%	0.006	EPA 3050B/7000B
BT-L05	LM168582	Pb	< 0.006	wt%	0.006	EPA 3050B/7000B
BT-L06	LM168583	Pb	4.0	wt%	0.3	EPA 3050B/7000B
BT-L07	LM168584	Pb	1.1	wt%	0.06	EPA 3050B/7000B
BT-L08	LM168585	Pb	0.83	wt%	0.06	EPA 3050B/7000B
BT-L09	LM168586	Pb	0.38	wt%	0.02	EPA 3050B/7000B
BT-L10	LM168587	Pb	0.13	wt%	0.006	EPA 3050B/7000B
BT-L11	LM168588	Pb	0.031	wt%	0.006	EPA 3050B/7000B
BT-L12	LM168589	Pb	1.5	wt%	0.2	EPA 3050B/7000B
BT-L13	LM168590	Pb	0.36	wt%	0.02	EPA 3050B/7000B
BT-L14	LM168591	Pb	0.41	wt%	0.02	EPA 3050B/7000B
BT-L15	LM168592	Pb	0.50	wt%	0.03	EPA 3050B/7000B
BT-L16	LM168593	Pb	0.036	wt%	0.006	EPA 3050B/7000B
BT-L17	LM168594	Pb	0.006	wt%	0.006	EPA 3050B/7000B
BT-L18	LM168595	Pb	< 0.03	wt%	0.03	EPA 3050B/7000B

\* The Reporting Limit represents the lowest amount of analyte that the laboratory can confidently detect in the sample, and is not a regulatory level. The Units for the Reporting Limit are the same as the Units for the Final Results.



Beatriz Hinojosa, Laboratory Supervisor, Rancho Dominguez Laboratory  
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# Metals Analysis of Paints

(AIHA-LAP, LLC Accreditation, Lab ID #101629)

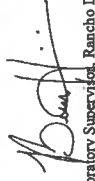
Element Environmental, LLC  
Bernice Balet  
98-030 Hekaha Street  
Unit 9  
Aiea, HI 96701

Client ID: L1617  
Report Number: M209931  
Date Received: 04/17/19  
Date Analyzed: 04/24/19  
Date Printed: 04/24/19  
First Reported: 04/24/19

Job ID / Site: 190025; Birkhimer Tunnel, Diamond Head, Oahu, Hawaii  
Date(s) Collected: 04/15/19  
Total Samples Submitted: 18  
Total Samples Analyzed: 18

Sample Number	Lab Number	Analyte	Result	Result Units	Reporting Limit*	Method Reference
BT-L01	LM168578	Pb	< 0.006	wt%	0.006	EPA 3050B/7000B
BT-L02	LM168579	Pb	< 0.006	wt%	0.006	EPA 3050B/7000B
BT-L03	LM168580	Pb	0.007	wt%	0.006	EPA 3050B/7000B
BT-L04	LM168581	Pb	0.011	wt%	0.006	EPA 3050B/7000B
BT-L05	LM168582	Pb	< 0.006	wt%	0.006	EPA 3050B/7000B
BT-L06	LM168583	Pb	4.0	wt%	0.3	EPA 3050B/7000B
BT-L07	LM168584	Pb	1.1	wt%	0.06	EPA 3050B/7000B
BT-L08	LM168585	Pb	0.83	wt%	0.06	EPA 3050B/7000B
BT-L09	LM168586	Pb	0.38	wt%	0.02	EPA 3050B/7000B
BT-L10	LM168587	Pb	0.13	wt%	0.006	EPA 3050B/7000B
BT-L11	LM168588	Pb	0.031	wt%	0.006	EPA 3050B/7000B
BT-L12	LM168589	Pb	1.5	wt%	0.2	EPA 3050B/7000B
BT-L13	LM168590	Pb	0.36	wt%	0.02	EPA 3050B/7000B
BT-L14	LM168591	Pb	0.41	wt%	0.02	EPA 3050B/7000B
BT-L15	LM168592	Pb	0.50	wt%	0.03	EPA 3050B/7000B
BT-L16	LM168593	Pb	0.036	wt%	0.006	EPA 3050B/7000B
BT-L17	LM168594	Pb	0.006	wt%	0.006	EPA 3050B/7000B
BT-L18	LM168595	Pb	< 0.03	wt%	0.03	EPA 3050B/7000B

