COUNTY OF MAUI – DEPARTMENT OF WATER SUPPLY
LAUNIUPOKO AQUIFER WELL DEVELOPMENT SITE L-1 PRODUCTION
LAUNIUPOKO, MAUI, HAWAI'I

REQUEST FOR PROPOSALS PART 1
DESIGN-BUILD CONSTRUCTION

DWS CIP JOB NO. 20-01-A-DV

RFP Part 1 Issued: NOVEMBER 2026

11/9/2026

For: Director – Approval Date

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Exhibits

For RFP PART 1

A-1 Submission Requirements Proposal Checklist
A-2 Qualifications and Work Approach Proposal Checklist
B Statement of Qualifications
C List of Comparable Projects
D Certifications
E Authorization for Background and/or Financial Information, Proposer's Prior Performance
F HUD Form 4010 (Federal Labor Standards Provisions)
G Litigation and Audit Finding History
H Certification of Compliance for Employment of State Residents HRS Chapter 103B
I Non-Gratuity Affidavit
J Certification of Compliance with HRS 396-18
K Certification of Compliance for Final Payment
L Section 3 Business Concern Certification
M Standards of Conduct Declaration
N Public Procurement, Senate Bill 2075

The Following Additional Exhibits will be required and included in RFP

A-3 Price Proposal Checklist
O Cost Form
P Wage Certification for Construction Contracts
Q Bid Bond
R Performance Bond with Surety
S Payment Bond with Surety
T Apprenticeship Program Preference
U HRS 104 and Davis-Bacon Prevailing Wage Rates

1 Notice to Offerors

COUNTY OF MAUI – DEPARTMENT OF WATER SUPPLY
LAUNIUPOKO AQUIFER WELL DEVELOPMENT SITE L-1 PRODUCTION LAUNIUPOKO, MAUI, HAWAIʻI
DWS CIP JOB NO. 20-01-A-DV

The Department of Water Supply (DWS) is soliciting qualifications from prospective Offerors for the furnishing and paying for all materials, labor, transportation, goods and services, tools, supplies, equipment, machinery, construction, testing and commissioning services incidental to and necessary to design and construct the Launiupoko production well at Site L-1, DWS seeks to develop groundwater production wells to replace 1.55 million (mgd) of surface water required to be released into Kanaha Stream.

DWS is issuing this Request for Proposals Part 1 (RFP Part 1, also referred to herein as solicitation) pursuant to Hawaiʻi Revised Statutes (HRS) Section 103D-303D, and the Hawaiʻi Administrative Rules (HAR) Chapter 3-122, Subchapter 6. The procurement for the Project involves a two-step process.

The RFP Part 1 (**Request for Proposal Part 1**) process will solicit qualifications from prospective Offerors as stated in the RFP Part 1 Pre-Qualifications of Offerors. In accordance with RFP Part 1, an evaluation will be conducted of each Offeror's Qualifications received and, on the basis of the evaluation, a list of no more than three Pre-Qualified Offerors eligible to respond to RFP Part 2 (**Request For Proposal Part 2**) to perform the Design Build (DB) Project will be generated. The RFP Part 2 Process will follow the submission requirements and evaluation outlined in RFP Part 2. Prospective Offerors are directed to the Procurement Process section below for detailed information on the procurement process for this solicitation.

Documents received after the stated date and time will not be considered. All prospective Offerors shall have a State of Hawaiʻi professional engineer's license pursuant to Chapter 464, HRS and a Hawaiʻi State Contractor's License Type "A" at the time of submission of a Proposal in response to RFP Part 1 Pre-Qualification of Offerors.

RFP Part 1 must be received electronically via the Public Purchase (e-procurement system) by **10:00 AM (Hawaii Standard Time) on January 8th, 2027 and RFP Part 2** must be received electronically submitted via email to DWS.Engineering@mauicounty.gov, by **10:00 AM (HST) on March 12, 2027**

A non-mandatory pre-bid meeting will be held at **10:00 AM on Friday, November 30, 2026** via Microsoft Teams. Interested parties requesting to attend the meeting are required to provide notification of attendance by email to **DWS.Engineering@mauicounty.gov** at least THREE (3) day prior to the designated date.

Offerors shall possess valid Hawaii State Contractorʻs licenses to perform the required work, which shall be valid at the time of RFP Part 1 closing.

RFP Part 2 must be accompanied by an acceptable form of proposal security in amount not less than five percent (5%) of the amount total sum proposal, including additives, payable to the "County of Maui", in compliance with Section 103D-323, Hawaii Revised Statutes, as amended.

Offerors are required to comply with the newest procurement code Hawaii Revised Statutes Chapter 103D, any rules and regulations and policy directives issued with respect to Chapter 1034D and any amendments thereof. Offerors are required to comply with the Maui County approved Procurement Policy found on https://hookumuhou.mauicounty.gov/31/Document-Library#docaccess-8604f9d66888dba80e803e40f99d32a4 including 2 CFR 200.318-327 and other federal regulations outlined in the policy.

The project involves furnishing all labor, tools, materials and equipment as necessary to perform the work.

Please refer to the Electronic Procurement System (http://www.publicpurchase.com/) for detailed information on DWS's electronic procurement system (see Section 5.1).

The Chief Procurement Officer reserves the right to cancel this solicitation or reject any or all Offers in whole or part if deemed to be in the best interest of DWS.

The Project is to be designed and constructed using the DB delivery method.

In no event will the Owner be liable for any costs incurred by any Proposer or any other party in developing or submitting a Proposal.

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MARCY MARTIN, Director
Department of Finance
County of Maui

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1.1 Abbreviations, Acronyms, and Definitions

This solicitation incorporates the definitions of HRS 103D; the HAR, Title 3, Department of Accounting and General Services, Subtitle 11, Procurement Policy Board, Chapters 120 through 131; the General Terms and Conditions for Professional Services Contracts, dated January 2019 (General Terms); and the General Provisions for Construction Contracts of the Department of Water, dated April 25, 2016 (General Provisions). In addition to the forgoing, the following terms have the meaning indicated:

"Addendum" or **"Addenda"** refers to a written or graphic document issued by the Department of Water Supply before the Proposal Due Date, which modifies or interprets the RFP Part 1 and subsequent RFP Part 2 using additions, deletions, clarifications, or corrections. It may be issued following a pre-bid/pre-proposal conference or as a result of a specification or work scope change to the solicitation

"Authorized Representative" refers to the person authorized to bind the Proposer in matters related to the RFP Part 1, RFP Part 2, and the Contract. This is the person authorized to sign for the project.

"Award Notice" refers to the award determination or notice to be issued by the Department of Water Supply in relation to the subsequent RFP.

"Award Winner", "Contractor", or **"Selected Proposer"** means a Proposer awarded a Contract resulting from the subsequent RFP Part 2.

"**Best Value**" means the most advantageous offer determined by evaluating and comparing all relevant criteria, in addition to price, so that the Proposal meeting the overall combination that best serves DWS is selected

"Bidder", **"Offeror"**, **"Proposer",** or **"Respondent"** means a(n) (i) legal person, (ii) partnership, or (iii) consortium of partnerships, and/or (iv) companies or other entities that submit a response to this RFP Part 1 and subsequent RFP Part 2 that is not currently debarred.

"CDBG-DR" refers to Community Development Block Grant - Disaster Recovery funding, which is additional funding appropriated by the United States Congress to rebuild affected areas and provide crucial unmet needs funding to assist in the recovery process.

"Contract" or **"Contract(s)"** refers to the agreement(s) to be executed between the Department of Water Supply and the Selected Proposer(s) in accordance with this RFP Part 1 and subsequent RFP Part 2.

"County/The County/COM/Maui County" refers to the County of Maui.

"**Design-Builder**" means the Proposer who is awarded the contract because its Proposal represents the Best Value to DWS and is responsible for the successful completion of the Project.

"Evaluation Committee" refers to the administrative body comprised of at least three (3) persons appointed by the Director of the Department of Water Supply to evaluate proposals (mostly execute rating and ranking) in a competitive procurement process.

"HAR" means Hawaii Administrative Rules, as amended.

"HRS" means Hawaii Revised Statutes, as amended.

"HUD" refers to the United States Department of Housing and Urban Development.

"Liquidated Damages" are the damages paid usually in the form of monetary payment, agreed by the parties to a contract, which are due and payable as damages by the party who breaches all or part of the contract. May be applied daily for as long as the breach is in effect.

"Procurement Policy" refers to the Procurement Policy (updated June 2026), which establishes the rules and requirements for the acquisition of goods and services of the County of Maui.

"**Project**" means all materials, labor, transportation, goods and services, tools, supplies, equipment, machinery, construction, testing and commissioning services incidental to and necessary for the design, construction and installation in place complete of the Launiupoko Aquifer Well Development Site L-1 Production.

"Proposal" or **"Proposals"** refers to the proposal(s) submitted by Proposer(s) in response to this RFP Part 1 and subsequent RFP Part 2.

"Proposal Due Date" refers to the date and time on which the Electronically Submitted Proposals are due. Proposals received after the stipulated date will not be accepted by the Department of Water Supply.

"Public Interest" means any government action directed to protecting and benefiting citizens at large, whereby essential goods and services are provided for the welfare of the population.

"Qualified Proposer" means a responsible and responsive Proposer whose Proposal meets the Submission Requirements of this RFP Part 1 and subsequent RFP Part 2 and obtains a technical score greater than or equal to the minimum threshold of this RFP Part 1 and subsequent RFP Part 2.

"RFP" means this Request for Proposals and addenda issued by the Department of Water Supply.

"Responsible" an entity or individual who is fully capable of meeting all of the requirements of the bid/proposal solicitation documents and subsequent contract. Must possess full capability, including financial and technical, to perform as contractually required. Must be able to fully document the ability to provide good faith performance.

2 Overview, Purpose, and Intent

2.1 Overview

Maui County's CDBG-DR grant addresses Maui's long-term recovery efforts, restoration of housing, infrastructure, economic revitalization, and public services in distressed areas following a disaster.

The Department of Water Supply, while administering HUD funds, may receive allocations for the recovery and mitigation following future disasters that impact Maui County. Therefore, the Department of Water Supply reserves the right to amend any contract(s) resulting from this procurement process to include services under any fund allocation presently administered and/or that may be administered by the Department of Water Supply.

2.2 Purpose

This RFP Part 1 and subsequent RFP Part 2 seeks to select design-build firm that will assist the Department of Water Supply in the implementation and administration of Launiupoko Aquifer Well Development Site L-1 Production for the Infrastructure and Public Facilities Program**,** under the CDBG-DR Program Portfolio, and any other federal allocation for a period for contract term of two (2) years and may, at its sole discretion, extend the contract term to three (3) additional optional annual extensions upon mutual agreement of the parties. If an additional term is needed, the County will seek the approval of HUD for contracts in excess of a five (5) year term, upon determining that no viable alternative is available. No additional term shall exceed the lifetime of the Grant Agreement, unless said term is extended by HUD, in which case the agreement nor extension shall not exceed the extended period.

The Contract shall be awarded to the responsible firm(s) whose technical approach to the project, qualifications, price, and/or any other factors considered, are most advantageous to the Department of Water Supply provided that the price is considered reasonable.

There is no guarantee of a minimum level of services that may be requested by the Department of Water Supply under this contract.

2.3 Department of Water Supply Reservation of Rights

In connection with this procurement process, including the receipt and evaluation of RFP Part 1 Proposals and the selection of Offerors elibgible to proceed to RFP Part 2, the Department of Water Supply reserves to itself (at its sole discretion) all rights available to it under applicable law, including without limitation, with or without cause, and with or without notice, the right to:

- Modify the procurement schedule.
- Waive limited deficiencies, informalities, and irregularities in a Proposal and accept and review a nonconforming Proposal.
- Hold meetings and interviews, and conduct discussions and correspondence, with one or more of the Respondents to seek an improved understanding of any information contained in an Proposal.

- Seek or obtain, from any source, data that has the potential to improve the understanding and evaluation of the Proposals.
- Reject a Proposal containing exceptions, additions, qualifications, or conditions not called for in the RFP Part 1 or otherwise not acceptable to the Owner.
- Conduct an independent investigation of any information, including experience, included in a Proposal by contacting Project references, accessing public information, contacting independent parties, or any other means.
- Reject any or all proposals, disregard or waive any minor instances of noncompliance, informality and/or irregularities in the RFP Part 1 process, or terminate the RFP Part 1 process at any time if deemed to be in the best interests of the County of Maui, the Department of Water Supply, or the communities will be served by such action.
- Reject and not consider any proposal that does not meet the requirements of this RFP Part 1, including but not necessarily limited to incomplete proposals and/or proposals offering alternate or non-requested services.
- Cancel this solicitation and reissue the RFP Part 1 or another version of it, if it is considered that doing so is in the public's best interest.
- Reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to, if:
    - Funding is not available,
    - Legal restrictions are placed upon the expenditure of monies for this category.
    - The Department of Water Supply requirements in good faith change after award of the contract.
- Require additional information from all Proposers.
- Contact any individuals, entities, or organizations that have had a business relationship with the Proposer to request references. Even though they were not included in the reference section of the RFP Part 1 submittal.
- In the event any resulting contract is prematurely terminated due to nonperformance and/or withdrawal by the Contractor, the Department of Water Supply reserves the right to:
    - seek monetary restitution (to include but not limited to withholding of monies owed or the execution of the payment and performance bond) from the Contractor to cover costs for interim services and/or cover the difference of a higher cost (difference between terminated Contractor's rate and new company's rate) beginning the date of Contractor's termination through the contract expiration date.
- Amend the contract(s) of the Selected Proposer(s) to, among others, extend its original duration, or to extend the scale of its scope to include work under subsequent CDBG-DR action plans or other federal funds as related to the services requested herein, or to reduce the scale of its scope to decrease work as a consequence of underperformance or inexcusable delay related to the services requested herein.
- Contract with one or more qualified proposers as a result of the selection of qualified Proposers or the cancellation of this RFP Part 1.

- Negotiate any price from the Awarded Proposer(s) in response to a specific order under this solicitation.
- Withdraw from the contracting process with a Selected Proposer if the Selected Proposer does not provide the required contract documents, including insurance requirements, within **ten (10)** business days of the contract Award Notice.

The Department of Water Supply reserves the right to, at any time during the ensuing contract period, and without penalty to the Selected Proposer(s) contracted as a result of this RFP Part 1, conduct additional competitive solicitations to obtain additional design-build construction services when, in the opinion of the Contracting Officer, it is the best interests of the Department of Water Supply to do so.

This contract does not entitle any firm to exclusive rights to County agreements/contracts. The Department of Water Supply reserves the right to perform any and all available required work in-house or by any other means it so desires.

2.4 Errors and Omissions

Approval by Department of Water Supply of the Selected Proposer's work product for the project shall not constitute nor be deemed a release of the responsibility and liability of the Selected Proposer for the accuracy and competency of the Selected Proposer's designs, drawings, specifications, or other documents and work pertaining to the project. Additionally, approval by the Department of Water Supply of the Selected Proposer's work product shall not be deemed to be an assumption of drawings, specifications, or other documents prepared by the Selected Proposer for the project. After acceptance of the final plans by the Department of Water Supply, the Selected Proposer agrees, prior to and during the construction of the project, to perform such Selected Proposer services, at no additional cost to the Department of Water Supply, as may be required by the Department of Water Supply to correct errors or omissions on the plans prepared by the Selected Proposer pertaining to the project.

2.5 Procurement Policy

On June 2026, Maui County approved the Procurement Policy for use by all departments and divisions within the County of Maui Office of Recovery (County OOR).

2.6 Action Plan

The CDBG-DR Action Plan, as approved by HUD is available at https://hookumuhou.mauicounty.gov/31/Document-Library and is incorporated by reference and made an integral part of this RFP Part 1, RFP Part 2, and the Contract(s).

3 Scope of Work

The Department of Water Supply (DWS) is soliciting proposals from prospective Offerors for the furnishing and paying for all materials, labor, transportation, goods and services, tools, supplies, equipment, machinery, construction, testing and commissioning services incidental to and

necessary to design and construct the Launuipoko production well at Site L-1 as part of the Infrastructure and Public Facilities Program under the County's CDBG-DR Programs, under the current Action Plan, as amended, and any subsequent Action Plans, as well as for the future allocation of funds. Specific activities and tasks under the Scope of Work are included as **Attachment 1** (Scope of Work).

3.1 Deliverables (Applicable to RFP Part 2)

Deliverables to be provided are detailed in **Attachment 1** (Scope of Work). The Proposer shall be responsible for completing, at a minimum, the activities outlined in the Scope of Work. The Selected Proposer(s) shall assist the Department of Water Supply by providing additional resources to accomplish assignments authorized by the Department of Water Supply.

3.2 Contract Term

The term of the Contract will be for contract term of two (2) years and may, at its sole discretion, extend the contract term to three (3) additional optional annual extensions upon mutual agreement of the parties. If an additional term is needed, the County will seek the approval of HUD for contracts in excess of a five (5) year term, upon determining that no viable alternative is available. No additional term shall exceed the lifetime of the Grant Agreement, unless said term is extended by HUD, in which case the agreement nor extension shall not exceed the extended period. The Department of Water Supply reserves the right to re-procure the services at any time during the performance of the Contract.

A model contract for design-build construction will be included in the forthcoming RFP Part 2 **Attachment 3** (Model Contract). Please be aware that this model contract is just a draft and may be subject to modifications before execution, at the Department of Water Supply discretion, as a result of negotiations with Proposer, by law or regulations, or any other event that may affect the dispositions therein contained.

This RFP Part 1, its award, and any derivative contract are subject to a grant agreement between the County of Maui and HUD, and the availability of the allocated CDBG-DR funds. Proposer acknowledges and agrees that any suspension, cancellation, or termination of the CDBG-DR allocation will result in the immediate suspension, cancellation, or termination of this RFP Part 1, award, or executed contract, upon Department of Water Supply's notice.

Issuance of this RFP Part 1 does not constitute a commitment by the County of Maui and/or the Department of Water Supply to award a contract.

3.3 County of Maui General Terms and Conditions

The County of Maui General Terms and Conditions for Construction shall be made a part of the proposal documents, and can be found at the following link(s): https://www.mauicounty.gov/DocumentCenter/View/142382/Professional-Services-GTCs and in **Attachment 5** (General Terms and Conditions).

It is the sole responsibility of the Proposers to ensure that these Terms & Conditions are considered and reviewed before submitting its proposal.

Proposers acknowledge and agree that there shall be no post-award revision to the General Conditions.

3.4 State of Hawaii Requirements

In accordance with Section 3-122-112, as amended, of the Hawaii Administrative Rules, the Selected Proposer must produce the following documents:

- Tax Clearance Certificate
- DLIR Certificate of Compliance
- Certificate of Good Standing from the DCCA

The awarded Proposer is encouraged to use the Hawaii Compliance Express (HCE) website to assist them in obtaining the above certificates. The State website is https://vendors.ehawaii.gov/hce/.

It is not a requirement of the Proposer to supply the compliance documents as part of the submittal. However, these documents are required to be provided to the Department of Water Supply by the time the contract is prepared for execution, following the award. For new users of HCE or out-of-state Contractors, the process of obtaining the required documents may be time-consuming. The Proposer is asked to certify that they are willing and able to obtain the compliance certification at the time of proposal submission.

3.5 Compliance Requirements

In addition to the State of Hawaii requirements, the Selected Proposer must also comply with the following:

- The County of Maui, in accordance with the provisions of Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 notifies all prospective providers that it will affirmatively ensure that in any contract entered into pursuant to this solicitation for proposals, disadvantaged, women, minority and veteran owned business enterprises (M/W/V/DBEs) are afforded full opportunity to participate in response to this solicitation and will not be discriminated against on the grounds of race, color, age or national origin in consideration for an award. Prospective providers must comply with the County's equal employment opportunity policy, which prohibits discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin.
- The Equal Employment Opportunity Regulations of the Secretary of Labor implementing Executive Order 11246, as amended, shall be complied with on this project.
- Title 2 of the Code of Federal Regulations (C.F.R.), Part 200. As a non-state entity, the County of Maui shall comply with the standards set forth in 2 C.F.R. § 200.317-327. Where the federal procurement under grant standards does not address a specific procurement issue, the County shall abide by its own applicable procurement code and rules.