\* The Reporting Limit represents the lowest amount of analyte that the laboratory can confidently detect in the sample, and is not a regulatory level. The Units for the Reporting Limit are the same as the Units for the Final Results.



Beatriz Hinojosa, Laboratory Supervisor, Rancho Dominguez Laboratory  
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Forensic Analytical LABORATORIES

Analysis Request Form (COC)

Client Name & Address: Client No.: L1617 PO / Job#: 190025 Date: 4/15/2019  
 Element Environmental, LLC 98-030 Hekaha Street, Unit 9 Aiea, Hawaii 96701  
 Turn Around Time: Same Day / 1 Day / 2 Day / 3 Day / 4 Day / 5 Day  
 PCM  NIOSH 7400A  NIOSH 7400B  Rosemeter  
 PUM  Standard  Point Count #100  1000 /  CARB 435  
 Contact: Bernice Baleta Phone: (808) 389-4792  
 Email: bbaleta@e2hi.com  
 Site Name: Birkhimer Tunnel  
 Site Location: Diamond Head, Oahu, Hawaii  
 Comments: Page 1 of 2

Sample ID	Date / Time	Sample Location / Description	FOR AIR SAMPLES ONLY			Sample Area / Air Volume
			Type	Time On/Off	Avg IPM	
BT-L01	4/15/19	Pacific Disaster Center / light yellow concrete wall	A	1P		
BT-L02	4/15/19	EAS Studio A / off-white concrete wall	A	1P		
BT-L03	4/15/19	Studio B / off-white concrete wall	A	1P		
BT-L04	4/15/19	EAS Control Room / off-white concrete wall	A	1P		
BT-L05	4/15/19	IDF-4 (electrical cabinet) / light yellow concrete wall	A	1P		
BT-L06	4/15/19	Air Conditioner Room / light yellow concrete wall	A	1P		
BT-L07	4/15/19	Front Entry / light yellow concrete wall	A	1P		
BT-L08	4/15/19	Front Entry / light yellow concrete wall	A	1P		
BT-L09	4/15/19	Front Entry / white concrete ceiling	A	1P		
BT-L10	4/15/19	Generator Room / light green concrete wall	A	1P		

Sampled By: Bernice Baleta Date/Time: 4/15/2019 Shipped Via: Fed Ex  UPS  Courier  Drop Off  Other  
 Relinquished By: Bernice Baleta Date / Time: 4/16/2019 @ 1200  
 Received By: [Signature] Date / Time: 4/17/19 10:00 AM  
 Condition Acceptable?  Yes  No  
 Relinquished By: Bernice Baleta Date / Time: 4/16/2019 @ 1200  
 Received By: [Signature] Date / Time: 4/17/19 10:00 AM  
 Condition Acceptable?  Yes  No

Forensic Analytical Laboratories may subcontract client samples to other FBI locations to meet client requests.  
 San Francisco Office: 3777 Depot Road, Suite 409, Hayward, CA 94545-9261 • Phone: 510/887-8828 • 800/827-3274  
 Los Angeles Office: 2959 Pacific Commerce Drive, Torrance Dominguez, CA 90501 • Phone: 310/753-2374 • 888/813-9417  
 Las Vegas Office: 6763 S Eastern Avenue, Suite 3, Las Vegas, NV 89119 • Phone: 702/784-0040



Forensic Analytical LABORATORIES

Analysis Request Form (COC)