- The Selected Proposer will be required to agree to contract provisions required by Title 2 of the Code of Federal Regulations (C.F.R.), Part 200, sections 200.317-200.327. 2 C.F.R. § 200.327, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
- Title 24 of the Code of Federal Regulations (C.F.R.), Part 570; the CDBG-DR Universal Notice issued by HUD, as amended; and any other HUD Federal Register notices, waivers and alternative requirements applicable to the County.
- In addition, the Selected Proposer must not be suspended, debarred, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. The County of Maui shall utilize SAM.gov to verify compliance with 2 C.F.R. § 200.318(h).
- License(s): Proposers should provide, at the time of the opening of the proposal, all necessary permits and/or licenses required for this product and/or service.

3.6 Order of Precedence

If a conflict exists between the "Terms and Conditions" the following order of precedents will apply:

1. County of Maui, General Terms and Conditions
2. Special Conditions and Supplemental Instructions
3. Scope of Work
4. Request for Qualifications (RFP Part 1)

3.7 Waiver of Claims

Once this contract expires, or final payment has been requested and made, the Contractor shall have no more than thirty (30) calendar days to present or file any claims against the County concerning this contract. After that period, the County will consider the Contractor to have waived any right to claims against the County concerning this agreement.

3.8 Penalties and Liquidated Damages

The services will be subject to the following penalties and liquidated damages:

- **Penalties:** If the selected Proposer is determined to have engaged in any proscribed conduct or otherwise is in default as to any applicable term, condition, or requirement of the contract, the Department of Water Supply may impose sanctions against the selected Proposer for any default. Refer to all required provisions set forth at 2 C.F.R. § 200.327 and 24 C.F.R. § 570.489(g).

  If the Contractor fails to comply with federal statutes, regulations, or the terms and conditions of the contract, the Department of Water Supply may take one or more of the following actions:

  - Temporarily withhold cash payments pending correction of the deficiency by the Contractor.
  - Disallow all or part of the cost of the activity or action not in compliance.
  - Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180.
  - Withhold further Federal awards for the project or program.

- Take other remedies that may be legally available.

- **Liquidated Damages:** Department of Water Supply and the Selected Proposer(s) will agree on the timetable for the deliverable of each task. The Selected Proposer(s) shall pay Department of Water Supply, as liquidated damages, $1,000 for each calendar day that a required deliverable is late until deemed in compliance, subject to a maximum amount of not to exceed 1 percent (1%) of the total contract value. Said sum, given the difficulty of accurately ascertaining the loss that Department of Water Supply will suffer because of delay in the completion of the work herein requested, is hereby fixed and agreed as the liquidated damages that Department of Water Supply will suffer because of such delay. Liquidated damages received are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the Department of Water Supply's right to indemnification, or the Selected Proposer(s)' obligation to indemnify the Department of Water Supply, or to any other remedy provided for as a provision of the contract or law. Liquidated damages may be assessed at the sole discretion of the Department of Water Supply. Liquidated damages shall be assessed only for delays that are directly attributable to the Selected Respondent's failure to perform the required services in a timely manner as set forth in the resulting contract. The Selected Respondent shall not be liable for liquidated damages to the extent any delay is caused, in whole or in part, by actions, omissions, decisions, approvals, reviews, changes in scope, failure to provide necessary information, or other delays attributable to the County, the County's representatives, other contractors or consultants retained by the County, or circumstances beyond the Selected Respondent's reasonable control. Any period of delay resulting from such causes shall be excluded from the calculation of liquidated damages. To apply and calculate such liquidated damages, a grace period of **ten (10) days** shall be observed. The Department of Water Supply may deduct and retain out of the monies which may become due to the Selected Proposer(s), the amount of any such liquidated damages, and in case the amount which may become due is less than the number of liquidated damages due to the Department of Water Supply, the Proposer shall be liable to pay the difference.

3.9 HUD General Provisions

Given that the contract involves federal funds for which HUD is the federal oversight agency, the Selected Proposer agrees to comply with all the requirements and HUD General Provisions included in **Attachment 7** (Special Provisions and Regulations Required by HUD).

3.10 Insurance Requirements

Proposer shall be aware that, in case of being selected for the award of this RFP Part 1 and subsequent RFP Part 2, Proposer must have at a minimum the required insurance policies and coverages. For details regarding insurance requirements, refer to **Attachment 5** (General Terms and Conditions).

3.11 Local Participation

In accordance with HRS §103B-3, the Contractor awarded any contract resulting from this solicitation shall ensure that not less than eighty percent (80%) of the total workforce hours expended in the performance of the contract are worked by Hawaii residents, as defined by applicable state law. Compliance shall be determined by dividing the total hours worked by Hawaii residents by the total hours worked by all employees of the Contractor and its subcontractors, excluding hours worked in shortage trades as determined by the Hawaii Department of Labor and Industrial Relations.

Proposers are encouraged to utilize local subcontractors, professionals, consultants, and service providers headquartered in Hawaii or primarily doing business in Hawaii to support compliance with HRS §103B-3. As part of the proposal, Proposers may include a brief description of their anticipated workforce approach and use of local entities; however, such information is provided for informational purposes only and does not modify the Contractor's statutory obligations.

Certification of compliance with HRS §103B-3 shall be made under oath by an authorized officer of the general contractor and applicable subcontractors and submitted to the Procurement Officer with the notice of contract completion. Failure to comply may result in statutory sanctions, including withholding of final payment or debarment or suspension pursuant to HRS §103D-702, as applicable.

3.12 Minority, Women, and Veteran-Owned Business Enterprises

The Department of Water Supply recognizes its obligation to promote opportunities for maximum feasible participation of certified Minority, Women, and Veteran-Owned Business Enterprises (M/W/VBEs), and the employment of minority group members and women in the performance of all Department of Water Supply federally funded contracts. The Department of Water Supply is committed to ensuring that firms that are M/W/VBE certified are encouraged to submit proposals in response to this RFP Part 1.

The work to be performed under the contract resulting from this RFP Part 1 shall be subject to the regulations outlined in the 2 C.F.R. § 200.321 that require the non-federal entity to take necessary steps to ensure that all Subrecipients, Contractors, Sub-Contractors, and/or Developers funded in whole or in part with the CDBG-DR financial assistance ensure that, when possible, contracts and other economic opportunities are directed to small and minority firms (MBEs), women-owned business enterprises (WBEs), veteran-owned business (VBEs), and labor surplus area firms. Consistent with Executive Orders No. 11625, 12138, and 12432, the subrecipient shall make every feasible effort to ensure that small businesses, M/W/VBEs, and labor surplus area businesses participate in contracting.

The Department of Water Supply recognizes its obligation to promote opportunities for maximum feasible participation of certified M/W/VBEs, and the employment of minority group members and women in the performance of the contracts. All participating entities engaged with the Department of Water Supply must make a commitment and demonstrate an acceptable "Good Faith Effort" toward the achievement of Department of Water Supply's M/W/VBEs subcontracting goals.

Good Faith Effort and affirmative steps shall include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this section.

3.13 Section 3

The work to be performed under the contract resulting from this RFP Part 1 shall be subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701u, and as implemented in 24 C.F.R. Part 75 (Section 3). You can access Department of Water Supply's Section 3 Policy requirements (https://hookumuhou.mauicounty.gov/31/Document-Library#docaccess-8d483aedf33ea123b20dd96ea27d6c86).

Specifically, for this contract, the Proposer shall indicate, if selected, how they will meet the Section 3 minimum benchmarks and will enforce these requirements with any subcontractors during the life of the contract with Department of Water Supply:

HUD's current Section 3 Project safe harbor benchmarks, as established in accordance with the provisions of 24 CFR 75.23 are:

Labor Hour Standard	Ratio Formula	Benchmark Percentage*
Section 3 Workers	Work Hours of Section 3 Workers ÷ Total Labor Hours	25%
Targeted Section 3 Workers	Work Hours of Targeted Section 3 Workers ÷ Total Labor Hours	5%

* Federal Register Doc. 2020-19183 Filed 9-28-20

1. For a worker to qualify as a Section 3 worker, one of the following must be maintained:

1	A worker's self-certification that their income is below the income limit from the prior calendar year;

2	A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;
3	Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
4	An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or
5	An employer's certification that the worker is employed by a Section 3 business concern.

2. For a worker to qualify as a Targeted Section 3 Worker, under eligible Housing and Community Development financial assistance:

1	An employer's confirmation that a worker's residence is within one mile of the worksite or, if fewer than 5,000 people live within one mile of a worksite, within a circle centered on the worksite that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census;
2	An employer's certification that the worker is employed by a Section 3 business concern; or
3	A worker's self-certification that the worker is a YouthBuild participant.

3.14 Hawaii Certified Enterprises

The Department of Water Supply encourages the utilization and participation of Disadvantaged Business Enterprise (DBE) firms or similar in procurements, and evaluation proceedings will be conducted within the established guidelines regarding equal employment opportunity and nondiscriminatory action based upon the grounds of race, color, sex or national origin.

3.15 Background Checks

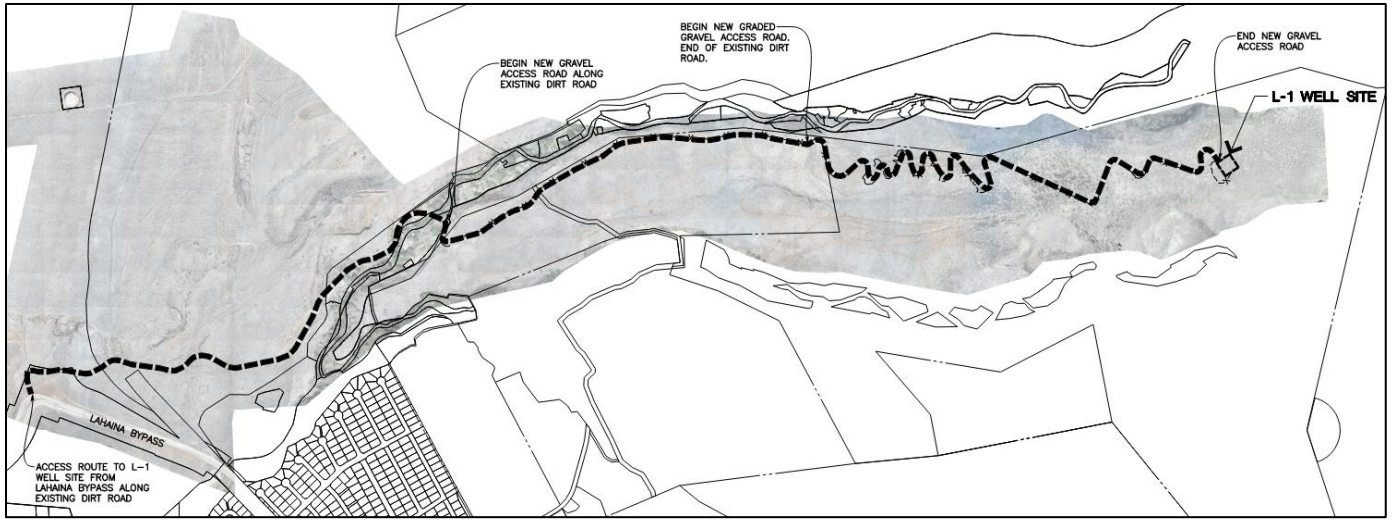
The Offeror is required to conduct background checks, at its own expense, for each employee as well as for the employees of its subcontractors who will provide services to the County or who will have access to County facilities or to County computer systems, either through on-site or remote access.

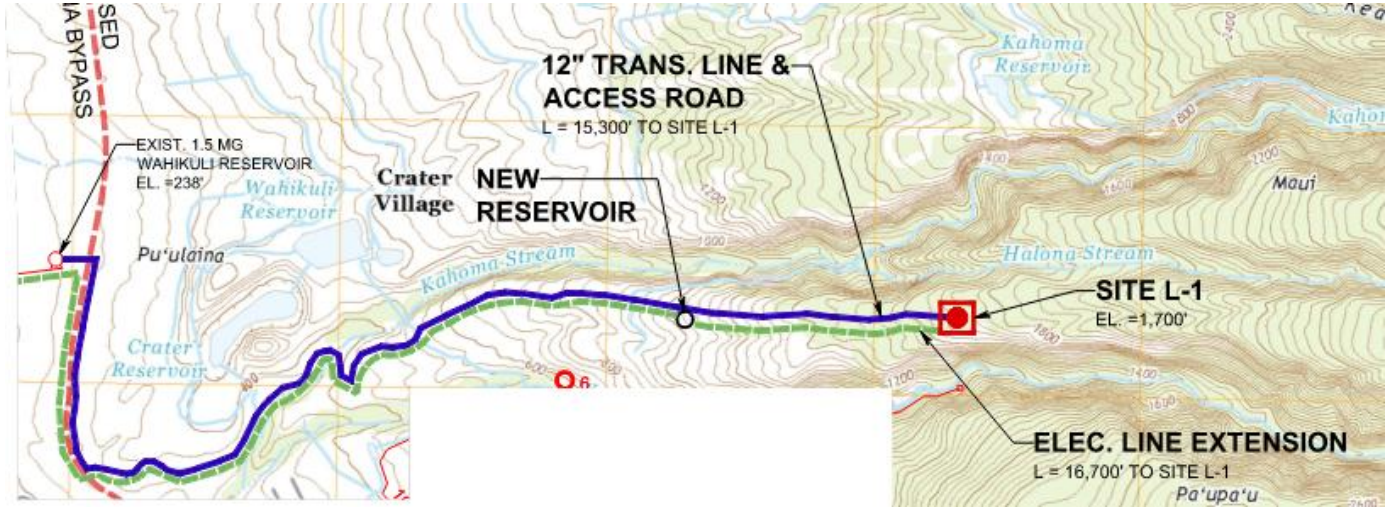
4 Background Information

4.1 Project Description

The purpose of this project is to design and construct a new production well and necessary infrastructure and appurtenances to supplement and provide additional water sources for the Department of Water Supply. The new well and infrastructure will be located at the site identified as Launiupoko, L-1. L-1 is about 2.8 miles from the ocean on the north side of Kanaha Stream and is on a portion of a 338-acre parcel, owned by the State of Hawaii.

Project Location:





A full description of the scope of the project can be found in **Attachment 1** (Scope of Work) and **Attachment 2** (Scope of DB Services). Key components of the project include:

1. **Installation of a production well and backup well**: Design and construct a new production well. Anticipated well diameter of 28 inches, a casing diameter of 20.75 inches, depth of 1,700 feet and an installed capacity of 807 gallons per minute. The primary production well shall be sized accordingly and anticipated to be equipped with a submersible pump and motor rated at 400-500 horsepower. Pump size, well screening, casing and other details will be determined during final design upon receipt of the exploratory well engineering report.

2. **Installation of a waterline**: Design and construct an approximately 2.9 miles of new 12 inch waterline to connect the new storage tank to the existing distribution system.

3. **Installation of a 2MG water storage tank**: Design and construct a new storage tank connected to the new production well.

4. **Installation of Electrical Line**: Design and construct electrical line to provide electricity for operations of new well site.

5. **Installation of a permanent Emergency Generator**: Site will require an anticipated 800-kW generator, fuel tank, and automatic transfer switch to ensure uninterrupted operations during electrical outages. Generator and fuel tank sizing to be determined in final design.

6. **Installation of Standard Facilities**: The site will include the standard anticipated infrastructure for groundwater well operation, including on-site piping, a 35,000-gallon control tank, chain link fence, 20x65 foot control building, chlorination equipment, water level monitoring equipment, safety equipment, and sitework. Standard Facilities sizing to be determined in final design.

7. **Installation of a permanent access road**: Design and construct a new road, approximately 2.9 miles, meeting all applicable codes and standards for access improvements for the well site, L-1.

8. **Permitting and Regulatory Compliance**: Obtaining all necessary permits and approvals to ensure the project meets legal, environmental, and safety requirements. This will involve coordination with relevant regulatory agencies, preparation of permit applications and submission of necessary documentation.

9. **Construction in Accordance with Solicitation Terms**: Executing construction activities in compliance with the terms and conditions outline in the solicitation, including adherence to technical specifications, quality standards, and project timelines.

10. **Submission of Record Drawings**: Upon completion of the project, the contractor will submit accurate record drawings that reflect the final installed well, waterlines, roadway, storage tank, operation building, all utilizes and appurtenances related to this Project. These drawings will document any changes made during construction, providing a detailed and up-to-date representation of the system.

The successful completion of this project will result in a new permitted water source supplementing the existing County of Maui Department of Water Supply's potable water system and ensuring compliance with applicable regulations. The project will be executed with minimal disruption to the existing water supply system and will provide a long-term water supply to the existing potable water system.

4.2 Project Funding

DWS intends to implement the Project utilizing a Design-Build (DB) delivery method, under which the selected Design-Builder will be responsible for providing complete design and construction services under a single contract. The Design-Builder will be selected through a competitive procurement process and will be responsible for advancing the design, establishing and maintaining the project budget, obtaining all required permits and regulatory approvals, and constructing the Project in accordance with the requirements established by DWS and the Contract Documents. The procurement will require proposers to submit a price proposal as part of the RFP Part 2, and the selected Design-Builder will be responsible for delivering the Project for the agreed-upon contract price while meeting the Project's technical, schedule, quality, and performance requirements.

The Project is funded by Community Development Block Grant – Disaster Recovery (CDBG-DR) funds via HUD. Therefore, this project will need to meet American Iron and Steel (AIS) certification requirements and adhere to the State Historic Preservation Department (SHPD) environmental review process including the federal National Historic Preservation Act Section 106 process review.

Construction phase activities are conditioned upon successful completion and approval of the required Environmental Review Record (ERR) in accordance with 24 CFR Part 58, and issuance by the U.S. Department of Housing and Urban Development (HUD) of the Authorization to Use Grant Funds (AUGF).

If environmental clearance is not obtained, or if HUD does not authorize the use of funds, the County retains the right to withdraw or modify any or all portions of the resulting contract without obligation. No choice-limiting actions are authorized unless and until the above conditions are satisfied.

Accordingly, the Design-Build (DB) contract including the Project Schedule must meet the terms of the County and HUD funding requirements.

Further, funds are available and appropriated only for the first fiscal year of the contract, the contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds. The contract may be cancelled if funds are not appropriated or otherwise made available to support the continuation of the contract after the first fiscal year. No breach of contract shall be deemed to have occurred as a result of this termination, which shall be considered as a normal termination of the contract, provided that the contractor shall be reimbursed for its unamortized, reasonably incurred, nonrecurring costs.

The head of the purchasing agency shall notify the Contractor on a timely basis regarding the availability of funds or the continuation of the contract for each succeeding fiscal period.

4.3 Schedule

The Project must be scheduled for completion by **February 28th, 2031**. All Work shall be planned and performed to meet this completion date.

The following are Department of Water Supply known constraints. This solicitation is issued before completion and approval of the following:

- The Launiupoko L1 Exploratory Phase testing is completed and well confirms hydrogeological conditions, water quality, and has a sustainable yield. The services included in this RFP Part 1, RFP Part 2 and subsequent contract will work with the Exploratory Well phase contractors to develop a clear hand off, Owner-Furnished Information designation, and early validation milestones while adhering to DWS decision-gate documentation requirements.
- The project's Hawai'i Revised Statutes (HRS) Chapter 343 Environmental Assessment and is intended to advance the project using approved construction documents.
- The project's HUD NEPA Environmental Assessment (24 CFR 58.36) and Authority to Use Grant Funds and is intended to advance the project using approved construction documents.
- Funding constraints for HUD CDBG-DR funded infrastructure projects require completion of construction, commissioning, and turnover by **February 28th, 2031**.