Client Name & Address: Client No.: L1617 PO / Job#: 190025 Date: 4/15/2019  
 Element Environmental, LLC 98-030 Hekaha Street, Unit 9 Aiea, Hawaii 96701  
 Turn Around Time: Same Day / 1 Day / 2 Day / 3 Day / 4 Day / 5 Day  
 PCM  NIOSH 7400A  NIOSH 7400B  Rosemeter  
 PUM  Standard  Point Count #100  1000 /  CARB 435  
 Contact: Bernice Baleta Phone: (808) 389-4792  
 Email: bbaleta@e2hi.com  
 Site Name: Birkhimer Tunnel  
 Site Location: Diamond Head, Oahu, Hawaii  
 Comments: Page 2 of 2

Sample ID	Date / Time	Sample Location / Description	FOR AIR SAMPLES ONLY			Sample Area / Air Volume
			Type	Time On/Off	Avg IPM	
BT-L11	4/15/19	Generator Room / light green concrete wall	A	1P		
BT-L12	4/15/19	Janitor Room / light green concrete wall	A	1P		
BT-L13	4/15/19	Pump Room / light green concrete wall	A	1P		
BT-L14	4/15/19	Pump Room / white concrete ceiling	A	1P		
BT-L15	4/15/19	Rear Exit Corridor / light yellow concrete wall (inverted with plastic)	A	1P		
BT-L16	4/15/19	Kitchen / light yellow concrete wall	A	1P		
BT-L17	4/15/19	State Warning Point cubicles / light yellow concrete wall	A	1P		
BT-L18	4/15/19	Hall by EAS/Baleta cubicles / light yellow concrete wall (inverted with plastic)	A	1P		

Sampled By: Bernice Baleta Date/Time: 4/15/2019 Shipped Via: Fed Ex  UPS  Courier  Drop Off  Other  
 Relinquished By: Bernice Baleta Date / Time: 4/16/2019 @ 1200  
 Received By: [Signature] Date / Time: 4/17/19 10:00 AM  
 Condition Acceptable?  Yes  No  
 Relinquished By: Bernice Baleta Date / Time: 4/16/2019 @ 1200  
 Received By: [Signature] Date / Time: 4/17/19 10:00 AM  
 Condition Acceptable?  Yes  No

Forensic Analytical Laboratories may subcontract client samples to other FBI locations to meet client requests.  
 San Francisco Office: 3777 Depot Road, Suite 409, Hayward, CA 94545-9261 • Phone: 510/887-8828 • 800/827-3274  
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FORENSIC LABORATORIES

Final Report

Metals Analysis of HUD Wipes

(AIHA-LAP, LLC Accreditation, Lab ID #101629)

Element Environmental, LLC
Bernice Bailete
98-030 Hekaha Street
Unit 9
Aiea, HI 96701

Client ID: L1617
Report Number: MZ25475
Date Received: 05/26/20
Date Analyzed: 06/01/20
Date Printed: 06/01/20
First Reported: 06/01/20

SGSFL Job ID: L1617
Total Samples Submitted: 6
Total Samples Analyzed: 6

Job ID / Site: 190025; Birkhimer Tunnel, Diamond Head, Oahu, Hawaii
Date(s) Collected: 05/21/20

Table with columns: Sample Number, Lab Number, Area f2, Analyte, Result, Result Units, Reporting Limit\*, Method Reference. Rows include BT-W07 through BT-W16.

\* The Reporting Limit represents the lowest amount of analyte that the laboratory can confidently detect in the sample, and is not a regulatory level. The Units for the Reporting Limit are the same as the Units for the Final Results.

Signature of Beatriz Hinojosa

Beatriz Hinojosa, Laboratory Supervisor, Carson Laboratory

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20535 South Belshaw Avenue, Carson, CA 90746 / Telephone: (310) 763-2374 (888) 813-9417 / Fax: (310) 763-4450



FORENSIC LABORATORIES

Analysis Request Form (COC)

Client Name & Address, Client No., PO / Job #, Date, Turn Around Time, Turn of Day, Method, Contact, Phone, Email, Site Name, Site Location, Comments.