4.4 Project Budget

For the upcoming RFP Part 2, an appropriate budget allowance should be incorporated to account for potential procurement cost impacts associated with Senate Bill 2075 (Act 87, SLH 2026). The new local bidder and offeror preference requirements may influence bid pricing and contract award evaluations; therefore, a contingency should be included until the impacts can be more accurately assessed during project procurement.

4.5 Design-Build Delivery Method

The Project will be procured and delivered using the **Design-Build (DB)** delivery method. The selected Design-Builder shall furnish all professional design services, permitting and regulatory approvals, procurement, construction, commissioning, and closeout services necessary to deliver the Project under a single contract. The Design-Build procurement process will evaluate both qualifications and price in accordance with the solicitation requirements. The Design-Builder will be responsible for managing project scope, schedule, cost, quality, and risk, and for delivering a fully operational facility that satisfies the Owner's performance and technical requirements by the required completion date of **February 28th, 2031**. This delivery approach is intended to promote accountability, efficient project execution, and successful delivery within the established budget and schedule.

4.6 Owner Objectives

- **Quality**: Deliver the proposed facilities consistent with project design and specifications
- **Cost**: Minimize capital and life cycle cost

- **Schedule**: Achieve the scheduled completion date of the project by **February 28th, 2031**
- **Risk**: Achieve an optimal balance or risk allocation between the owner and the design-builder
- **Safety**: Implement an effective safety program incorporating industry best practices
- **Compliance**: Implement the Project in full compliance with applicable federal, State and County requirements.

4.7 Project Permits and Approvals

Permit requirements and approvals will be refined during the design-build process and should be incorporated into both design and construction budgets.

1. Well Construction Permit
2. Pump Installation Permit
3. Water Use Permit
4. Environmental (HEPA/NEPA)
5. Special Management Area - Conservation District Use Permit
6. County Zoning, Land Use and Grading approvals
7. Department of Health Safe Drinking Water Branch
8. NPDES Clean Water Act
9. Utility and Right-of-Way Permits
10. HDOT
11. County of Maui Building, Grading, Grubbing, and Stockpiling Permits
12. NPDES Construction Storm Water Permit
13. Traffic Control Permits
14. Well Construction and Pump Installation Permit Compliance
15. DOH Safe Drinking Water Branch Approval to Place the Facility in Services
16. Electrical and Mechanical Permits
17. Fuel Tank Permits

4.8 Roles and Responsibilities

Role	Owner	Design-Builder
Project Management	• Provide overall project direction, coordination, and decision-making authority for the Launiupoko Aquifer Well Development Site L-1 Production Phase Project. • Make day-to-day decisions. • Review and provide timely comments on Design-Builder deliverables and determine acceptance, required revisions, or	• Single point of contact with the Owner's Project Manager. • Develop and implement Project Management and Quality Management Plans. • Perform risk management and mitigation activities. • Establish and maintain a change management plan. • Develop and implement Project health and safety practices. • Facilitate resolution of Project issues and

	modifications. • Approve design and construction plans. • Manage contracts with Owner Advisor (Stantec Consulting Inc.) and Design-Builder. • Provide Project funding. • Approve scope changes. • Coordinate with Owner operations. • Manage funding, regulatory oversight, procurement sequencing, and compliance with applicable federal, state, and county requirements.	challenges. • Serve as the lead professional responsible for the planning, design, and engineering consistent with applicable County, State, and Federal standards. • Develop and maintain a detailed project schedule, coordinate design activities, and manage subconsultants, if any. • Prepare complete, accurate, and internally quality-controlled design deliverables, including plans, specifications, cost estimates, technical memoranda, and supporting documentation required to advance the project to construction. • Attend and participate in project meetings, workshops, and site visits, whether conducted remotely or in person, as requested by the County. • Identify schedule risks, design conflicts, constructability issues, and cost impacts, and proactively recommend solutions to the County. • Maintain complete project records and documentation in accordance with contractual and funding requirements.
Design Management	• Review design deliverables. • Participate in design reviews. • Provide input into design. • Participate in technology decisions. • Participate in design decisions that impact operations and maintenance activities. • Coordinate internal County reviews and interdepartmental input and serve as the primary point of contact between the Design-Builder and other County stakeholders.	• Lead engineering and design team resources. • Develop design deliverables. • Recommend technology solutions. • Facilitate review of construction submittals and verify design intent is being met during construction. • Coordinate with County departments, utility providers, regulatory agencies, and other stakeholders as directed by the County, and incorporate required standards, conditions, and approvals into the design. • Support environmental compliance and permitting efforts by providing technical information, refined design details, and responses to agency comments consistent with approved environmental determinations. • Licensed in accordance with Chapter 444, HRS, relating to the licensing of

		contractors. • Verify field conditions, configurations, and dimensions and use the actual as the basis for work.
Design and Preconstruction Services	• Review design deliverables and submissions. • Furnish existing studies and data including record drawings, preliminary studies, etc. • Provide access to site/easements. • Obtain government approvals and permits for which the Owner is responsible.	• Manage interface between design and construction team members. • Prepare and maintain a Project schedule. • Provide constructability input throughout design development. • Prepare equipment and subcontract procurement plans. • Provide additional Owner-requested, Project-specific services necessary for Project success.
Construction Services	• Participate in construction Project meetings. • Monitor construction activities.	• Deliver constructed work. • Manage self-performing and subcontracted work. • Manage craft labor. • Maintain site safety and security. • Perform engineering services during construction. • Obtain and comply with government approvals and permits for which the Design-Builder is responsible. • Provide warranty coverage for constructed work. • Maintain and transmit as-built drawings to the Owner at construction completion.
Commissioning and Startup	• Participate in the early development of the facility commissioning plan • Engage meaningfully in commissioning, startup, and training activities and prepare for handoff from	• Coordinate construction activities with and lead assigned testing, commissioning, startup, and training activities, coordinating with Owner's O&M staff to minimize impacts • Provide timely and complete submission of manufacturer's equipment O&M

	Design-Builder	materials • Prepare facility O&M manual

OTHER PARTIES

Other parties, including utility agencies, regulatory agencies, and third-party stakeholders, may have review, coordination, or approval roles related to the project. While the Firm is responsible for coordination and incorporation of requirements, these entities are not under the Firm's control, and review timelines may affect the overall project schedule.

AUTHORITY AND LIMITATIONS

The Firm shall not commit the County to any course of action, scope change, cost increase, or schedule modification without prior written authorization from the County. All final decisions regarding scope, budget, schedule, and advancement to future phases remain solely with the County.

5 Instruction to Offerors

The RFP Part 1 shall be governed by the procedures described in the following sections.

5.1 RFP Part 1 Electronic Procurement System

The RFP Part 1 documents are available for download by qualified firms at the Public Purchase System website: http://www.publicpurchase.com/ to access and download the documents, prospective Proposers must go to the "Bid Opportunities" section of the Website, where all procurement documents will be published.

Prospective Proposers interested in responding to this solicitation must be registered as a vendor in the Participant Portal is hosted by Neighborly Software. Prospective Proposers not registered with the Public Purchase System should go to http://www.publicpurchase.com/ to begin the registration process. For help, please visit: https://www1.publicpurchase.com/gems/hawaiico.hi/register/vendor/register.

All communications including addenda and acknowledgements for **RFP Part 1** only will be via the Public Purchase System. It is the sole obligation of Offerors to monitor the e-procurement system for information concerning this solicitation.

5.2 Addenda

Offerors shall base their qualifications and proposal on the terms and conditions contained in the proposal documents. Any change to the qualification and proposal documents shall be made by written addendum.

Offerors are responsible for confirming the existence of any addenda up until the day the qualifications or proposal are due. Failure by the offeror to receive any addendum shall not relieve the offeror from any obligation under its qualification or proposal as submitted. No oral interpretation, instruction, or information regarding the proposal documents given by any officer or employee of the County shall be binding.

Offerors shall refer to **Subsection 2.11 - Addenda of the County of Maui General Terms and Conditions** and any applicable Special Provisions.

The Department of Water Supply reserves the right to amend this RFP Part 1 at any time. Any amendments to the RFP Part 1 will be issued as written Addenda. Department of Water Supply will post copies of each Addendum for all prospective Proposers to monitor and download at the Public Purchase System website: http://www.publicpurchase.com/. Addenda will become a part of this RFP Part 1.

- DWS reserves the right to revise RFP Part 1 by issuing an addendum to it at any time prior to the RFP Part 1 Pre-Qualification Proposals due date specified in the Procurement Schedule. Additionally, DWS may revise the RFP Part 1 as provided for in HAR 3-122- 16.06.

5.3 Procurement Process

DWS is issuing this solicitation pursuant to HRS Section 103D-303 and HAR Chapter 3-122, Subchapter 6. The procurement for the Project involves a two-step process, Pre-Qualification of Offerors and Design-Build Proposals as noted in Section 1 (Notice to Offerors), and more fully described in **Attachment 3** (Model Contract) that will be included in the RFP Part 2. The draft scope of DB services for which pricing will be required in the RFP Part 2 step is defined in **Attachment 1** (Scope of Work) and **Attachment 2** (Scope of DB Services).

5.3.1 RFP Part 1 Pre-Qualification of Offerors

The RFP Part 1 process will solicit qualifications from prospective Offerors. Questions, comments, and requests will only be incorporated into the RFP Part 1 if an addendum is issued to reflect the change.. In accordance with RFP Part 1, Pre-Qualification of Offerors, an evaluation will be conducted of each Statement of Qualification (or response to RFP Part 1) received and, based on the evaluations in accordance with Section 7.3, a list of no more than three Pre-Qualified Offerors eligible to respond to RFP Part 2 to perform the design-build Project will be generated.

5.3.2 RFP Part 2 Design-Build Proposals

Following the determination of the Pre-Qualified Offerors, DWS will schedule discussion on RFP Part 2 with the Pre-Qualified Offerors. Details concerning the discussion will be made available only to the Pre-Qualified Offerors. Clarifications resulting from the discussions or clarification requests from the Pre-Qualified Offerors will only be incorporated into the RFP Part 2 if an addendum is issued to reflect the change. All addenda must be acknowledged by the Pre-Qualified Offeror.

DWS will assemble an evaluation committee to evaluate the RFP Part 2 Design-Build Proposals received based on the evaluation criteria set forth and intends to select the **Design-Builder** based on criteria as described in the RFP Part 2.

Consistent with the competitive sealed proposal process set forth in HRS § 103D-303, the Owner will provide a **$50,000 stipend** to each responsive, responsible shortlisted Proposer that submits a compliant RFP Part 2 Proposal but is not selected for award.

The stipend is intended to partially compensate eligible Proposers for the development of project-specific technical concepts, design solutions, analyses, or other work products requested as part of RFP Part 2 that may provide value to the Owner. The stipend is not intended to fully compensate Proposers for the costs associated with preparing or submitting a Proposal.

Eligibility for and payment of the stipend shall be subject to the requirements and conditions set forth in RFP Part 2.

5.4 Procurement Schedule

DWS anticipates the dates in Table 5-1 as Project milestones leading to contract award. Although DWS intends to adhere to the below schedule, this schedule is subject to modification at the sole discretion of DWS. If an activity is delayed, such as the "Proposal Due Date," the rest of the dates may be adjusted by the same number of days. The dates, times, and activities are subject to change and may be revised through the issuance of Addenda by the Department of Water Supply. Offerors will be notified of any changes to the significant dates by an Addendum to this solicitation via the e-procurement system.

Table 5-1: RFP Part 1 and RFP Part 2 Schedule and Significant Dates

RFP Part 1 Pre-Qualification of Offerors	
Pre-Proposal Conference Part 1	11/30/2026 @10:00AM
Deadline for Written Inquiries to RFP Part 1	12/7/2026
Responses to Written Inquiries to RFP Part 1	12/18/2026
RFP Part 1 Proposal Due Date	1/8/2027
Pre-Qualification Notice (Tentative)	1/15/2027
RFP Part 2 Design-Build Proposals	
Discussions with Pre-Qualified Offerors	1/25/2027 - 2/3/2027
Deadline for Written Inquiries to RFP Part 2	2/10/2027
Responses to Written Inquiries to RFP Part 2	2/26/2027
Proposal Due Date	3/12/2027
Tentative Award Date (Tentative)	4/12/2027

5.5 Correspondence and Communications

Inquiries and communications regarding the RFP Part 1 must be submitted to the Department of Water Supply via the Public Purchase System Portal.

5.5.1 Prohibited Communications

Verbal communications regarding the contents of the RFP Part 1 are prohibited during the submission and selection processes. Failure to adhere to this requirement may result in the rejection of submitted Proposals.

5.6 Questions and Clarifications

Each prospective Proposer may submit questions as to the intent of clarity of this RFP Part 1, its attachments, and its Exhibits. Offerors shall submit all comments, questions, and requests for clarification, to correct errors, or substitutions in writing on or before the deadline established in Section 5.4 of this RFP Part 1 via the e-procurement system for this RFP Part 1 (see Section 5.1). Inquiries shall be submitted by prospective Proposers using the document titled Form for Submission of Inquiries, included as **Attachment 4a** (RFP Part 1 Submission of Inquiries Form). Questions shall be clearly labeled, and the section(s) and page number in this RFP Part 1 or other document that forms the basis of the question shall be cited. Responses to all Proposers' questions will be distributed as an Addendum (Refer to Section 5.2 Addenda) to this RFP Part 1 on or before the date established in Section 5.4 and will be posted on the website.

This will allow issuance of any necessary amendments to this solicitation. It will also assist in preventing the opening of Statement of Qualifications upon which award may not be made due to a defective solicitation. For RFP Part 1, only written comments, questions, and requests submitted via the e-procurement system by the deadline will be considered. Oral comments, questions, and requests either in person or by phone will not be accepted or considered. Comments, questions, and requests to any other office, consultant, employee, or other agency will not be considered.

DWS will respond only to those comments, questions, and requests that DWS deems to be material and that are not adequately addressed in previously provided documents. DWS will state the comments, questions, and requests along with its responses and make those available to all prospective Offerors in RFP Part 1 and all Pre-Qualified Offerors in RFP Part 2. DWS reserves the right to rephrase and consolidate comments, questions, and requests concerning the same or similar subject. DWS will not post or respond to comments, questions, and requests for clarification that:

- Are claimed to be confidential or to contain confidential information or
- Request confidential responses.

DWS will provide written responses subject to the dates set forth in the Procurement Schedule.

If it appears to an offeror that the performance of the work or any matter relating thereto is not sufficiently described or explained in the proposal documents, or that a discrepancy exists between different parts thereof, or that the full intent of the proposal documents is not clear, the offeror shall submit a written request (questions) to the Director of Water Supply for clarification subject to the dates set forth in the Procurement Schedule.

Requests shall be submitted via the Public Purchase System Portal for RFP Part 1. If a clarification is determined to be required by the Director of Water Supply, it shall be issued in the form of an addendum. No oral interpretation, instruction, or information regarding the proposal documents

given by any officer or employee of the County shall be binding. Offerors shall refer to Subsection 2.10 – Clarification of Proposal Documents of the County of Maui General Terms and Conditions and any applicable Special Provisions.

The submitted PDF must contain bookmarks for each section listed in Section 8.

5.7 Acknowledgment of RFP Part 1 and RFP Part 2 and Offeror Representative

Prospective Offerors are encouraged to acknowledge receipt of this RFP Part 1 through the Electronic Procurement System and identify a designated representative who will serve as the Offeror's primary point of contact for notices, addenda, and other procurement communications associated with this RFP Part 1. Such acknowledgment must be submitted in the Electronic Procurement System in Section 5.1.

The notifications to Offeror's moving forward to the RFP Part 2 will be sent via email. **Please include the email address of the point of contact for notifications in RFP Part 1 & RFP Part 2**.

RFP Part 2 communications including addenda, acknowledgements, and award will be via email from: Joseph.Sinacori@co.maui.hi.us.

Any questions pertaining to the process, or helping in submitting a proposal, can be directed to Joseph Sinacori, PE at (808) 270-7473. Email: Joseph.Sinacori@co.maui.hi.us.

All proposals will be encrypted until the hour of proposal opening. The County of Maui will not be responsible in any way for errors in transmission or failure to receive the proposal by the deadline due to offeror error.

Offerors shall refer to Subsection 2.02 – Proposal Forms and Subsection 2.05 – Preparation of Proposals of the County of Maui General Terms and Conditions and any applicable Special Provisions.

5.8 Pre-Proposal Conference

A virtual Pre-Proposal Conference will be held via Microsoft Teams as follows:

Date: November 30, 2026
Time: 10:00 a.m. Hawaii Standard Time
Location: Microsoft Teams

Prospective Offerors will be provided the Microsoft Teams meeting information through the point of contact identified for the Offeror in the Public Purchase System. Offerors are responsible for ensuring that their point-of-contact information in Public Purchase is accurate and current. All communications and notifications related to RFP Part 1 will be issued through the Public Purchase System in accordance with Sections 5.1 and 5.5**.**

Offerors seeking assistance regarding the conference or access to the Microsoft Teams meeting may contact:

- Joseph Sinacori, P.E.: **Joseph.Sinacori@co.maui.hi.us**
- Carbon Copy DWS Engineering: **DWS.Engineering@mauicounty.gov**

Attendance at the Pre-Proposal Conference does not replace the requirement to submit formal comments, questions, or requests for clarification through the Public Purchase System by the deadline established in **Section 5.4**. Only written inquiries submitted through Public Purchase in accordance with **Section 5.6** will be considered for a formal response.

5.9 Visit

A non-mandatory site visit will not be available.

Submission of a Proposal shall be evidence that the Offeror understands the scope of the Project and has thoroughly familiarized itself with the existing conditions and the extent and nature of the work to be performed, and shall comply with all of the terms, conditions, and requirements of this solicitation if awarded the contract.

No additional compensation, subsequent to award, shall be allowed by reason of any misunderstanding or error regarding the site conditions or the extent and nature of the work to be performed.

5.10 Pre-Contractual Expenses and Representations for Proposal Submission (RFP Part 1)

All costs associated with the response to this RFP Part 1 are the sole responsibility of the Proposer. Neither the Department of Water Supply, the County of Maui, nor any of its Government Entities or its instrumentalities, nor HUD, or other relevant entities of the Federal Government, will be responsible for any expenses in the preparation and/or presentation of the Proposals, oral presentations, negotiations, or for the disclosure of any information or material received in connection with this RFP Part 1. Proposers shall not include any such expenses in their proposals.

The Department of Water Supply further reserves the right, without limitations, to make such investigations as it deems necessary as to the qualifications or perceived conflicts of interest of any firms submitting Proposals in response to this RFP Part 1. The mere appearance of a conflict of interest shall constitute sufficient cause for the outright rejection of a Proposal. If any or all Proposals are rejected, the Department of Water Supply reserves the right, without limitations, to re-solicit Proposals.

By submitting a Proposal, the Proposer shall adhere to complying with all applicable federal, state, and local laws and regulations.

5.11 Modification or Withdrawal of RFP Part 1 Pre-Qualification Proposals

A Proposal may be modified or withdrawn prior to the RFP Part 1 Proposals Due Date in accordance with HAR § 3-122-16.07. Any proposal may be withdrawn at any time prior to the time fixed in the public notice for the receipt of proposals, only by written request filed with the Purchasing Division. The request shall be executed by the Proposer or his duly authorized representative. The withdrawal

of a proposal does not prejudice the right of the Proposer to file a new proposal. No proposal may be withdrawn after the time fixed in the public notice for the receipt of proposals.

5.12 Ownership of Proposals

All materials submitted in response to this RFP Part 1 shall become the property of the Department of Water Supply and will not be returned. Selection or rejection of a Proposal does not affect this provision.