Table with columns: Sample ID, Date / Time, Sample Location / Description, Type, Time On/Off, Avg DPM, Total Time, Sample Area / Air Volume. Rows include BT-W07 through BT-W16.

Sampled By, Date / Time, Shipped Via, Fed Ex, JPS, US Mail, Courier, Drop Off, Other, Relinquished By, Date / Time, Received By, Date / Time, Condition Acceptable? Yes/No.

Min Forensic Laboratories may subcontract client samples to other NENI locations to meet client requests.
San Francisco Office: 3777 Depot Road, Suite 409, Hayward, CA 94545-2761
Los Angeles Office: 20535 South Belshaw Ave., Carson, CA 90746
Las Vegas Office: 6745 S Eastern Avenue, Suite 3, Las Vegas, NV 89119



**Final Report**

**Bulk Asbestos Analysis**

(EPA Method 40CFR, Part 763, Appendix E to Subpart E and EPA 600/R-93-116, Visual Area Estimation)  
 NVLAP Lab Code 101459-1

Element Environmental, LLC  
 Bernice Balete  
 98-030 Hekaha Street  
 Unit 9  
 Aiea, HI 96701

Client ID: L1617  
 Report Number: B322414  
 Date Received: 08/27/21  
 Date Analyzed: 09/03/21  
 Date Printed: 09/03/21  
 First Reported: 09/03/21

Job ID/Site: 190025, Birkhimer Tunnel, Diamond Head, Oahu, Hawaii

SGSFL Job ID: L1617  
 Total Samples Submitted: 22  
 Total Samples Analyzed: 22

Sample ID	Lab Number	Asbestos Type	Percent in Layer	Asbestos Type	Percent in Layer
BT-C-01A	51472019	Asbestos (ND)	ND	Asbestos (ND)	ND
Layer: Tan Fibrous Material					
Total Composite Values of Fibrous Components: Asbestos (ND)					
Cellulose (90 %)					
BT-C-01B	51472020	Asbestos (ND)	ND	Asbestos (ND)	ND
Layer: Tan Fibrous Material					
Total Composite Values of Fibrous Components: Asbestos (ND)					
Cellulose (90 %)					
BT-C-01C	51472021	Asbestos (ND)	ND	Asbestos (ND)	ND
Layer: Tan Fibrous Material					
Total Composite Values of Fibrous Components: Asbestos (ND)					
Cellulose (90 %)					
BT-C-01D	51472022	Asbestos (ND)	ND	Asbestos (ND)	ND
Layer: Tan Fibrous Material					
Total Composite Values of Fibrous Components: Asbestos (ND)					
Cellulose (90 %)					
BT-C-01E	51472023	Asbestos (ND)	ND	Asbestos (ND)	ND
Layer: Tan Fibrous Material					
Total Composite Values of Fibrous Components: Asbestos (ND)					
Cellulose (90 %)					
BT-C-01F	51472024	Asbestos (ND)	ND	Asbestos (ND)	ND
Layer: Tan Fibrous Material					
Layer: Grey Cementitious Material					
Layer: Yellow Non-Fibrous Material					
Total Composite Values of Fibrous Components: Asbestos (ND)					
Cellulose (90 %)					
BT-C-01G	51472025	Asbestos (ND)	ND	Asbestos (ND)	ND
Layer: Tan Fibrous Material					
Total Composite Values of Fibrous Components: Asbestos (ND)					
Cellulose (90 %)					

Client Name: Element Environmental, LLC  
 Report Number: B322414  
 Date Printed: 09/03/21