5.13 Requirements for Legal Entities

Proposers that are Hawaii-based corporations, limited liability companies, partnerships, or any other legal entity shall be duly and properly organized and/or registered in compliance with the applicable laws of Hawaii. Such entities must show that they are in "good standing" at the time of the Proposals submission. In the event the Proposer is a foreign legal entity, including U.S. based entities, it shall be duly and properly organized and/or registered in compliance with the applicable laws of its place of organization and/or incorporation. Such entities must show that they are in "good standing" within their jurisdiction at the time of Proposals submission. If a Contract is awarded to a foreign entity Proposer, said Proposer shall request authorization to do business in Hawaii previous to the execution of the Contract.

Proposers must ensure at all times that professional, architectural, or engineering services are performed by licensed professionals with the proper qualifications, skills, and experience necessary to perform the services, according to applicable regulations.

5.14 Laws & Regulations

All proposals must be submitted, filed, made, and executed in accordance with the County, State of Hawaii, and Federal laws relating to proposals for contracts of this nature, whether the same are expressly referred to herein or not.

By submitting a proposal, the Proposer certifies that the proposal submitted is in accordance with any required authorization by the governing body of the Proposer's organization. The Proposer further certifies that the information and responses contained in the proposal are true, accurate, and complete, and that the Department of Water Supply may justifiably rely upon said information for purposes of evaluation and contracting with the Proposer. If it is subsequently discovered that any information provided in the proposal is false, it will result in the Proposer's elimination from consideration.

The Contractor shall comply with all such laws, ordinances, codes, rules, regulations, design standards and criteria, governmental general and development plans. If any discrepancy or inconsistency is discovered between the contract and any such law, ordinance, code, rule, regulation, design standard, design criterion, and governmental general and development plans, the Contractor shall immediately report the same in writing to the Department of Water Supply.

The Contractor shall obtain all necessary permits and approvals for the performance of the contract and shall pay for all charges in connection with such permits.

Refer to Subsection 4.6 - Laws and Regulations of the County of Maui General Terms and Conditions and any applicable Special Provisions.

6 General Proposal Requirements

All proposals shall comply with the general requirements stated in the following sections.

6.1 Proposal Format

To ensure uniformity with specific requirements and prompt reference among all Electronic Proposals, the format of the Electronic Proposals shall adhere to the following parameters:

- Proposals shall be completed, signed, and submitted, including any required forms, via the Public Purchase website at https://www.publicpurchase.com. The County of Maui will not be responsible in any way for errors in transmission or failure to receive the bid by the deadline due to submission error or oversight.
- Proposer shall not submit more than one (1) offer.
- All proposals and other material submitted become the property of the County of Maui and may be returned at the sole discretion of the County of Maui.
- Required Forms: complete and return all required forms. If the form is not applicable, please return with "Not Applicable" or "N/A" in large letters across the form.
- Execution of Proposal: All documents must be properly signed by a corporate authorized representative, witnessed, and, where applicable, corporate and/or notary seals affixed. All proposals shall be typed or printed in ink. Please attach a copy of a Corporate Resolution confirming authorized signers.
- Should not contain links to other Web pages.

6.2 Proposal Execution

The Proposals must be properly executed by an authorized representative of the Proposer. To constitute proper execution, the Proposal shall be in strict compliance with the following:

- **Individuals:** Proposals submitted by Individuals shall be signed by them. If the Proposal is signed by an authorized representative, a power of attorney, dated and executed by the individual, shall be attached to the Proposal as evidence of the representative's authority to sign the Proposal and to bind the Proposer thereto.
- **Corporations:** Proposals submitted by corporations shall state the correct name of the corporation and must be signed by an authorized officer, whose authority to bind the corporation must be evidenced by the corresponding corporate resolution. The title or position occupied by the corporate officer executing the Proposal shall appear below the signature.
- **Partnerships:** Proposals submitted by a partnership shall be signed on the partnership's behalf by at least one general partner or by an authorized representative of the partnership. If the authorized representative signs the Proposal, a power of attorney, dated and executed by

all partners of the Proposer, shall be attached to the Proposal as evidence of the representative's authority to sign the Proposal and to bind the Proposer.

Where two or more Proposers desire to submit a single proposal in response to this RFP Part 1, they should do so on a prime-subcontractor basis rather than as a joint venture. The Department of Water Supply intends to contract with a single firm and not with multiple firms doing business as a joint venture.

6.3 Proposals Electronic Submission

Proposals are to be submitted on the Proposals Due Date stated in Section 5.4 of this RFP Part 1. Responses to the RFP Part 1 submitted after the prescribed deadline will not be allowed. Submissions of responses to the RFP Part 1 will only be accepted by electronic means via Public Purchase in accordance with Section 6.1. Proposers are advised that the Department of Water Supply will neither require nor accept physical proposal submissions, whether by courier, FedEx, UPS, DHL, personal delivery, or similar physical means. If Proposals are submitted in both electronic and paper formats, the Department of Water Supply will only consider the electronic format for evaluation.

The Proposer will receive access to submit the Electronic Proposals after the registration process is completed through the Public Purchase System. The proposal must be submitted within the closing date and time for Proposals as established in Section 5.4 of this RFP Part 1.

6.4 Health & Safety Program Certification

Pursuant to Section 396-18, HRS, relating to Safety and Health Programs for Contractors Bidding on State Construction Jobs, offerors whose bid and proposal are in excess of $100,000 shall submit a signed "Certification of Compliance, HRS 396-18, Safety and Health Programs" with their bid and proposal stating that a written safety and health plan for the job will be available and implemented by the notice to proceed date. **Failure to submit a signed "Certification of Compliance HRS 396-18, Safety and Health Programs" with a bid and proposal may be grounds for the County to disqualify an offeror and reject its proposal**.

Failure to have available and implement the written safety and health plan by the notice to proceed date shall be considered willful noncompliance and be sufficient grounds for the County to terminate the contract.

At a minimum, the written safety and health plan shall include:

(1) A safety and health policy statement reflecting management commitment;
(2) A description of the safety and health responsibilities of all levels of management and supervisors on the job and a statement of accountability appropriate to each;
(3) The details of:
    A. The mechanism for employee involvement in job hazard analysis;
    B. Hazard identification, including periodic inspections and hazard correction and control;
    C. Accident and "near-miss" investigations; and

D. Evaluations of employee training programs;

(4) A plan to encourage employees to report hazards to management as soon as possible and to require management to address these hazards promptly; and

(5) A certification by a senior corporate or company manager that the plan is true and correct.

6.5 Prevailing Wage

The contractor shall comply Chapter 104, HRS, relating to Wages and Hours of Employees on Public Works. Wages to be paid laborers and mechanics on this project shall be no less than the minimum prevailing wage, as determined by the Director of the Department of Labor and Industrial Relations. The wage rate schedules are issued on or about February 15 and September 15 of each year. A copy of the current minimum wage rate schedule can be downloaded at the DLIR website: https://labor.hawaii.gov/rs/home/wages/72-2/.

Notwithstanding the provisions of the contract, the prevailing wages shall be periodically adjusted during the performance of the contract in an amount equal to the change in the prevailing wages as periodically determined by the Director of Labor and Industrial Relations.

Offerors shall refer to **Subsection 6.14 - Rate of Wages for Laborers and Mechanics** of the County of Maui General Terms and Conditions and any applicable Special Provisions and **Exhibit U HRS 104 and Davis-Bacon Prevailing Wage Rates.**

6.6 Alternative Materials and Equipment

Proposals shall be based on materials and equipment specified in the proposal documents, unless the Director of Water Supply issues an addendum to approve substitution of material or equipment.

An offeror requesting a substitution of material or equipment shall submit a written request to the department for clarification not less than ten (10) calendar days prior to the day designated for opening of proposals.

Offerors shall refer to **Subsection 2.16 - Substitution of Materials and Equipment** of the County of Maui General Terms and Conditions and any applicable Special Provisions.

6.7 Records Retention

All documentation must be retained in accordance with 24 CFR 570.489 and County OOR record retention policies, which require retention of all procurement related documentation for a period of seven (7) years following notification to the County of Maui's Office of Recovery that the CDBG-DR grant for the August 2023 Wildfires has been closed.

6.8 Procurement Officer

The Procurement Officer for this solicitation is:

Joseph Sinacori
Department Water Supply
County of Maui

200 South High Street
Wailuku, Hawaii 96793

7 RFP Part 1 Evaluation Criteria

Proposals will be evaluated for compliance with the requirements of this RFP Part 1. The Department of Water Supply reserves the right to accept or reject any or all offers and to waive any minor or inadvertent discrepancy in the proposal documents.

Proposals must be complete and include all required documentation to be considered, so that Department of Water Supply can proceed with the evaluation. Proposals that are incomplete or fail to meet any of the mandatory submission requirements may be disqualified from further evaluation.

7.1 Evaluation guidelines

Department of Water Supply Procurement Personnel and Evaluation Committee will evaluate the proposals in accordance with the evaluation standards and methodology set forth in this section.

7.2 Minimum Requirements

Each responsive Proposal will be reviewed to determine whether it meets the minimum requirements outlined in this subsection. At its sole discretion, the selection committee may waive any failure to satisfy such requirements and may request clarification or additional information to address any questions that may arise in this regard. Any Proposal that does not satisfy all of the following minimum requirements may be rejected.

- Financial Condition of Design-Builder
- Ability of the Design-Builder to demonstrate it has bonding capacity in the amount of the entire contract price
- Ability of the Design-Builder to demonstrate it can provide the required insurance coverage
- Legal proceedings and judgements
- Completion of contracts
- Debarment status
- Licensing and registration. The Design-Builder and other Key Firms included in the Proposal must be licensed in Hawaii for the type of work to be performed.

7.3 Pre-Qualification Criteria

Offerors that submit qualifications to be “pre-qualified” shall be ranked according to the summation of the total score for each of the following criteria:

Criteria	Total Points Available
Timely Submission	Pass/Fail
Financial Stability	Pass/Fail
Certifications	Pass/Fail

A. Technical Qualifications	40
B. Approach to Design Build	30
C. Key Staff and Roles	25
D. Section 3 Compliance Form	5
Maximum Total	**100**

Only Proposals determined to be acceptable in accordance with the requirements of this RFP Part 1 will be placed on the Priority List. Proposals determined to be unacceptable will be rejected from further consideration.

7.3.1 Criteria Guidelines

7.3.1.1 Criteria A. Technical Qualifications

The offeror's demonstrated experience, capabilities, and past performance completing projects of similar size, scope, and complexity. This includes the qualifications of key personnel, relevant project history; identifying no more than three (3) projects, preferably design-build projects of this type of scope, organizational capacity, and the ability to successfully deliver a design-build project to required standards. Provide measurable outcomes, such as cost savings, time savings, and quality improvements. Include any performance metrics, such as exceeding safety standards or achieving certifications, documentation of change orders or amendments to the original contract, demonstrating the ability to adapt and manage unforeseen challenges. For each project, identify whether the project was a design-bid-build or a design-build project. Design-build project experience is preferred. Provide a brief description of the project, identify the owner and design engineer and whether the project was completed. Provide at least one "lesson learned" for each project.

7.3.1.2 Criteria B. Approach to Design-Build

The offeror's proposed methodology and understanding of the design-build process, including its project management strategy, communication plan, risk management and cost control approach, quality control procedures, and ability to integrate design and construction functions efficiently. Please indicate whether your design-build team has a written Teaming Agreement in place.

7.3.1.3 Criteria C. Project Team and Key Staffs Roles and Responsibilities

Describe the proposed Project Team organization, including the roles, responsibilities, reporting relationships, and management structure of the Design-Builder, key firms, and key personnel. The description should demonstrate how the team will be organized and managed to successfully deliver the Project. Key Staff and roles must include at a minimum those listed in Section 8.5.

The Key Firms and Key Personnel identified in the Proposal are considered essential to the Project. Any proposed changes to Key Firms or Key Personnel after Proposal submission shall be subject to the requirements of the forthcoming RFP Part 2 and shall require prior written approval from the Owner. Offerors shall clearly identify any anticipated substitutions and provide justification for such changes in accordance with the Solicitation requirements.

8 RFP Part 1 Pre-Qualification Proposal Content

Proposers shall comply with the following Submission Requirements in order for their Proposals to be evaluated on their technical aspects. **Submission requirements will be scored as either "Pass" or "Fail".** If the Proposer meets all Submission Requirements of this RFP Part 1, the Proposer will "Pass" the Submission Requirements Evaluation. If the Proposer does not meet all Submission Requirements, the Proposer will "Fail" the Submission Requirements evaluation. **Failure to comply with each of the Submission Requirements of this RFP Part 1 will result in the disqualification of the Proposal.** However, the Department of Water Supply, at its own discretion, reserves the right to waive minor irregularities. The proposal shall include the following documents in support of the team's capability to successfully perform the services.

Proposals must be submitted through the Public Purchase System website: http://www.publicpurchase.com/ within the closing date and time as established in Section 5.4 of this RFP Part 1. The proposal shall include the following information in support of the team's capability to successfully perform the services.

Prospective Offerors should make every effort to present information clearly and concisely. Prospective Offerors shall provide brief, concise information that addresses the requirements of the Project consistent with the evaluation criteria described in this RFP Part 1 and enable a clear understanding and evaluation of the prospective Offeror's qualifications. Legibility, clarity, and completeness of the RFP Part 1 Proposals are essential.

The Proposals submitted in response to this RFP Part 1 shall not exceed ten (10) single-sided pages, excluding dividers, cover letter, and other items specifically exempted by the RFP Part 1.

8.1 Cover Letter

The cover letter shall be signed by an authorized representative of the Proposer. The letter shall indicate the Proposer's commitment to providing the services at the price and schedule proposed. The letter shall establish the appointment of a person(s) to act as a primary contact for all Department of Water Supply. This person or back-up shall be readily available during normal working hours by phone or in person and shall be knowledgeable of the terms and procedures involved. Also, the cover letter shall identify the members of the team that comprise the Proposer. Indicate the organizational relationship of the team members. **(No more than 1 page).**

8.2 Certification

Qualifications must include a certification executed by the official representative of the prospective Offeror, verifying the accuracy of the information submitted as part of the Proposal. Evidence of the authority of the official representative(s) is required to be included in the Proposal. Failure to comply with this requirement may be cause for rejection of the Pre-Qualification Proposal as being non-responsive.

8.3 Executive Summary

Prospective Offerors shall provide an executive summary which contains sufficient information for reviewers with both technical and non-technical backgrounds to become familiar with the prospective Offeror's Proposal, its team organization, and its ability to satisfy the requirements of the Project.

8.4 Qualifications of the Proposer

A detailed and complete description of the Design-Builder and Key Firms must be provided with the Proposals Pre-Qualification Criteria

8.4.1 **Design-Builder Profile**

Required information applies to the Design-Builder and not to Key Firms (subconsultants/subcontractors). In the case of a joint venture, both parties must provide requested information. The Design-Builder profile must include the following information:

- **General Information**. Provide general information about the Design-Builder, such as lines of business and service offerings, locations of home and other offices, number of employees (professional and nonprofessional), years in business, and evidence of required licenses. Provide licenses in Appendix B (Supporting Financial and Company Documentation) of the Proposal.
- **Design-Builder Legal Structure**. Identify whether the Design-Builder is organized as a corporation, limited liability company (LLC), general partnership, joint venture, limited partnership, or other form of legal entity. Describe how the Design-Builder has used this structure, or a similar structure, to deliver similar projects. As applicable, identify the owners of the Design-Builder (e.g., shareholders, members, partners, and the like) who hold an interest of 10% or more in Appendix B (Supporting Financial and Company Documentation).
- **Project Office Location**. Identify where the Design-Builder intends to maintain its Project office(s) and the location where the construction management work will be performed.
- **Safety**. Provide a summary description of the Design-Builder's corporate safety program and include safety statistics or records indicating categories of accidents and their incidence or frequency rates for the past three years. The following safety records must be provided for the Design-Builder for the current and past three years:
    - **The experience modification rate (EMR) calculated by the National Council on Compensation Insurance or similar rating bureau**. (The EMR is also referred to as the experience modification rating, experience modification factor, experience modifier, or X-mod.) Where this value is greater than the industry average of 1.0, Respondent may provide mitigating information to explain the reasons for the EMR rating in Appendix B (Supporting Financial and Company Documentation).
    - **The days-away-from-work injury incidence rate**. A day-away-from-work injury is an injury that prevents an employee from returning to their next regularly scheduled shift. The incidence rate is calculated by multiplying the number of days-away-from-work

injuries for the particular year by 200,000 and then dividing the product by the person-hours worked for that year.

The Proposal must provide the following additional information pertaining to factors or events that have the potential to adversely impact the Design-Builder's ability to perform its contractual commitments. If any of the questions below are answered in a manner that indicates that any of these unfavorable factors or events are present, it is the Respondent's responsibility to (1) describe in detail the unfavorable factor or event, and (2) provide sufficient information to demonstrate that the unfavorable factor or event will not adversely impact the Respondent's ability to perform its contractual commitments. Include the following information in Appendix B (Supporting Financial and Company Documentation):

- **Financial Condition**. Provide financial statements for the Design-Builder for the past three years and quarterly financial statements, certified by the chief financial officer, for the current year. For publicly traded companies, reference to US Securities and Exchange Commission 10-K filings and any recent 10-Q findings are adequate. For entities that are not publicly traded, provide audited financial statements for the same period. If the Design-Builder is a joint venture, LLC, or partnership, such financial statements must be provided for each partner or member. In addition, submit evidence of financial stability and capacity through a Bank Reference Letter, Letter of Credit, audited or unaudited Financial Statements, or any other related documentation. County DWS reserves the right to request any additional information to assure itself of the Proposer's financial status.
- **Payment and Performance Bonds**. Provide a letter issued by the Design-Builder's surety company to verify the availability of a bond in the amount of one hundred percent (100%) of the contract price as required by Section 103D-324, Hawaii Revised Statues.
- **Insurance**. Provide a letter from the Design-Builder's insurance company or broker stating its ability to acquire and provide the minimum limits for the required insurance provided in **Attachment 5** (General Terms and Conditions). The required insurance must be obtained and maintained from insurance companies that have an A.M. Best Rating of A- or better and are duly licensed or authorized in Hawaii.
- **Legal Proceedings and Judgments**. List and briefly describe any pending or past (within five years) legal proceedings and judgments, or any contingent liability that could adversely affect the financial position or ability to perform contractual commitments to Owner. If no such proceedings or judgments are listed, provide a sworn statement to that effect from the Design-Builder's general counsel.
- **Completion of Contracts**. Has the Design-Builder failed to complete any contract, or has any contract been terminated due to alleged poor performance or default within the past 5 years? If so, describe the circumstances.
- **Debarred from Bidding**. Has the Design-Builder been debarred within the past 5 years, or is it currently under consideration for debarment on public contracts by the federal government or by any state? If so, describe the circumstances.

8.4.2 Key Firms

Identify and provide general information for any Key Firms (such as subcontractors and subconsultants) included on the Project Team. Include EMR safety records for the current and past three years for each Key Firm anticipated to be responsible for construction activities.

8.5 Project Team Structure and Key Personnel

Describe the structure and management of the Project Team. Note that any change in the Key Firms or Key Personnel included in the Proposal are subject to the provisions outlined in Section 7.3.1 (Criteria Guidelines, Criteria C. Project Team and Key Staffs Roles and Responsibilities), which requires Owner approval of such changes.

8.5.1 Project Team Structure

Describe the scope of the Design-Builder's and each Key Firm's services and responsibilities. Include organizational chart(s) showing reporting relationships and responsibilities of the Design-Builder and Key Firms.

8.5.2 Key Personnel Experience and Qualifications

Include organizational chart(s) identifying all Key Personnel (and their firm affiliations) and showing reporting relationships of all Key Personnel (along with their firm affiliations).