Sample ID	Lab Number	Asbestos Type	Percent in Layer	Asbestos Type	Percent in Layer
BT-F-01A	51472026	Asbestos (ND)	ND	Asbestos (ND)	ND
Layer: Grey Sheet Flooring					
Layer: Fibrous Backing					
Layer: Yellow Mastic					
Layer: Grey Non-Fibrous Material					
Layer: Black Mastic					
Total Composite Values of Fibrous Components: Asbestos (Trace)					
Cellulose (20 %) Fibrous Glass (3 %) Synthetic (10 %)					
BT-F-01B	51472027	Asbestos (ND)	ND	Asbestos (ND)	ND
Layer: Grey Sheet Flooring					
Layer: Fibrous Backing					
Layer: Yellow Mastic					
Layer: Grey Non-Fibrous Material					
Layer: Black Mastic					
Total Composite Values of Fibrous Components: Asbestos (Trace)					
Cellulose (20 %) Fibrous Glass (3 %) Synthetic (10 %)					
BT-F-01C	51472028	Asbestos (ND)	ND	Asbestos (ND)	ND
Layer: Grey Sheet Flooring					
Layer: Fibrous Backing					
Layer: Yellow Mastic					
Layer: Black Mastic					
Layer: Grey Non-Fibrous Material					
Layer: Brown Mastic with Debris					
Total Composite Values of Fibrous Components: Asbestos (Trace)					
Cellulose (25 %) Fibrous Glass (7 %) Synthetic (10 %)					
BT-F-02A	51472029	Asbestos (ND)	ND	Asbestos (ND)	ND
Layer: Grey Sheet Flooring					
Layer: Fibrous Backing					
Layer: Yellow Mastic with Debris					
Layer: Grey Non-Fibrous Material					
Layer: Black Mastic					
Total Composite Values of Fibrous Components: Asbestos (ND)					
Cellulose (20 %) Fibrous Glass (3 %) Synthetic (7 %)					
BT-F-02B	51472030	Asbestos (ND)	ND	Asbestos (ND)	ND
Layer: Grey Sheet Flooring					
Layer: Fibrous Backing					
Layer: Yellow Mastic					
Layer: Grey Non-Fibrous Material					
Total Composite Values of Fibrous Components: Asbestos (ND)					
Cellulose (20 %) Fibrous Glass (5 %) Synthetic (10 %)					

Sample ID	Lab Number	Asbestos Type	Percent in Layer	Asbestos Type	Percent in Layer
BT-F-02C	51472031				
Layer: Grey Sheet Flooring			ND		
Layer: Fibrous Backing			ND		
Layer: Yellow Mastic			ND		
Layer: Grey Non-Fibrous Material			ND		
Total Composite Values of Fibrous Components		Asbestos (ND)			
Cellulose (20%)		Fibrous Glass (5%) Synthetic (10%)			
BT-F-03A	51472032				
Layer: Grey Sheet Flooring			ND		
Layer: Fibrous Backing			ND		
Layer: Yellow Mastic			ND		
Layer: Grey Non-Fibrous Material			ND		
Layer: Black Mastic			ND		
Total Composite Values of Fibrous Components		Asbestos (ND)			
Cellulose (20%)		Fibrous Glass (5%) Synthetic (10%)			
BT-F-03B	51472033				
Layer: Grey Sheet Flooring			ND		
Layer: Fibrous Backing			ND		
Layer: Yellow Mastic			ND		
Layer: White Mastic			ND		
Layer: Grey Non-Fibrous Material			ND		
Total Composite Values of Fibrous Components		Asbestos (ND)			
Cellulose (20%)		Fibrous Glass (5%) Synthetic (10%)			
BT-F-03C	51472034				
Layer: Grey Sheet Flooring			ND		
Layer: Fibrous Backing			ND		
Layer: Grey Non-Fibrous Material			ND		
Layer: Black Mastic			ND		
Total Composite Values of Fibrous Components		Asbestos (ND)			
Cellulose (20%)		Fibrous Glass (5%) Synthetic (10%)			
BT-M-01A	51472035				
Layer: Brown Non-Fibrous Material			ND		
Layer: Brown Mastic			ND		
Layer: Paint			ND		
Total Composite Values of Fibrous Components		Asbestos (ND)			
Cellulose (Trace)					
BT-M-01B	51472036				
Layer: Brown Non-Fibrous Material			ND		
Layer: Brown Mastic			ND		
Total Composite Values of Fibrous Components		Asbestos (ND)			
Cellulose (Trace)					