- **Project Manager** – Individual responsible for the overall delivery of the Project, including management of the design-build team, coordination with the Owner, and oversight of design, construction, commissioning, start-up, and project closeout.
- **Engineering Manager** – Individual responsible for the management, coordination, and delivery of all engineering and design services required for the Project, including preparation of design documents and provision of engineering support during construction.
- **Preconstruction Manager** Individual responsible for preconstruction planning, constructability reviews, permitting coordination, cost estimating, procurement planning, schedule development, and design-phase support activities, planning, risk management, and development of the Design-Build contract price.
- **Construction Manager** Individual responsible for planning, coordinating, and managing all construction activities, including subcontractor oversight, schedule management, resource allocation, and construction execution.
- **Site Superintendent** – Individual assigned full-time to the Project site and responsible for daily field operations, coordination of subcontractors and trades, site safety, quality control, and compliance with contract requirements.
- **Commissioning and Start-up Manager** – Individual responsible for developing and implementing commissioning, testing, start-up, and acceptance procedures necessary to achieve successful Project completion.
- **Safety Manager** – Individual responsible for development, implementation, monitoring, and enforcement of the Project Safety Plan and compliance with applicable safety requirements.

- **Quality Manager** – Individual responsible for development, implementation, and administration of the Project Quality Management Plan and associated quality assurance and quality control activities.
- **Lead Estimator** – Individual responsible for development of the proposal estimate, pricing, cost analyses, value engineering evaluations, and cost control support throughout Project delivery.

Describe Key Personnel individual qualifications and experience and how it aligns with their proposed role. Specifically discuss Project Manager's experience leading similar teams.

- Provide resumes for all Key Personnel in Appendix C (Resumes). Resumes must be limited to two pages per individual and include:
  - Academic and professional qualifications
  - Professional registration (as applicable)
  - Tenure with organization and industry
  - Experience as it relates to the Project and to the individual's specified role on the Project

8.6 Relevant Project Experience

Describe the performance history and experience of the Project Team on similar projects, including a description of past working relationships.

The Respondent shall submit a minimum of 3 and up to 5 reference project descriptions to demonstrate relevant experience with projects of similar scope and scale for municipal clients in the United States, completed in the last 10 years, with a preference for collaborative delivery projects. Each project description shall contain at least the following information:

- Project name and location
- Name of owner
- Owner reference and contact information
- Delivery method (DB, PDB, CMAR, etc.)
- Role of Respondent and/or Key Firm(s)
- Initial and final contract value and reason for change
- Scheduled and actual completion dates
- Description of the project showing relevance to this Project
- Names of Key Personnel that participated in project and are included in this Proposal, along with a clear description of the roles and responsibilities of each

Provide a one-page summary table to cross-reference the Project Team (Design-Builder, Key Firms, and Key Personnel) with participation in the reference projects.

Prospective Offerors shall provide the information necessary to establish the prospective Offeror meets the pre-qualification criteria identified in Section 7.3.

8.7 Appendix A – Forms for Affirmation of Compliance

Appendix A must include executed forms, affirming that Proposer is in compliance with the required policies, based on the forms in the Attachment and Exhibits for this RFP Part 1.

8.8 Appendix B—Supporting Financial and Company Documentation (submit under separate cover)

Appendix B must include all information required in Section 8.4.1.

8.9 Appendix C—Resumes

Appendix C must include resumes for all Key Personnel in Proposal, per requirements of Section 8.5.2.

8.10 Financial Stability

The Proposer, in its Proposal, shall demonstrate that it has adequate financial resources to perform the services under the Contract. The Proposer must provide:

8.10.1 Financial Stability and Capability

The Proposer must submit evidence of financial stability and capacity through a Bank Reference Letter, Letter of Credit, audited or unaudited Financial Statements, or any other related documentation. The Department of Water Supply reserves the right to request any additional information to assure itself of the Proposer's financial status.

8.10.2 Disclosure Requirement.

The Respondent must disclose significant audit findings, monitoring findings, defaults, or corrective actions in the last five years.

8.10.3 Legal Actions

Sworn statement executed by an authorized representative of the Proposer, dated not later than **sixty (60) days** before the Proposal submission date, of any relevant or significant pending litigation or claim against the Proposer. Must include at a minimum the following information.

- Parties involved;
- Case number;
- Nature of cause;
- Amount involved;
- Probability of loss; and
- Statement certifying the Proposer is not in bankruptcy, receivership, or any other condition, preventing the Proposer from total or partial administration or disposition of its property.

8.11 Certifications & Affidavit

Submit an executed copy of the Certification Affidavit. Proposer must submit with his response to this RFP Part 1: **Exhibit D** which includes the following certifications: Non-Conflict of Interest Certification, Non-Conflict of Interest on Existing or Pending Contracts, Limited Denial of Participation (LDP)/Suspension or Debarment Status Affidavit, Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Non-Collusive Affidavit, Contractor's Standards of Conduct Declaration and Anti-Lobbying Certification. Also the following: **Exhibit F**, HUD Form 4010 (Federal Labor Standards Provisions), **Exhibit G** Litigation and Audit Finding History, **Exhibit H** Certification of Compliance for Employment of State Residents HRS Chapter 103B, As amended by Act 192, SLH 2011, **Exhibit I** Non-Gratuity Affidavit, **Exhibit J** Certification of Compliance with HRS 396-18, Safety and Health Program for Contractor Bidding on County Jobs in Excess of $100,000, **Exhibit K** Certification of Compliance for Final Payment, **Exhibit L** Section 3 Business Concern Certification, and **Exhibit M** Standards of Conduct Declaration, duly completed and notarized, if applicable. The document authorized by a Notary Public outside of Hawaii jurisdiction shall be authenticated and include an official certificate or apostille from the Secretary of State, County Clerk or corresponding entity of the State government.

8.12 Authorization Request

Submit an executed copy of the authorization to request financial, performance, and reference information. The Proposer shall submit **Exhibit E**, which includes Authorization for Background and/or Financial Information, Proposer's Prior Performance Certification.

9 Section 3 Business Concern, Veterans, and/or MWVBE, and Apprenticeship Program

In accordance with applicable federal regulations, including 24 CFR Part 75 (Section 3) and 2 CFR §200.321, the Department of Water Supply will evaluate proposals based on the Proposer's demonstrated approach to advancing economic opportunities and inclusive contracting.

This consideration does not establish a mandatory quota or automatic preference and will be applied in a manner consistent with full and open competition.

9.1 Section 3 Preference

Proposers may receive evaluation credit for demonstrating alignment with Section 3 objectives, which prioritize providing contracting and employment opportunities to low and very low-income persons and Section 3 Business Concerns, to the greatest extent feasible, as required under 24 CFR Part 75.

Proposers must be able to demonstrate that they meet one of the following criteria:

- Fifty-one percent (51%) percent or more owned by Section 3 residents; or

- Has permanent, full-time employees at least thirty per cent (30%) of whom are currently Section 3 residents, or within three (3) years of the date of first employment with the business concern were Section 3 residents, or
- Has subcontracted or a commitment to sub-contract in excess of twenty-five percent (25%) percent of the total dollar award of all sub-contracts to be awarded to such businesses described above.

9.2 Section 3 Supporting Evidence

Supporting Evidence to substantiate Section 3 status can include:

- Evidence of business ownership (e.g. Articles of Incorporation, By laws, proof of fifty one percent (51%) company ownership, Partnership Agreement);
- Evidence of employees of the business (e.g. roster of all full-time or part-time, permanent workforce and labor hours);
- Evidence of completed Section 3 Worker Self-certification Forms for each of my employees who qualify as a Section 3 Worker or Targeted Section 3 Worker and a copy of their timesheets to indicate their Labor Hours performed;
- Certification that the business has reviewed that each of the employees listed as a Section 3 Workers qualify as Section 3 Workers based on their supporting documentation provided and retained on the business file.

9.3 M/W/VBE Documentation

Proposers may submit current M/WBE and/or VBE certification(s), if applicable. Such documentation will be reviewed solely as evidence of the Proposer's familiarity with and participation in inclusive contracting practices and will not, by itself, result in an automatic preference or award of points.

All Proposers will be evaluated using the same criteria regardless of certification status.

9.4 Section 3 or M/WBE Policies

You can locate the Section 3 or MWBE Policy document with all the related information of this topic available in English and Spanish on the Department of Water Supply (Document Library | Ho'okumu Hou: County of Maui Office of Recovery CDBG-DR, HI).

9.5 Apprenticeship Program Preferences:

To be considered must have Apprenticeship Program in place, the proposer must submit **Exhibit T** (Apprenticeship Program Preference) with their response to the subsequent RFP Part 2.

Apprenticeship Program Preference: Pursuant to HRS 103-55, applicable to public works projects with estimated values of $250,000 or greater. Section 103-55.6 HRS, as enacted by S.B. 19, Act 17, SLH 2009, and the State of Hawai'i Comptroller's Memorandum 2011-06 as amended, provides for a Hawai'i Apprenticeship Preference for public works construction projects with estimated values of

$250,000 or greater. The preference shall be in the form of five percent (5%) bid adjustment applied to the Pre-Qualified Offeror's Proposal amount.

10 Conditions for Respondents

10.1 Ineligible Firms and Individuals

Any entity performing advisory, consulting, drafting, evaluation, or other support functions associated with the procurement process for this project and are therefore ineligible to participate as proposers, partners or subcontractors with any Offeror that submits an Proposal.

10.2 Conflict of Interest

Provide a signed copy of **Exhibit M** (Standards of Conduct Declaration), that mandates the public disclosure of certain information concerning persons doing business or seeking to do business with Owner, including affiliations and business and financial relationships such persons may have with Owner's officers.

11 Evaluation of RFP Part 1 Pre-Qualification Proposals

An Evaluation Committee will be appointed by the Department of Water Supply. The Evaluation Committee will assist the Department of Water Supply Purchasing Division in reviewing and rating various sections of this RFP Part 1, as well as making recommendations. The Department of Water Supply Procurement Division and the Evaluation Committee may rely on specialized advisers, consultants, and/or subject-matter experts to complete the evaluation of the proposals.

Proposals will be evaluated by the Department of Water Supply as described in the following sections.

11.1 Technical Evaluation

The Evaluation Committee will perform a comprehensive evaluation of all proposals in a fair and impartial manner. The evaluation shall be conducted following the evaluation process described in this RFP Part 1.

Once the Evaluation Committee has completed a preliminary evaluation of the mentioned sections, it may elect to establish a short list of proposers. Only those proposals deemed to be qualified to successfully perform the services required, as evidenced by the supporting documentation provided, will be considered for the shortlist.

Section 3 compliance will be evaluated and assigned points in accordance with the evaluation criteria and point allocation identified in this RFP Part 1.

M/W/VBE documentation may be reviewed for purposes of documenting participation and/or applicable program requirements but will not be assigned evaluation points and will not be used to increase or decrease a Proposer's technical or cost evaluation score. Submission or non-

submission of M/W/VBE certification, by itself, shall not establish an evaluation preference, quota, or set-aside..

11.2 Shortlist

The objective of RFP Part 1 is to generate a list of no more than three (3) Pre-Qualified Offerors with the technical qualifications, approach to design-build, key staff and roles, and Section 3 Compliance to successfully undertake and complete the Work.

An evaluation will be conducted on each RFP Part 1 Pre-Qualification Proposal received that have been classified as potentially acceptable and, based on the scoring criteria, using the summation from the pre-qualification criteria for each prospective Offeror, a list of no more than three Pre-Qualified Offerors eligible to respond to RFP Part 2 to perform the design-build Project will be generated. In the event that prospective Offerors have the same total points and results in more than three Pre- Qualified Offerors, the tie-break will be based on the highest average Pre-Qualification Proposal for Criteria A and B. If there is a tie using this tie-break, the second tie-break will be based on the highest score for Criteria C. Discussions may be conducted with "priority-listed offerors" pursuant to section 3-122-53, however, proposals may be accepted without discussions.

The top three ranked Offerors shall be listed as the Pre-Qualified Offerors and will be eligible to respond to RFP Part 2.

11.3 Notice of Pre-Qualified Offerors

DWS will email the Pre-Qualified Offerors by the date specified in the Procurement Schedule.

11.4 Rejection of Proposals and Cancellation of RFP Part 1 and Subsequent RFP

Issuance of the RFP Part 1 and forthcoming RFP Part 2 does not constitute a commitment by the County of Maui and/or the Department of Water Supply to award a Contract. Failure to meet any of the requirements of the RFP Part 1 and subsequent RFP Part 2 may be cause for rejection of the proposal. The Department of Water Supply may reject the proposal if it is incomplete, contains irregularities of any kind, or is offered conditionally.

The Department of Water Supply reserves the right, without limitations, to accept or reject, in whole or part, and without further explanation, any or all Proposals submitted and/or to cancel this solicitation and reissue the forthcoming RFP Part 2 or another version of it, if it deems that doing so is in the best interest of the Public Interest, the County of Maui, the Department of Water Supply, or the impacted communities.

11.5 Confidentiality of Responses and Proprietary Information

The County of Maui is required to disclose non-exempt public documents. The County is exempt from disclosing information submitted in response to a solicitation where the information is such that it "should reasonably be considered confidential."

Upon completion of the RFP Part 1and RFP Part 2 process, the Department of Water Supply will make public its report regarding the qualification, procurement, and selection process, which shall contain certain information related to this RFP Part 1 and RFP Part 2 process, except trade secrets, proprietary information, or privileged and confidential information of the Proposers, so identified by Proposers. A Proposer who determines that information within its proposal meets the statutory requirement and requires that information remain confidential shall mark the bottom of the pages containing such information with the word "CONFIDENTIAL."

Accordingly, all Proposers are suggested to submit a redacted copy of their Proposal at the time of submission. For the purpose of clarity, "redacted copy" refers to a copy of the Proposal that has been modified, edited, or revised and any confidential or sensitive information has been removed. If a Proposer marks every page of a proposal as "CONFIDENTIAL", the statutory requirement is not met; any proposal so marked will not be deemed to have been submitted in confidence, and upon request, the entire proposal will be disclosed.

The Department of Water Supply reserves the right, without limitations, to make public the redacted copies of the Proposals at the conclusion of the RFP Part 1 and RFP Part 2 process. If a redacted copy is not submitted by a Proposer, the Department of Water Supply will assume that the original copy of the Proposal can be made public. Proposals containing substantial contents marked as confidential or proprietary may be rejected by the Department of Water Supply.

The Department of Water Supply cannot guarantee that confidentiality or proprietary claims made by a Proposer, in any way, will be honored. Due to the nature of this RFP Part 1 and RFP Part 2, some confidentiality or proprietary claims cannot be assured. Provision of any information marked as confidential, or proprietary shall not prevent the Department of Water Supply from disclosing such information if required by law. After the award, the contract(s) executed by the Department of Water Supply and the Selected Proposer(s) will be a public document subject to disclosure. **No part of the contract can be designated as confidential**.

Any and all information, be it trade secrets, proprietary or confidential information submitted as part of this RFP Part 1 and RFP Part 2 will be made available to HUD, the U.S. Office of Inspector General, or any other federal or state agency that requires said information for program evaluation and compliance purposes.

11.6 Trade Secrets or Proprietary Data

Trade secrets or other proprietary data that the Pre-Qualified Offeror does not want to be subject to public inspection shall be submitted at the sole risk of the Offeror and without any liability to the County.

The request for confidentiality shall be submitted as a separate attachment to the Proposal and readily identifiable. File name should include the term "CONFIDENTIAL" (3-122-46(9), HAR).

A Pre-Qualified Offeror shall request in writing, nondisclosure of information such as designated trade secrets or other proprietary data the Pre-Qualified Offeror considers to be confidential. Such requests for nondisclosure shall accompany the Proposal, be clearly marked, and shall be readily

separable from the Proposal in order to facilitate eventual public inspection of the non-confidential portion of the Proposal.

Disclosure or nondisclosure by the County of confidential material shall be governed by HRS, Chapter 92F, Uniform Information Practices Act (Modified). Confidential data is normally restricted to financial information concerning the Offeror's organization and data that qualifies as trade secret in accordance with the Uniform Trade Secrets Act (57-3A-1 to 57-3A-7, NMSA 1978). The price of products offered or the cost of services proposed shall not be designated as confidential information.

All information contained in Proposals that do not comply with these instructions will be considered non-proprietary and subject to public disclosure upon request.

12 Non-Selected Offerors and Debriefing

Non-selected Offerors will be notified via email. Non-selected Offerors may submit a request for debriefing to the Manager and Chief Engineer of the Department of Water Supply, or designee, **within three (3) working days** after receiving email notification of an award. Thereafter, the Manager and Chief Engineer, or designee, shall provide a debriefing, to the maximum extent practicable, **within seven (7) working days**. A protest may be filed with the Manager and Chief Engineer, or designee, **within (5) working days** after the debriefing. For protest requirements see HRS 103D-701 and HAR 3-126, Legal and Contractual Remedies.

12.1 Protests

Any protest to an Owner's action in connection with this procurement must be filed in strict accordance with HRS § 103D-701, HAR Chapter 3-126, the Owner's applicable procedures, and with applicable law.

12.2 Administrative Procedure and Appellate Remedies

A party adversely affected by a determination in a public bid process may file a request for administrative review before the several hearings officers appointed by the Director of the Department of Commerce and Consumer Affairs pursuant to Hawaii Revised Statutes (HRS) section 26-9(f). Requests for administrative review under HRS section 103D-709 shall be filed directly with the Office of Administrative Hearings of the Department of Commerce and Consumer Affairs within **seven (7) calendar days** after the issuance of a written determination under HRS sections 103D-310, 103D-701, or 103D-702.

The party that initiates a proceeding under subsection (d) must submit to the Department of Commerce and Consumer Affairs a cash or protest bond equal to one percent of the estimated contract value.

In addition to the bond required in subsection (e), the initiating party shall pay to the department of commerce and consumer affairs a non-refundable filing fee of:

1. $200 for a contract with an estimated value of $500,000 or more, but less than $1,000,000; or

2. $1,000 for a contract with an estimated value of $1,000,000 or more.

Any bidder, offeror, contractor, or person that is a party to a protest of a solicitation or award of a contract under HRS sections 103D-302 or 103D-303 that is decided pursuant to HRS section 103D-701 may initiate a proceeding under this section; provided that:

1. For contracts with an estimated value of less than $1,000,000, the protest concerns a matter that is greater than $10,000; or
2. For contracts with an estimated value of $1,000,000 or more, the protest concerns a matter that is equal to no less than ten per cent of the estimated value of the contract.

Hearings to review and determine any request made pursuant to subsection (a) shall commence within **twenty-one (21) calendar days** of receipt of the request. The hearings officers shall have power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue a written decision, not later than **forty-five (45) days** from the receipt of the request under subsection (a), that shall be final and conclusive unless a person or governmental body adversely affected by the decision commences an appeal in the circuit court of the circuit where the case or controversy arises under HRS section 103D-710.

No later than **thirty (30) days** after the filing of an application for judicial review, and upon review of the record, the circuit court may affirm the decision of the hearings officer issued pursuant to HRS section 103D-709, remand the case with instructions for further proceedings, or reverse or modify the decision and order.

If an application for judicial review is not resolved by the thirtieth (30^{th}) day from the filing of the application, the court shall lose jurisdiction, and the decision of the hearings officer shall not be disturbed. All time limitations on actions, as provided for in HRS section 103D-712, shall remain in effect.

13 RFP Part 2 Evaluation and Selection

13.1 Notice of Pre-Qualified Offerors

DWS will email the Pre-Qualified by the date specified in the Procurement Schedule.

If discussions are conducted, discussions may only be conducted with Pre-Qualified Offerors on the shortlist, and shall be held to:

- Promote understanding of the requirements herein and the Pre-Qualified Offeror's Proposal; and
- Facilitate arriving at a contract that is most advantageous to DWS, taking into consideration the evaluation criteria set forth in this RFP Part 1 and forthcoming RFP Part 2.

Addenda may be issued to clarify or modify the RFP Part 2 and shall be distributed only to Pre-Qualified Offerors on the shortlist.

Should best and final offers be deemed necessary at the sole discretion of the Department of Water, County of Maui, the Procurement Officer shall establish a date and time for the Pre-Qualified

Offerors on the Shortlist to submit their best and final offer. Pre-Qualified Offerors who do not submit a Notice of Withdrawal or respond to a call for best and final offers shall have their initial Proposal considered for final evaluation.