Sample ID	Lab Number	Asbestos Type	Percent in Layer	Asbestos Type	Percent in Layer
BT-M-01C	51472037				
Layer: Brown Non-Fibrous Material			ND		
Layer: Brown Mastic			ND		
Layer: Paint			ND		
Total Composite Values of Fibrous Components		Asbestos (ND)			
Cellulose (Trace)					
BT-M-02A	51472038				
Layer: Brown Non-Fibrous Material			ND		
Layer: Brown Mastic			ND		
Total Composite Values of Fibrous Components		Asbestos (ND)			
Cellulose (Trace)					
BT-M-02B	51472039				
Layer: Brown Non-Fibrous Material			ND		
Layer: White Mastic			ND		
Layer: Black Mastic			ND		
Total Composite Values of Fibrous Components		Asbestos (ND)			
Cellulose (Trace)					
BT-M-02C	51472040				
Layer: Brown Non-Fibrous Material			ND		
Layer: White Mastic			ND		
Total Composite Values of Fibrous Components		Asbestos (ND)			
Cellulose (Trace)					

Tiffani Ludd, Laboratory Supervisor, Carson Laboratory  
 Note: Limit of Quantification (LOQ) = 1%. Trace denotes the presence of asbestos below the LOQ. ND = None Detected.  
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Forensic Analytical LABORATORIES

Analysis Request Form (COC)

Client Name & Address: **Element Environmental, LLC**  
 98-030 Hekaha Street, Unit 9  
 Aiea, Hawaii 96701

Client No.: **L1617**      Date: **8/25/2021**

PO / Job #: **190025**

Turn Around Time:  Same Day /  1Day /  2Day /  3Day /  4Day /  5Day

PCM  NOSH 7400A  NOSH 7408  Rotometer

PMA:  Standard /  Point Count /  1000 /  CARB 435

TEM Air:  AHERA /  Yonah2 /  NIOSH 7402

TEM Bulk:  Qualitative /  Quantitative

TEM Water:  Possible /  Not Possible /  Weight %

TEM Microscopic:  Qual /  FTIR /  FTIR /  SEM /  XRF

IAD Particle Identification (PMA LAB)  PMA Opaque/Soot

Particle Identification (TEM LAB)  Special Project

Site Name: **Birkthimer Tunnel**      Method:

Site Location: **Diamond Head, Oahu, Hawaii**

Analyst:

Comments: See the attached table for bulk sample information.

Sample ID	Date / Time	Sample Location / Description	FOR AIR SAMPLES ONLY			Sample Area
			Type	Time On/Off	Avg Tons/UPM	
BT-C-01A	8/25/2021	Lobby	IA			
BT-C-01B	8/25/2021	Lobby	IP			
BT-C-01C	8/25/2021	Lobby	IA			
BT-C-01D	8/25/2021	Lobby	IP			
BT-C-01E	8/25/2021	Lobby	IA			
BT-C-01F	8/25/2021	Lobby	IP			
BT-C-01G	8/25/2021	Lobby	IA			
BT-F-01A	8/25/2021	Break Room	IA			
BT-F-01B	8/25/2021	Break Room	IP			
BT-F-01C	8/25/2021	Break Room	IA			
BT-F-02A	8/25/2021	Hallway	IP			
BT-F-02B	8/25/2021	Hallway	IA			
BT-F-02C	8/25/2021	Hallway	IP			
BT-F-03A	8/25/2021	Hallway	IA			
BT-F-03B	8/25/2021	Hallway	IP			
BT-F-03C	8/25/2021	Hallway	IA			
BT-M-01A	8/25/2021	Break Room	IA			
BT-M-01B	8/25/2021	Break Room	IP			
BT-M-02A	8/25/2021	Hallway	IA			
BT-M-02B	8/25/2021	Hallway	IP			
BT-M-02C	8/25/2021	Hallway	IA			

Sampled By: **Bernice Balete**      Date/Time: **8/25/2021**      Shipped Via:  Fed Ex    UPS    US Mail    Courier    Drop Off    Other:

Relinquished By: **Bernice Balete**      Relinquished By:      Date / Time:      Received By:

Date / Time: **8/25/2021 @ 1400**      Date / Time:      Received By:

Condition Acceptable?  Yes    No      Condition Acceptable?  Yes    No

Forensic Analytical Laboratories may subcontract client samples to other FAAI locations to meet client requests.

San Francisco Office: 3777 Depot Road, Suite 409, Hayward, CA 94545-2761 • Phone: 310/887-8828 • 800/827-3274

Los Angeles Office: 2959 Pacific Commerce Drive, Rancho Dominguez, CA 90221 • Phone: 310/763-2374 • 888/813-9417

Las Vegas Office: 6703 S. Eastern Avenue, Suite 3, Las Vegas, NV 89119 • Phone: 702/794-0040

Bulk Samples  
 1638 Young Street, Honolulu, Hawaii  
 Units 10 & 11

Sample ID	Sample Date	Sample Location	Sample Description
BT-C-01A	8/25/2021	Lobby	Ceiling Insulation
BT-C-01B	8/25/2021	Lobby	Ceiling Insulation
BT-C-01C	8/25/2021	Lobby	Ceiling Insulation
BT-C-01D	8/25/2021	Lobby	Ceiling Insulation
BT-C-01E	8/25/2021	Lobby	Ceiling Insulation
BT-C-01F	8/25/2021	Lobby	Ceiling Insulation
BT-C-01G	8/25/2021	Lobby	Ceiling Insulation
BT-F-01A	8/25/2021	Break Room	Sheet Flooring/Mastic (beige and brown "stones", distinct lines/cream)
BT-F-01B	8/25/2021	Break Room	Sheet Flooring/Mastic (beige and brown "stones", distinct lines/cream)
BT-F-01C	8/25/2021	Break Room	Sheet Flooring/Mastic (beige and brown "stones", distinct lines/cream)
BT-F-02A	8/25/2021	Hallway	Sheet Flooring/Mastic (beige and cream "stones", distinct lines/cream)
BT-F-02B	8/25/2021	Hallway	Sheet Flooring/Mastic (beige and cream "stones", distinct lines/cream)
BT-F-02C	8/25/2021	Hallway	Sheet Flooring/Mastic (beige and cream "stones", distinct lines/cream)
BT-F-03A	8/25/2021	Hallway	Sheet Flooring/Mastic (gray and cream "stones", indistinct lines/cream)
BT-F-03B	8/25/2021	Hallway	Sheet Flooring/Mastic (gray and cream "stones", indistinct lines/cream)
BT-F-03C	8/25/2021	Hallway	Sheet Flooring/Mastic (gray and cream "stones", indistinct lines/cream)
BT-M-01A	8/25/2021	Break Room	Vinyl Base/Mastic (4" beige/brown)
BT-M-01B	8/25/2021	Break Room	Vinyl Base/Mastic (4" beige/brown)
BT-M-02A	8/25/2021	Hallway	Vinyl Base/Mastic (4" brown/cream)
BT-M-02B	8/25/2021	Hallway	Vinyl Base/Mastic (4" brown/cream)
BT-M-02C	8/25/2021	Hallway	Vinyl Base/Mastic (4" brown/cream)