A selection for award of a contract shall be made wherein applicable and appropriate, either after the initial Proposals are received or after receipt of best and final offers. Upon receipt of any best and final offers, the evaluation process will be repeated. The process will consider the revised information and re-evaluate as appropriate.

13.2 Price Proposal

Pricing is not a factor in the RFP Part 1 Evaluation. Upon completion of the RFP Part 1 technical evaluation and shortlist, the RFP Part 2 process outlined in the Procurement Schedule will start. RFP Part 2 has a price proposal requirement that will be included and considered during the evaluation process.

13.3 Overall Evaluation and Final Recommendation

The Overall Evaluation and Final Recommendation will evaluate proposals based on the criteria included in the RFP Part 2. The Evaluation Committee will perform a final evaluation of proposals based upon the evaluation criteria in the RFP Part 2 considering the information provided in proposals and subsequent information and clarifications requested. The Evaluation Committee will consider the Proposer's ability to perform, the value offered in their proposal, and the reasonableness of the price proposed. Upon completion of the evaluation process, the Evaluation Committee will prepare a report establishing the ranking of Proposers based on the evaluation criteria. The Evaluation Committee will make a recommendation to the Procurement Director.

13.4 Selection and Discussion

The Evaluation Committee may recommend, or the Department of Water Supply Purchasing Division may determine, that discussions are necessary with one or more "Qualified Proposer(s)".

Discussion are exchanges between the Department of Water Supply Purchasing Division and Proposers that are undertaken with the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements and with the intent of allowing the Proposers to revise their Price Proposals. The primary objective of discussions is to maximize the Department of Water Supply's ability to obtain the best possible offers, based on the requirements outlined in the RFP Part 2. The Department of Water Supply may elect to request the submission of best and final offers from responsible offerors who submit proposals determined to be reasonably likely to be selected for a contract award, if any.

13.5 Best and Final Offer (BAFO)

The Department of Water Supply reserves the right to request a Best and Final Offer from finalist Proposer(s), if it deems such an approach necessary. In general, the Best and Final Offer will consist of updated costs as well as answers to specific questions that were identified during the evaluation of Proposals.

The specific format for the Best and Final Offer would be determined during evaluation discussions.

13.6 Selection and Award Process

After final recommendation from the Evaluation Committee, negotiations, and best and final offer, if any, the Procurement Director will present the final recommendation to the Department of Water Supply. The recommendation shall be based on the "Qualified Proposer" with the Proposal, conforming to thie forthcoming RFP Part 2, which obtains the highest ranking. After considering the final recommendation from the Evaluation Committee and the Procurement Director, the Department of Water Supply will issue a resolution to award or cancel. The resolution to award from the Department of Water Supply shall include a determination that costs are reasonable.

Prior to awarding a contract, the Department of Water Supply must obtain Contractor and First Tier Sub-Contractor clearance. To obtain clearance, the Department of Water Supply will search https://www.sam.gov/SAM/ to verify whether the Contractor and First Tier Sub-Contractor is or not debarred. Therefore, the Proposers and First Tier Sub-Contractor must be registered in the System for Award Management (SAM) at the time of the Proposal submission or initiate the registration process right after the Proposal submission. For more information about SAM go to https://www.sam.gov/SAM/. Awards will only be issued to entities which are cleared and not ineligible for award of a contract due to suspension, debarment, or HUD imposed limited denial of participation.

- END RFP PART 1 -

ATTACHMENT 1
SCOPE OF WORK/SERVICES
LAUNIUPOKO AQUIFER WELL DEVELOPMENT SITE L-1 PRODUCTION
Community Development Block Grant – Disaster Recovery
DWS CIP JOB NO. 20-01-A-DV

1. Introduction

This document defines the work that the Proposer must perform for Design-Build Constuction Services under a contract with the Department of Water Supply (DWS) for the Launiupoko Aquifer Well Development Site L-1 Production. DWS intends to execute a two-phase, fixed-price design-build delivery method in which the selected Design Builder will complete the final design and construction of the project under a single contract awarded through a qualifications-based selection process and subsequent technical and fixed-price proposal evaluation in accordance with the procurement requirements established by DWS.

Upon completion of the evaluation of Proposals, the County of Maui Department of Water Supply (Agency) will select the highest-ranked responsive and responsible Proposer based on the evaluation criteria established in this RFP, including the proposed fixed price, and proceed with award of the Design-Build Contract. The fixed price submitted in the Proposal shall constitute the Proposer's price for performance of the Work and will not be subject to negotiation following final evaluation and selection, except as otherwise expressly permitted by the RFP and applicable procurement requirements.

This project is funded through the Community Development Block Grant - Disaster Recovery (CDBG-DR) program administered by the U.S. Department of Housing and Urban Development (HUD.) Program requirements are detailed in the HUD-approved Action Plan. A complete copy of the Action Plan, including all amendments, is available at the link provided by the Program. https://hookumuhou.mauicounty.gov/31/Document-Library. Therefore, this project will need to meet American Iron and Steel (AIS) certification requirements and adhere to the State Historic Preservation Department (SHPD) environmental review process including the federal National Historic Preservation Act Section 106 process review. Construction activities cannot start until U.S. Department of Housing and Urban Development HUD Authorization to Use Grant Funds is obtained. Accordingly, the Design-Build (DB) contract including the Project Schedule must meet the terms of the County funding requirements.

2. Project Overview

Design and construct the Launiupoko production well at Site L-1, DWS seeks to develop groundwater production wells to replace a portion of the 1.55 million(mgd) of surface water required to be released into Kanaha Stream. This project shall include permitting and obtaining necessary approvals (including all charges and fees) including developing construction documents for the installation of the new well and backup well, storage tank, facilities, utilities and the transmission main to tie into the existing Department of Water distribution system meeting the requirements of

the County of Maui, Department of Water and Department of Public Works; State of Hawai'i and submitting record drawings.

Specific Work Needed

- Prepare construction documents for the well development, storage tank, associated facilities, utilities, SCADA, and instrumentation and control (I&C) systems required for the operation, monitoring, and management of the new water system facilities, including the transmission main and all required connections to the Department of Water's existing distribution system.
- Furnish, construct and install the new well, storage tank, facilities, utilities and the transmission main identified in the construction documents
- Obtain all required permits, licenses, and approvals, and paying for all related charges and fees, including but not limited to:
    - A State of Hawai'i, Department of Health community noise permit and/or variance; and
    - State of Hawai'i State Historic Preservation Division concurrence for excavations.
    - A State of Hawai'i, Department of Health Drinking Water Branch
- Testing, Startup, commissioning, and project close out
- Submit record drawings following completion of the work.
- Perform all work necessary to meet all of the objectives of the project and fully complete the Scope of Work.

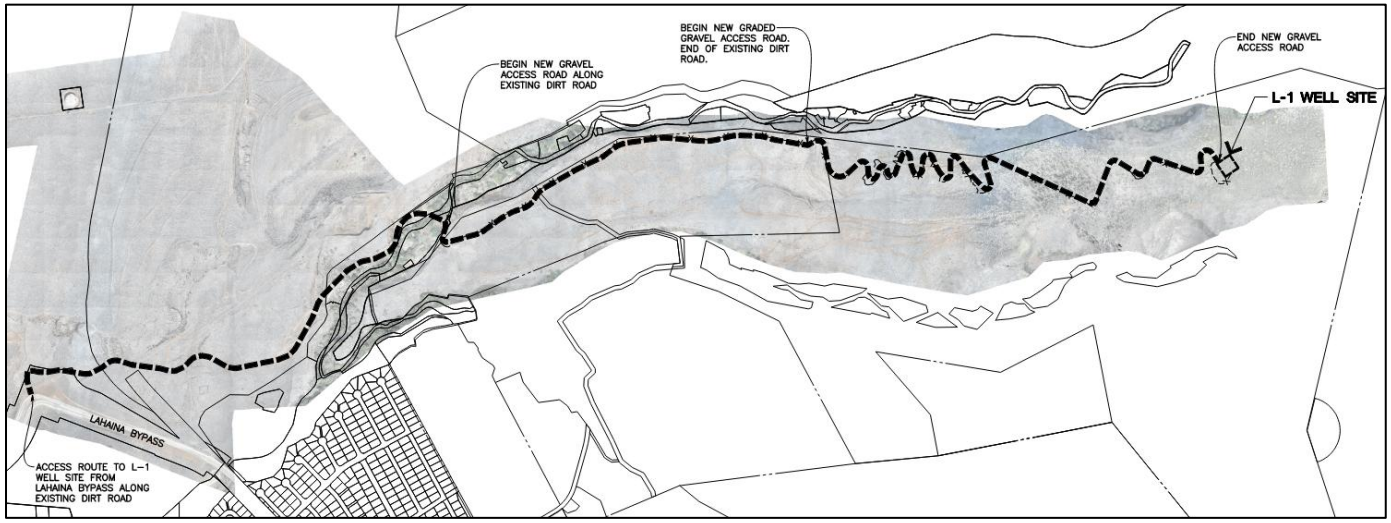
The Proposer will be directly responsible for ensuring the accuracy, timeliness, and completion of all tasks assigned under this contract. The scope of work presented is based upon circumstances existing at the time of solicitation. The Department of Water Supply reserves the right to modify or delete the tasks listed and, if appropriate, add additional tasks prior to and during the term of the contract.

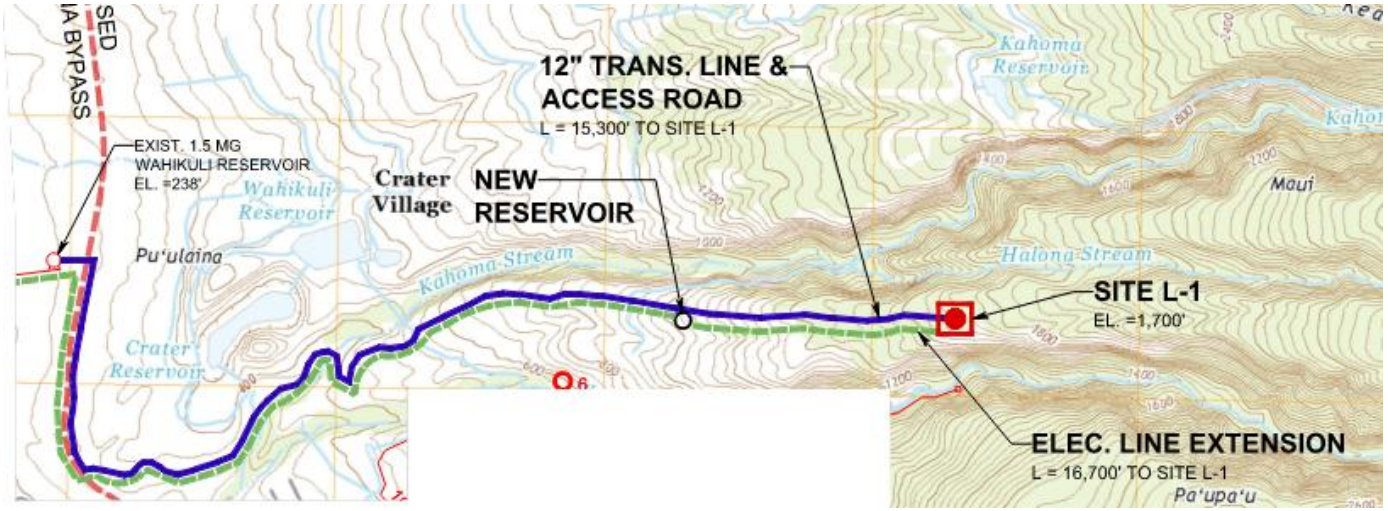
There is no guarantee of a minimum level of services which may be requested by DWS under a contract.

3. Goods or Services

The Department of Water Supply (DWS) is soliciting proposals from prospective Offerors for the furnishing and paying for all materials, labor, transportation, goods, tools, supplies, equipment, machinery, construction, testing and commissioning services incidental to and necessary to design and construct the Launiupoko production well at Site L-1, DWS seeks to develop groundwater production wells to replace 1.55 million (mgd) of surface water required to be released into Kanaha Stream. The purpose of this project is to design and construct a new production well and necessary infrastructure and appurtenances to supplement and provide additional water sources for the Department of Water Supply. The new well and infrastructure will be located at the site identified as Launiupoko 1, L-1. L-1 is about 2.8 miles from the ocean on the north side of Kanaha Stream and is on a portion of a 338-acre parcel, owned by the State of Hawaii.

Project Location:





Key components of the project include:

1. **Installation of a production well and backup well**: Design and construct a new production well. Anticipated well diameter of 28 inches, a casing diameter of 20.75 inches, depth of 1,700 feet and an installed capacity of 807 gallons per minute. The primary production well shall be sized accordingly and anticipated to be equipped with a submersible pump and motor rated at 400-500 horsepower. Pump size, well screening, casing and other details will be determined during final design upon receipt of the exploratory well engineering report.

2. **Installation of a waterline**: Design and construct an approximately 2.9 miles of new 12 inch waterline to connect the new storage tank to the existing distribution system.

3. **Installation of a 2MG water storage tank**: Design and construct a new storage tank connected to the new production well.

4. **Installation of Electrical Line**: Design and construct electrical line to provide electricity for operations of new well site.

5. **Installation of a permanent Emergency Generator**: Site will require an anticipated 800-kW generator, fuel tank, and automatic transfer switch to ensure uninterrupted operations during electrical outages. Generator and fuel tank sizing to be determined in final design.

6. **Installation of Standard Facilities**: The site will include the standard anticipated infrastructure for groundwater well operation, including on-site piping, a 35,000-gallon control tank, chain link fence, 20x65 foot control building, chlorination equipment, water level monitoring equipment, safety equipment, and sitework. Standard Facilities sizing to be determined in final design.

7. **Installation of a permanent access road**: Design and construct a new road, approximately 2.9 miles, meeting all applicable codes and standards for access improvements for the well site, L-1.

8. **Permitting and Regulatory Compliance**: Obtaining all necessary permits and approvals to ensure the project meets legal, environmental, and safety requirements. This will involve coordination with relevant regulatory agencies, preparation of permit applications and submission of necessary documentation.

9. **Construction in Accordance with Solicitation Terms**: Executing construction activities in compliance with the terms and conditions outline in the solicitation, including adherence to technical specifications, quality standards, and project timelines.

10. **Submission of Record Drawings**: Upon completion of the project, the contractor will submit accurate record drawings that reflect the final installed well, waterlines, roadway, storage tank, operation building, all utilizes and appurtenances related to this Project. These drawings will document any changes made during construction, providing a detailed and up-to-date representation of the system.

The successful completion of this project will result in a new permitted water source supplementing the existing County of Maui Department of Water Supply's potable water system and ensuring compliance with applicable regulations. The project will be executed with minimal disruption to the existing water supply system and will provide a long-term water supply to the existing potable water system.

4. Design-Build Delivery Method

The Project will be delivered using the **Design-Build (DB)** delivery method. This approach promotes early collaboration among the Owner, Design-Builder, and key stakeholders to optimize project scope, cost, schedule, and constructability. The Design-Build process will facilitate effective decision-making, risk management, and innovation while supporting the Project's goal of achieving completion by **February 28th, 2031**. The collaborative nature of this delivery method is intended to enhance project outcomes and ensure the Project is delivered efficiently and within the established budget and schedule.

Owner Objectives

- **Quality**: Deliver the proposed facilities consistent with project design and specifications
- **Cost**: Minimize capital and life cycle cost
- **Schedule**: Achieve the scheduled completion date of the project by **February 28th, 2031**
- **Risk**: Achieve an optimal balance or risk allocation between the owner and the design-builder
- **Safety**: Implement an effective safety program incorporating industry best practices

5. Deliverables

The key deliverables to be provided include, but are not limited to, the following:

- Project management plan and schedule
- HEPA EA (HRS 343) Environmental compliance documentation and mitigation plans
- Interim design milestones (based on DB approach submitted with RFP Proposal) design drawings and specifications
- 100% design drawings and specifications
- Construction cost estimates at each milestone
- Permit applications and approvals
- Construction documents
- Meeting agendas, minutes, and public outreach materials (as required)
- Construction
- Closeout/Final Documentation

6. Milestones

The Respondent shall demonstrate the capability to meet the following baseline milestones for the delivery of Design-Build construction services for the Launiupoko Aquifer Well Development Site L-1 Production project. These milestones represent standard phases of work for a multidisciplinary public infrastructure design-build project and shall guide the development, review, and completion

of all required deliverables.

All milestones shall be refined, finalized, and incorporated into the approved Project Schedule upon contract execution. The County reserves the right, at its sole discretion, to adjust milestone dates, sequencing, or review durations as necessary to respond to regulatory conditions, funding requirements, or project needs. No adjustment to milestones shall create any entitlement to additional compensation unless expressly authorized in writing by the County.

Notice to Proceed and Project Initiation

- Acknowledge receipt of Notice to Proceed
- Confirm project team, key personnel, and subconsultants
- Conduct project kickoff meeting with County Department of Water Supply
- Develop and submit Project Management Plan and detailed project schedule

Data Collection and Existing Conditions Assessment

- Review available project documentation, including environmental approvals and prior studies
- Conduct field investigations, surveys, and site assessments
- Perform geotechnical investigations required for wells, tank foundations, access road, and building pads
- Update subsurface utility information as required
- Identify existing infrastructure, utilities, constraints, and environmental considerations
- Submit existing conditions technical memoranda and supporting documentation

Preliminary Engineering and Alternatives Analysis

- Develop and evaluate design alternatives for well development and features
- Prepare preliminary engineering drawings and cost estimates
- Facilitate County review and selection of preferred alternative

Interim Design Milestones (Based on Design-Build Approach Submitted with RFP Proposal)

30 Percent Design Submittal

- Prepare preliminary design plans reflecting the selected alternative
- Develop initial engineering analyses and design assumptions
- Submit 30% design package, preliminary cost estimate, and updated project schedule
- Participate in County review and respond to comments

60 Percent Design Submittal

- Advance design development across all disciplines
- Submit draft plans, outline specifications, updated cost estimate, and updated project schedule
- Identify outstanding design issues, risks, and coordination items
- Respond to County and stakeholder review comments

90 Percent Design Submittal

- Complete near-final design documents
- Submit draft final plans, specifications, engineer's estimate, and updated project schedule
- Resolve outstanding technical issues and regulatory requirements
- Respond to County, stakeholder, and agency review comments

Final Design (100% PS&E) Submittal

- Submit complete, signed, and sealed Plans, Specifications, and Estimates (PS&E), and final project schedule
- Ensure all design elements are fully coordinated, compliant, and constructible
- Incorporate all required revisions and approvals

Permitting and Approval Support

- Permit requirements and approvals will be refined during the design process and should be incorporated into both design and construction budgets.
- Prepare, submit, and obtain permit applications and supporting technical documents
- Coordinate with regulatory agencies and respond to review comments
- Provide revisions as necessary to obtain required approvals
- The Design-Builder shall obtain or support obtaining all required permits, including, but not limited to:
    - Well Construction Permit
    - Pump Installation Permit
    - Water Use Permit
    - Environmental (HEPA/NEPA)
    - Special Management Area - Conservation District Use Permit
    - County Zoning, Land Use and Grading approvals
    - Department of Health Safe Drinking Water Branch
    - NPDES Clean Water Act
    - Utility and Right-of-Way Permits
    - HDOT
    - County of Maui Building, Grading, Grubbing, and Stockpiling Permits
    - NPDES Construction Storm Water Permit
    - Traffic Control Permits
    - Well Construction and Pump Installation Permit Compliance
    - DOH Drinking Water Branch Approval to Place the Facility in Services
    - Electrical and Mechanical Permits
    - Fuel Tank Permits

Construction-Phase Support

- Respond to Requests for Information (RFIs)
- Conduct field observations and provide design clarification

- Support resolution of design-related issues during construction
- Construction of the key components of the project included in Section 3 of this Attachment

Closeout and Record Documentation

- Provide all final electronic deliverables, including plans, specifications, and supporting documentation
- Submit record drawings or design revisions, if applicable
- Provide the County all standard warranty coverage for all constructed work as well as the long-term performance of the water supply infrastructure delivered (see Warranty section below)
- Conduct post-construction performance verification
- Ensure all documentation is complete and compliant with record retention requirements

7. Delivery Schedule

The Project is scheduled for completion by **February 28th, 2031**. All Work shall be planned and performed to meet this completion date.

The following are Department of Water Supply known constraints. This solicitation is issued before completion and approval of the following:

- The Launiupoko L1 Exploratory Phase testing is completed and well confirms hydrogeological conditions, water quality, and has a sustainable yield. The Phase 1 services included in this RFP and subsequent contract will work with the Exploratory Well phase contractors to develop a clear hand off, OFI designation, and early validation milestones while adhering to DWS decision-gate documentation requirements.
- The project's Hawai'i Revised Statutes (HRS) Chapter 343 Environmental Assessment and is intended to advance the project using approved construction documents.
- The project's HUD NEPA Environmental Assessment (24CFR 58.36) and Authority to Use Grant Funds and is intended to advance the project using approved construction documents.
- Funding constraints for HUD CDBG-DR funded infrastructure projects require completion of construction, commissioning, and turnover by **February 28th, 2031**.

Design-build construction services shall be performed in accordance with delivery schedules established by the Program Manager. Respondents must demonstrate the organizational capacity, staffing availability, and technical capability to meet delivery timeframes typical for federally funded disaster-recovery infrastructure programs, including the ability to support accelerated, expedited, or surge assignments if required.

The following baseline schedule identifies the anticipated timeline for major project milestones. All dates are estimates, and are subject to adjustment by the County, at its sole discretion, based on project conditions, regulatory requirements, funding constraints, or interagency coordination needs.

Estimated dates shall not be construed as guaranteed deadlines or commitments.

Baseline Delivery Schedule

Deliverable	Deadline
Project management plan and schedule	30 – Days following NTP
Environmental compliance documentation and mitigation plans	April 2028
Interim Design Milestones (Based on Design-Build Approach Submitted with RFP Proposal)	TBD
100% design drawings and specifications	September 2028
Construction cost estimates at each milestone	
Permit applications and approvals	April 2029
Construction documents	October 2027
Meeting agendas, minutes, and public outreach materials (as required)	Ongoing
Construction	December 2030
Closeout/Final Documentation	February 28, 2031

Note that construction cannot start until the following have been completed:

- Final design of the LAUNIUPOKO AQUIFER WELL DEVELOPMENT SITE L-1 PRODUCTION cannot be completed before Exploratory Phase testing is completed and well is deemed feasible and sustainable.
- Construction for the Production Well cannot be started prior to the completion of the HRS 343 and NEPA Environmental Assessment and HUD Authority to Use Grant Funds (AUGF) is received.
- DWS accepts the cost estimates for construction produced during the design process.

Construction phase activities, including final design, is conditioned upon successful completion and approval of the required Environmental Review Record (ERR) in accordance with 24 CFR Part 58, and issuance by the U.S. Department of Housing and Urban Development (HUD) of the Authorization to Use Grant Funds (AUGF).

If environmental clearance is not obtained, or if HUD does not authorize the use of funds, the County retains the right to withdraw or modify any or all portions of the resulting contract without obligation. No choice-limiting actions are authorized unless and until the above conditions are satisfied.

8. Staff Requirements

The Proposer shall have or will secure, at its own expense, all personnel required in performing the services under the contract. Department of Water Supply expects the Selected Proposer to provide competent and fully qualified staff that are authorized or permitted under federal, state, and local law to perform the scope of work under the contract. The Department of Water Supply reserves the right to request the removal of any staff not performing to standard. No personnel may be assigned to the resulting contract without the written consent of the Department of Water Supply.

The County reserves the right to:

- Approve or reject proposed key personnel
- Require the removal or replacement of any personnel not performing to County expectations
- Require additional staff or expertise if deemed necessary to meet project objectives
- Approve all personnel changes in writing prior to reassignment

No individual may be assigned to the contract without prior written authorization from the County. The Respondent shall demonstrate that all personnel assigned to this contract possess the education, licensure, training, and experience necessary to perform all required engineering and related professional services for federally funded disaster recovery programs, including HUD CDBG-DR.

At a minimum, the Respondent must meet the following staff qualification requirements:

- Licensed Professional Engineers (PE)
    - All engineering design work shall be performed under the supervision of a licensed Professional Engineer (PE) registered in the State of Hawai‘i.
    - Licensure must be active, in good standing, and maintained for the duration of the contract.
    - Responsible charge shall be clearly identified for all engineering disciplines.
- Relevant Engineering Experience
    - Key personnel shall demonstrate a minimum of five (5) years of professional experience with demonstrated experience in one or more of the following areas:
        - Drinking water well design and construction
        - Design-Build Construction
        - Public infrastructure and capital improvement projects
        - Pump installation and construction
        - Electrical and Mechanical design and construction
        - Utility coordination and design (water, wastewater, electrical, telecommunications)
    - Experience with projects of similar scale, complexity, and public safety significance is strongly preferred.
- Project management Experience
    - The Respondent shall have a designated and qualified Project Manager responsible for overall project delivery. The Project Manager shall:
        - Serve as the primary point of contact with the County
        - Manage multidisciplinary engineering and design teams
        - Oversee schedules, deliverables, and coordination
        - Implement quality control measures
        - Ensure timely delivery of milestones
- Multidisciplinary Team Capability

  - The Respondent shall demonstrate the ability to provide a complete, multidisciplinary team capable of performing all required services, including:
    - Civil and roadway engineering
    - Well engineering
    - Drainage and stormwater engineering
    - Utility coordination and design
    - Surveying and mapping
    - Environmental and permitting support
    - Construction
    - Commissioning and startup
    - Cost estimating and specifications development
  - Use of subconsultants is allowed. The Respondent remains fully responsible for all work completed under the contract.

- Regulatory and Program Compliance Experience
  - Key personnel shall demonstrate familiarity and experience with:
    - HUD CDBG-DR program requirements
    - 2 CFR Part 200 (Uniform Guidance)
    - Federal, state, and local permitting and approval processes
    - Environmental compliance requirements, including HRS Chapter 343
    - County of Maui standards, policies, and review procedures

- Quality Control and Technical Review Capability
  - The Respondent shall demonstrate the ability to:
    - Perform internal quality assurance and quality control (QA/QC) reviews
    - Ensure technical accuracy and completeness of all deliverables
    - Coordinate across disciplines to produce fully integrated design documents
    - Respond to County, regulatory, and stakeholder review comments

- Staffing Responsibilities
  - The Respondent shall:
    - Provide sufficient staffing to meet project schedule and workload requirements
    - Maintain continuity of key personnel throughout the project
    - Notify the County of any proposed changes in staffing and obtain prior approval
    - Ensure appropriate supervision, resources, and support for all assigned personnel

Staffing level must be adequate at all times to meet schedule and quality requirements.

Roles and Responsibilities

Role	Owner	Design-Builder
Project Management	• Provide overall project direction, coordination, and decision-making authority for the Launiupoko Aquifer Well Development Site L-1 Production Phase Project. • Make day-to-day decisions. • Review and provide timely comments on Design-Builder deliverables and determine acceptance, required revisions, or modifications. • Approve design and construction plans. • Manage contracts with Owner Advisor (Stantec Consulting Inc.) and Design-Builder. • Provide Project funding. • Approve scope changes. • Coordinate with Owner operations. • Manage funding, regulatory oversight, procurement sequencing, and compliance with applicable federal, state, and county requirements.	• Single point of contact with the Owner's Project Manager. • Develop and implement Project Management and Quality Management Plans. • Perform risk management and mitigation activities. • Establish and maintain a change management plan. • Develop and implement Project health and safety practices. • Facilitate resolution of Project issues and challenges. • Serve as the lead professional responsible for the planning, design, and engineering consistent with applicable County, State, and Federal standards. • Develop and maintain a detailed project schedule, coordinate design activities, and manage subconsultants, if any. • Prepare complete, accurate, and internally quality-controlled design deliverables, including plans, specifications, cost estimates, technical memoranda, and supporting documentation required to advance the project to construction. • Attend and participate in project meetings, workshops, and site visits, whether conducted remotely or in person, as requested by the County. • Identify schedule risks, design conflicts, constructability issues, and cost impacts, and proactively recommend solutions to the County. • Maintain complete project records and documentation in accordance with contractual and funding requirements.
Design Management	• Review design deliverables. • Participate in design reviews. • Provide input into design. • Participate in technology decisions. • Participate in design decisions that impact operations and maintenance activities. • Coordinate internal County reviews and interdepartmental input and serve as the primary point of	• Lead engineering and design team resources. • Develop design deliverables. • Recommend technology solutions. • Facilitate review of construction submittals and verify design intent is being met during construction. • Coordinate with County departments, utility providers, regulatory agencies, and other stakeholders as directed by the County, and incorporate required standards, conditions,

	contact between the Design-Builder and other County stakeholders.	and approvals into the design. • Support environmental compliance and permitting efforts by providing technical information, refined design details, and responses to agency comments consistent with approved environmental determinations. • Licensed in accordance with Chapter 444, HRS, relating to the licensing of contractors. • Verify field conditions, configurations, and dimensions and use the actual as the basis for work.
Design and Preconstruction Services	• Review design deliverables and submissions. • Furnish existing studies and data including record drawings, preliminary studies, etc. • Provide access to site/easements. • Obtain government approvals and permits for which the Owner is responsible.	• Manage interface between design and construction team members. • Prepare and maintain a Project schedule. • Provide constructability input throughout design development. • Prepare equipment and subcontract procurement plans. • Provide additional Owner-requested, Project-specific services necessary for Project success.
Construction Services	• Participate in construction Project meetings. • Monitor construction activities.	• Deliver constructed work. • Manage self-performing and subcontracted work. • Manage craft labor. • Maintain site safety and security. • Perform engineering services during construction. • Obtain and comply with government approvals and permits for which the Design-Builder is responsible. • Provide warranty coverage for constructed work. • Maintain and transmit as-built drawings to the Owner at construction completion.
Commissioning and Startup	• Participate in the early development of the facility commissioning plan • Engage meaningfully in commissioning, startup, and training activities and prepare for handoff from Design-Builder	• Coordinate construction activities with and lead assigned testing, commissioning, startup, and training activities, coordinating with Owner's O&M staff to minimize impacts • Provide timely and complete submission of manufacturer's equipment O&M materials • Prepare facility O&M manual

OTHER PARTIES

Other parties, including utility agencies, regulatory agencies, and third-party stakeholders, may have review, coordination, or approval roles related to the project. While the Firm is responsible for coordination and incorporation of requirements, these entities are not under the Firm's control, and review timelines may affect the overall project schedule.

AUTHORITY AND LIMITATIONS

The Firm shall not commit the County to any course of action, scope change, cost increase, or schedule modification without prior written authorization from the County. All final decisions regarding scope, budget, schedule, and advancement to future phases remain solely with the County.

9. Technical Specifications

Design-Build Construction services procured under this two part RFQ-RFP shall conform to the following technical specifications. These specifications define the minimum professional, regulatory, and methodological requirements applicable to all services performed under the resulting contract. Nothing in this section shall be construed to limit full and open competition.

The County reserves the right to clarify, supplement, or refine technical specifications during contract execution, provided that such modifications remain consistent with applicable law and do not materially alter the nature of the services procured.

Applicable Standards and Regulations

All services shall comply with all applicable Federal, State, and County requirements, including but not limited to:

- County of Maui standards, specifications, and design guidelines
- Hawai'i Revised Statutes (HRS) Chapter 103D and applicable administrative rules
- HRS Chapter 343 (Environmental Review) and approved Environmental Assessment
- 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements)
- 24 CFR Part 570 (CDBG program requirements), as applicable to CDBG-DR funding
- HUD CDBG-DR Federal Register Notices, program policies, guidance, and cross-cutting requirements
- Americans with Disabilities Act (ADA) and accessibility requirements
- Applicable federal, state, and local permitting and regulatory requirements
- The Davis-Bacon Act
- The Clean Air and Water Act
- Section 3 of the Housing and Urban Development Act of 1968
- Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), 49 CFR Part 24 and 42 U.S.C. 4601
- Immigration Reform and Control Act
- Resource Conservation and Recovery Act (RCRA). Under RCRA (Pub. L. 94–580 codified at 42 U.S.C. 6962)

- Contract Work Hours and Safety Standards Act (40 U.S.C. §327–333)
- Hawai'i Prevailing Wages, HRS 104
- Hawai'i Employment Security Law, HRS 383
- Hawai'i Workers' Compensation, HRS 386
- Hawai'i Temporary Disability Insurance, HRS 392
- Hawai'i Prepaid Health Care Act, HRS 393
- Hawai'i Occupational Safety and Health Law, HRS 396
- Hawai'i Contractors Licensing, HRS 444
- Senate Bill 2075, enacted as Act 87, Session Laws of Hawaii (SLH) 2026

All design work shall meet current generally accepted engineering practices and standards applicable to public infrastructure projects.

The Respondent is responsible for identifying, understanding, and complying with all applicable requirements. Lack of knowledge of applicable standards shall not constitute grounds for protests, claim, or relief.

Design Requirements

Engineering design services shall result in complete, coordinated, and constructible Plans, Specifications, and Estimates (PS&E) suitable for competitive procurement of construction services without the need for substantive revision. Deliverables shall include, but not limited to, all details necessary for regulatory review, permitting, and construction.

Design requirements include, but are not limited to:

- Primary production well and secondary backup well
- Access road alignments and construction requirements
- Electrical service extension and load requirements
- Pump sizing, motor selection, and anticipated horsepower
- Storage tank size (approx. 2 MG) and siting alternatives
- 12-inch transmission waterline routing to Wahikuli Reservoir
- Permanent emergency generator (approx. 800 kW) and fuel storage
- Control building, 35,000-gallon control tank, chlorination systems, and monitoring equipment
- Preliminary SCADA and controls architecture
- Construction sequencing and site logistics

All design elements shall be prepared to a level of detail sufficient to support construction without the need for material revision.

Engineering Methodology

The Respondent shall utilize sound, defensible engineering methodologies based on current standards and best practices. Requirements include:

- Evaluation of feasible alternatives during preliminary engineering

- Use of appropriate modeling and analysis tools
- Application of discipline-specific design standards
- Integration of design elements across all engineering disciplines

Methodologies and assumptions shall be clearly documented and supported.

Environmental Compliance and Integration

All design work shall comply with and incorporate:

- Completion of the HRS Chapter 343 Environmental Assessment and integration of all resulting requirements into the design
- All required mitigation measures, conditions, and commitments
- Restrictions on choice-limiting actions under federal environmental regulations
- Applicable federal, state, and local environmental regulations

Environmental constraints shall be clearly identified and incorporated into design documents. No design element may conflict with approved environmental determinations.

Failure to incorporate mitigation requirements shall require correction by the Respondent at no additional cost.

Permitting and Regulatory Coordination

The Respondent shall:

- Develop technical materials and documentation required for all permit applications
- Coordinate with regulatory agencies at the County, State, and Federal levels
- Respond to agency review comments and revise design documents as necessary to obtain approvals in a timely manner

All permitting documentation shall be technically accurate, complete, and suitable for agency review.

Construction Requirements

Construction shall result in the completed construction of all project elements in accordance with the approved final design and all applicable codes and standards.

Construction requirements include, but are not limited to:

- Primary Production Well Construction
    - Drill 28-inch borehole to approx. 1,700 ft
    - Install 20.75-inch casing
    - Conduct well development, testing, and reporting
    - Install submersible pump/motor (size determined during design)
- Secondary Backup Borehole Construction
    - Drill and construct backup borehole in proximity to primary
    - Install casing, screen, and develop well

  - Test and report results

- Access Road and Electrical Line Extension
  - Construct permanent access road for construction and long-term O&M use
  - Install electrical infrastructure to serve pumping equipment, controls, and site systems
- Storage Tank Construction
  - Construct approx. 2 MG storage tank with appurtenances
  - Install foundations, piping, vents, access ladders, and safety systems
- Transmission Pipeline
  - Install approximately 12-inch waterline from well site to Wahikuli Reservoir
  - Complete pressure testing, disinfection, and tie-in
- Emergency Generator and Power Systems
  - Install approx. 800-kW standby generator, ATS, and fuel tank
  - Construct generator pad, fencing, ventilation, and electrical routing
  - Integrate generator into site SCADA and power system
- Standard Site Infrastructure
  - Construct 20×65 ft control building
  - Install 35,000-gallon control tank
  - Install chlorination equipment
  - Install monitoring and safety equipment
  - Provide chain-link fencing and security systems
  - Complete site grading, drainage, paving, and landscaping as required

Commissioning, Startup, Testing, and Turnover Requirements

The Respondent shall perform all required commissioning activities, including:

- Pump testing and well performance verification
- SCADA testing and controls integration
- Storage tank filling, leak testing, and disinfection
- Waterline hydrotesting and flushing
- Generator startup and load testing
- Operator training for all system components
- Development of O&M manuals, as-built drawings, and asset data
- Final walkthrough and commissioning report

Quality Control and Technical Review

The Respondent shall maintain internal quality assurance and quality control (QA/QC) procedures to ensure:

- Deliverables are complete, accurate, and properly coordinated prior to submittal

- Respond to County review comments and revise deliverables as required
- Provide corrected deliverables at no additional cost when deficiencies are identified

General Oversight and Monitoring

This contract is funded in whole or in part with Community Development Block Grant – Disaster Recovery (CDBG-DR) funds and is subject to all applicable federal, state, and County monitoring and oversight requirements. The County of Maui, through the Office of Recovery (OOR), will monitor the Firm's performance to ensure compliance with contractual obligations, program requirements, and applicable federal regulations, including 2 CFR Part 200, 24 CFR Part 58, and 24 CFR Part 570.

Monitoring activities may include desk reviews, on-site or virtual meetings, review of deliverables, review of invoices and supporting documentation, and compliance assessments using standardized County OOR monitoring tools and checklists. The Firm shall cooperate fully with all monitoring activities and provide timely access to records, documentation, and staff as requested.

Required Programmatic and Progress Reporting

The Firm shall submit regular reports documenting progress, issues, and compliance status throughout the contract term. At a minimum, reporting requirements include:

- **Monthly Progress Reports** summarizing:
    - Tasks completed during the reporting period
    - Progress toward approved milestones and deliverables
    - Schedule status and anticipated upcoming activities
    - Key coordination efforts with County departments, utilities, or agencies
    - Identified risks, issues, or potential delays and proposed mitigation measures
- **Design Milestone Submittals**, including required plans, technical memoranda, cost estimates, and supporting documentation, consistent with the approved project schedule.

All reports shall be submitted in the format and frequency specified by the County and must be sufficient to support County monitoring, HUD reporting, and internal program management requirements.

CDBG-DR Compliance Reporting

In addition to standard progress reporting, the Firm shall support all CDBG-DR-specific compliance reporting, including but not limited to:

- **Environmental Compliance Support**
    - Provide technical information, refined design details, and documentation necessary to support compliance with 24 CFR Part 58 (Environmental Review).
    - Ensure that design activities remain consistent with approved environmental determinations and do not result in prohibited choice-limiting actions.
- **Procurement and Contract Compliance**
    - Maintain documentation demonstrating compliance with federal procurement

requirements, including cost reasonableness and avoidance of prohibited contract types.

- **National Objective and Eligibility Support**
  - Provide information as requested by the County to support documentation of project eligibility, national objective compliance, and disaster tie-back requirements.
- **Section 3 / Civil Rights Coordination (As Applicable)**
  - Support reporting related to Section 3 applicability or determinations, nondiscrimination requirements, and other civil rights provisions, as directed by the County.
- **MBE / DBE and Related Federal Opportunity Reporting**
  - The Firm shall comply with all applicable MBE/DBE outreach, utilization, and reporting requirements as established by HUD, the County of Maui, and the County Office of Recovery (OOR), including applicable requirements incorporated by reference in the solicitation, contract, and County policies.
  - At a minimum, the Firm shall be responsible for the following:
    - Good Faith Efforts and Outreach: Demonstrate and document good-faith efforts to provide meaningful opportunities for certified or self-identified MBE/DBE firms to participate in the performance of the contract, including through subcontracting, teaming, or supplier arrangements, as applicable to a professional services agreement.
    - Retain documentation of outreach efforts, solicitations, responses received, and reasons for selection or non-selection, upon request by the County.
    - MBE/DBE Utilization Reporting: Submit MBE/DBE participation reports in the format, frequency, and level of detail required by the County OOR. Reports may be required quarterly, with invoices, at key milestones, and/or at contract closeout, as determined by the County to support HUD reporting and oversight.

The Firm shall respond promptly to any County or HUD requests for clarification, supplemental documentation, or corrective action related to CDBG-DR

Documentation and Reporting Requirements

All technical deliverables shall include sufficient documentation to support:

- County review and acceptance
- Permitting and regulatory approvals
- Competitive procurement of construction services
- Compliance with CDBG-DR program requirements
- HUD monitoring and federal audit requirements

Documentation shall include:

- Technical memoranda and reports
- Design calculations (as applicable)

- Supporting data, models, and analyses
- Assumptions and design decisions

Data Management and Record Retention

The Respondent shall:

- Maintain all project data, documents, and supporting materials in a secure and organized manner
- Provide electronic deliverables in formats acceptable to the County
- Retain all project records in accordance with federal record retention requirements under 2 CFR Part 200 and County policies

All records shall be made available upon request for monitoring, audit, or review purposes.

10. Warranty

The Respondent will provide to the County standard warranty coverage for all constructed work as well as the long-term performance of the water supply infrastructure delivered. This includes the following:

1. General Design-Build Warranty

Warranty Period: Minimum 2 years after Final Acceptance

Respondent shall warrant that:

- All work is free from defects in materials, equipment, and workmanship.
- All work conforms to the contract requirements, permit conditions, codes, and industry standards.
- All components are suitable for their intended purpose.
- The project has been designed and constructed in accordance with accepted engineering practices.
- Defective work will be repaired or replaced at no cost to the County.

Design Professional Warranty

The Engineer of Record should warrant that:

- Design services were performed in accordance with the professional standard of care.
- Plans and specifications comply with applicable laws, regulations, permits, and engineering standards.

2. Production Well Warranty

Well Construction Warranty Minimum 2 years after Final Acceptance

Respondent shall warrant well casing integrity, screen integrity, gravel pack installation, sanitary seal, wellhead construction, and absence of construction-related sand production.

Well Performance Warranty Minimum of 2 years after Final Acceptance

Respondent shall guarantee:

- Sustained production capacity as specified in the solicitation.
- Specific capacity meeting design criteria.
- Water quality meeting drinking water standards at project completion.
- Proper functioning of pumping equipment.

If production declines due to design or construction defects, the Respondent must rehabilitate, repair, or replace the well.

3. Waterline Warranty

Pipe and Appurtenance WarrantyMinimum of 2 years after Final Acceptance

Warranty should cover pipe materials, fittings, valves, air-release valves, blowoffs, service connections, and restraints and thrust blocks. The Respondent shall correct any leaks, joint failures, settlement-related failures, and improper installation defects.

Pressure Testing Warranty

Respondent shall warrant that the waterlines passes leakage and pressure testing and remains operational without construction-related failures during the warranty period.

4. Water Storage Tank Warranty

Structural Warranty Minimum: 5 years after Final Acceptance

Warranty covers structural integrity, foundation performance, settlement attributable to design or construction defects, and seismic design compliance.

Coating Warranty Minimum: 5 years

Warranty covers interior coatings, exterior coatings, and corrosion protection systems.

Mechanical Components Warranty Minimum: 2 years after Final Acceptance

Includes level controls, mixing systems, overflow assemblies, cathodic protection systems, access hatches, and vent systems.

5. Well Pump and Mechanical Equipment Warranty

Minimum: 2 years after Final Acceptance

Includes vertical turbine pumps, submersible pumps, motors, bearings, couplings, variable frequency drives (VFDs), pressure tanks, and flow meters. Warranty should include replacement parts, labor, and commissioning.

6. Electrical Systems Warranty

Minimum: 2 years after Final Acceptance

Includes motor control centers, switchgear, transformers, generators, automatic transfer switches, instrumentation and controls, lighting systems, and conduit and wiring. Respondent shall warrant system functionality and code compliance.

7. SCADA, Instrumentation, and Controls Warranty

Minimum: 2 years

Includes PLCs, SCADA programming, telemetry equipment, pressure sensors, flow meters, tank level instrumentation, and communications systems. The warranty should include software correction, configuration updates, troubleshooting support, and recommissioning if required.

8. Operations Building Warranty

Building Construction Warranty Minimum: 1 year

Includes structural components, roofing, doors and windows, and interior finishes.

Roof Warranty Minimum: 20 years manufacturer warranty.

HVAC Warranty Minimum: 2 years.

Plumbing Warranty Minimum: 2 years.

Fire Alarm/Security Systems Warranty Minimum: 2 years.

9. Roadway Warranty

Pavement Warranty Minimum: 2 years

Covers premature cracking, rutting, settlement, and base course failures attributable to Respondent work.

Drainage Improvements Warranty Minimum: 2 years

Includes culverts, ditches, swales, and erosion control improvements.

10. Regulatory Compliance Warranty

Respondent warrants that:

- All permits were obtained.
- Construction complied with permit requirements.
- Project complies with Safe Drinking Water Act requirements.
- State of Hawaii Department of Health approvals were obtained.
- County approvals were obtained.

If deficiencies arise due to Respondent failure to comply with permit conditions, Respondent shall correct them at no cost to the County.

11. Record Drawings Warranty

Respondent shall warrant that:

- Record drawings accurately reflect installed conditions.
- GIS coordinates are accurate.
- Equipment schedules are accurate.
- O&M manuals accurately represent installed equipment.

Errors discovered within 2 years shall be corrected at Respondent expense.

12. Manufacturer Warranties Assignment

Respondent shall assign all manufacturer warranties to the County including pumps, motors, VFDs, generators, electrical equipment, SCADA equipment, roofing systems, tank coatings, and pipe materials. The County should receive original warranty certificates before final payment.

13. Correction Period Warranty

The Design-Builder shall promptly repair, replace, restore, and re-test any defective work, equipment, materials, software, structures, utilities, or appurtenances identified during the warranty period at no cost to the County. Such correction shall include labor, equipment, materials, engineering, permitting, testing, commissioning, restoration, and all incidental costs associated with the corrective work.

14. Performance Guarantees

The Respondent shall provide performance guarantees for:

- Well production rate (gpm).
- Pump efficiency.
- Tank usable storage volume.
- SCADA functionality.
- Waterline pressure requirements.
- Water quality compliance.
- System reliability.

Recommended Minimum Warranty Matrix

Component	Recommended Warranty
General Construction	1–2 years
Design Services	Professional standard of care
Production Well	2 years
Well Capacity Performance	1–2 years
Waterline	2 years
Storage Tank Structure	5 years
Tank Coatings	5 years
Pumps & Motors	2 years
Electrical Systems	2 years
SCADA & Controls	2 years
Operations Building	1 year
Roof System	20 years
Roadway & Drainage	2 years

Component	Recommended Warranty
Record Drawings	2 years
Manufacturer Warranties	Full transfer to County

11. Contract Term

The Contract shall remain in effect for a period sufficient to complete all design-build construction services for the Launiupoko L1 Production Well project, including final construction documents, permitting support and construction phase services.

The anticipated period of performance will begin upon issuance of a Notice to Proceed (NTP), currently estimated for **April 2027**, and is expected to extend through **February 28, 2031**, unless terminated earlier in accordance with the terms of the Contract.

The final period of performance will be established at Contract execution. The schedule is subject to adjustment by the County and shall not be construed as a guarantee of duration.

The County reserves the right, at its sole discretion, to extend the Contract term or period of performance as necessary to support completion of the project, permitting activities, regulatory review, funding requirements, or other project needs. Any extension shall be authorized in writing by the County.

Option for Additional Services (If Authorized)

The Contract may include optional services authorized solely at the County's discretion through written notice. Optional services do not constitute guaranteed work and may occur beyond the base period of performance as required to support project delivery.

Contract Modifications

The County reserves the right to modify the Contract in accordance with applicable Federal, State, and County regulations. Modification may include:

- Modifying the scope of services
- Adjusting or revising the schedule or phasing of work
- Addition or removal of tasks
- Adjusting deliverable requirements

Any modification shall be executed in writing and in compliance with 2 CFR 200.318(j), HRS 103D, and applicable County procurement policies.

No verbal or informal direction shall constitute authorization for changes.

No Guarantee of Work Beyond Scope

This Contract is issued for a single, defined project and does not constitute an on-call or indefinite quantity contract. No additional work beyond the approved scope shall be performed without prior written authorization from the County.

Compliance with Terms and Conditions

All services shall be performed in accordance with:

- The executed Contract
- County of Maui General Terms and Conditions for Goods and Services
- Applicable federal, state, and local laws and regulations

The Respondent is responsible for reviewing all applicable terms and conditions prior to submission and acknowledges that no post-award modifications to general terms and conditions shall be permitted except as allowed by law.

The County of Maui General Terms and Conditions for Goods and Services shall be made a part of the proposal documents and can be found at the following link(s): https://www.mauicounty.gov/DocumentCenter/View/3186/Goods-and-Services.

Prevailing Wage

The contractor shall comply Chapter 104, HRS, relating to Wages and Hours of Employees on Public Works. Wages to be paid laborers and mechanics on this project shall be no less than the minimum prevailing wage, as determined by the Director of the Department of Labor and Industrial Relations. The wage rate schedules are issued on or about February 15 and September 15 of each year. A copy of the current minimum wage rate schedule can be downloaded at the DLIR website: https://labor.hawaii.gov/rs/home/wages/72-2/.

Notwithstanding the provisions of the contract, the prevailing wages shall be periodically adjusted during the performance of the contract in an amount equal to the change in the prevailing wages as periodically determined by the Director of Labor and Industrial Relations.

Offerors shall refer to **Subsection 6.14 - Rate of Wages for Laborers and Mechanics** of the County of Maui General Terms and Conditions and any applicable Special Provisions.

Alternative Materials and Equipment

Proposals shall be based on materials and equipment specified in the proposal documents, unless the Director of Water Supply issues an addendum to approve substitution of material or equipment.

An offeror requesting a substitution of material or equipment shall submit a written request to the department for clarification not less than ten (10) calendar days prior to the day designated for opening of proposals.

Offerors shall refer to **Subsection 2.16 - Substitution of Materials and Equipment** of the County of Maui General Terms and Conditions and any applicable Special Provisions.

COUNTY OF MAUI – DEPARTMENT OF WATER SUPPLY

LAUNIUPOKO AQUIFER WELL DEVELOPMENT SITE L-1 PRODUCTION

LAUNIUPOKO, MAUI, HAWAIʻI

DWS CIP JOB NO. 20-01-A-DV

DRAFT SCOPE OF DB SERVICES

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Scope of DB Services

1 DESIGN AND PRECONSTRUCTION SERVICES

The County of Maui Department of Water Supply (Owner) has elected to deliver the Project using the design-build (DB) method. The Design-Builder shall provide complete design, permitting, procurement, construction, testing, commissioning, startup, training, and closeout services under a single contract. The Design-Builder shall be responsible for delivering a fully functional Project that satisfies the Contract Documents, Owner's Project Criteria, performance requirements, Contract Price, and Contract Time.

The Design-Builder shall integrate design and construction activities to identify and mitigate risks, support constructability, coordinate permitting and long-lead procurement, maintain required operations during construction, and deliver the Project within the Contract Price and Contract Time. Owner review, comment, or acceptance shall not relieve the Design-Builder of responsibility for the design, construction, or performance of the completed Project.

Design and preconstruction services include:

1.1 Task 1—Project Management

Design-Builder will:

1. Participate in a 3-hour Phase 1 Project kickoff meeting within 2 weeks of NTP. Participants shall include:
    a. Kimo Landgraf, Deputy Director, County of Maui Department of Water Supply
    b. Tom Ochwat, Capital Improvement Program Section Head, County of Maui Department of Water Supply
    c. Joseph Sinacori, Project Manager, County of Maui Department of Water Supply
    d. Justin Rodden, Project Engineer, County of Maui Department of Water Supply
    e. Owner Advisor (Stantec Consulting Inc.).
2. Participate in a 6-hour risk workshop within 4 weeks of NTP. Participants shall include:
    a. Kimo Landgraf, Deputy Director, County of Maui Department of Water Supply
    b. Tom Ochwat, Capital Improvement Program Section Head, County of Maui Department of Water Supply
    c. Joseph Sinacori, Project Manager, County of Maui Department of Water Supply
    d. Justin Rodden, Project Engineer, County of Maui Department of Water Supply
    e. Owner Advisor (Stantec Consulting Inc.).
3. Participate in a 4-hour partnering workshop with Owner and Design-Builder Key Personnel within 6 weeks of NTP. Participants shall include:
    a. Kimo Landgraf, Deputy Director, County of Maui Department of Water Supply
    b. Tom Ochwat, Capital Improvement Program Section Head, County of Maui Department of Water Supply

c. Joseph Sinacori, Project Manager, County of Maui Department of Water Supply
d. Justin Rodden, Project Engineer, County of Maui Department of Water Supply
e. Owner Advisor (Stantec Consulting Inc.).

4. Within 30 calendar days of the Notice to Proceed (NTP), provide a Draft Project Management Plan that describes the DB approach to Project delivery. The format and level of detail for all documents, tools, and processes shall be acceptable to the Owner. The plan will specifically address:

    a. Team organization necessary to deliver the Project
    b. Communication protocols, document management and control, decision process, and dispute resolution matrix
    c. Proposed Project schedule format and structure
    d. Proposed format and process for risk management (e.g., format of risk register, process, etc.)
    e. Proposed format and structure for design,and schedule trend management process for Owner to provide input during Project Delivery
    f. Building information modeling (BIM)/technology standards and processes for collaborating
    g. Minority business and local preference participation plan/approach
    h. Table of contents for all plans defined in subsequent tasks

        i. Procurement Plan
        ii. Permitting and Approvals Plan
        iii. Quality Management Plan
        iv. Field Investigation Plan
        v. Environmental Management Plan (Phase 2)
        vi. Site Logistics Plan (Phase 2)
        vii. Construction Emergency Response Plan and Site Safety Plan (Phase 2)

5. Based on Owner review and feedback, submit Final Project Management Plan within two weeks of receiving Owner comments.
6. Participate in bi-weekly progress meetings to review Project status.
7. Submit monthly invoices and progress reports documenting Project status, planned versus actual progress, schedule performance, and key milestones.

1.1.1 Task 1 Deliverables:

- Draft and Final Project Management Plan
- Progress Meeting Minutes
- Monthly Invoices/Progress Reports

1.2 Task 2—Alternative Analyses and Technical Workshops

The Design-Builder will perform an analysis of various technical alternatives to allow the Owner to make decisions necessary to refine the scope of the Project prior to Engineering Design

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Development. The alternatives that will be evaluated include:

The Design-Builder shall schedule, prepare for, and conduct up to six (6) 8-hour technical workshops and meetings with the Owner and Design-Builder Key Personnel throughout Projecct delivery, as necessary to support Project planning, design development, permitting, procurement, and constructiona activities. These technical meetings and workshops are in addition to the progress meetings required under Task 1. The scheduling and discussion topics for these workshops shall be jointly agreed upon between the Owner and the Design-Builder and shall be intended to facilitate and support Owner decision-making with respect to the Project configuration and design, permitting, and construction planning progression.

1.2.1 Task 2 Deliverables:

Deliverables for alternatives analysis should be aligned with the Owner review and decision-making requirements.

- Technical workshop agendas and meeting minutes (including presentation materials)

1.2.2 Task 2 Assumptions:

- Provide the Owner 10 calendar days to review deliverable for alternative analysis

1.3 Task 3—Permitting and Approvals

A preliminary Permitting and Approvals Plan. Attachment 1 Scope of Work also identifies anticipated permits and approvals that are required for Project Delivery.

Task 3.1 — Permitting and Approvals Plan. The Design-Builder shall identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project described by Design-Builder, including, but not limited to, the United States Army Corps of Engineers, Hawai‘i Department of Health, Hawai‘i Department of Transportation, Hawaiian Electric/Maui Electric, Office of Planning and Sustainable Development, Department of Land and Natural Resources, Commission on Water Resource Management, County of Maui Department of Public Works, and other agencies having jurisdiction over the Project. The Design-Builder shall identify and obtain all permits, approvals, clearances, and authorizations required for Project delivery. The Design-Builder shall develop a draft Project Permitting and Approvals Plan consistent with Attachment 1 and including any other permits/approvals identified by the Design-Builder. The plan shall identify/address all permits and approvals including those being obtained by the Owner. The plan shall include a detailed schedule for obtaining permits and approvals throughout design and construction and for providing timely input and deliverables by the Design-Builder for the permits being obtained by the Owner, and for the Owner for permits being obtained by the Design-Builder. For each identified permit/approval, the plan shall include the following information:

- The name of the permit/approval
- Name and contact information for the authority having jurisdiction (AHJ) responsible for issuing the permit/approval
- Responsibilities (individuals) for developing the permit application and supporting technical information

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- A summary of application and supporting technical requirements for each permit/approval
- A description of linkages to other permits/approvals and to decisions by the Owner and/or Design-Builder
- Expected AHJ review and approval durations
- Permit/approval tracking procedures and responsibilities
- Protocols for incorporating permit/approval conditions into design and construction

The Design-Builder shall provide the draft plan to the Owner for review and shall submit it within 40 calendar days of the NTP. Within 10 working days following the receipt of Owner comments, the Design-Builder shall revise the plan to address Owner comments.

The Design-Builder shall update the plan as Project development activities progress if such progression results in identifying additional permits or changes to the permitting requirements and durations. In addition, an updated Permitting and Approvals Plan shall be provided to the Owner along with the following documents:

- 30% Design Package
- 60% Design Package
- 90% Design Package
- 100% Design Package

The Design-Builder shall obtain, or support the Owner in obtaining, all permits, approvals, clearances, and authorizations required for Project delivery in accordance with the Contract Documents. The Design-Builder shall actively monitor the status of permit and approval processing; respond to requests for clarification, additional information, and application revisions; attend meetings with authorities having jurisdiction as necessary to support timely permit issuance; notify the Owner of significant permitting issues or delays; and provide regular updates regarding permit status and approvals obtained.

1.3.1 Task 3 Deliverables:

- Draft and Final Permitting and Approvals Plan
- Permit Status Log
- Permitting Meeting Minutes
- Copies of permit applications, permits, approvals and authorizations obtained by the Design-Builder

1.4 Task 4—Survey and Field Investigations

The Design-Builder shall identify, plan, perform, and coordinate all survey, geotechnical, environmental, utility, and other field investigations necessary to support Project design, permitting, construction, commissioning, and closeout. The Design-Builder shall be responsible for verifying existing site conditions; identifying subsurface conditions; locating existing utilities and infrastructure; supporting permit applications; developing maintenance of operations plans; and obtaining all information necessary to complete the Work.

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The Design-Builder shall develop and submit a proposed Field Investigation Plan for Owner review and acceptance prior to initiating field investigation activities. The Field Investigation Plan shall identify the proposed investigations, methodologies, schedule, access requirements, safety considerations, deliverables, and coordination requirements.

1.4.1 Task 4 Deliverables:

- Proposed Field Investigation Plan
- Topographic and Boundary Survey
- Utility Investigation Report
- Geotechnical Investigation Report
- Environmental investigation Reports, as required
- Field Investigation Data and Supporting Documentation

1.5 Task 5—Engineering Design Development

Task 5.1—Preliminary Design Report (PDR) Package. The Design-Builder shall:

1. Review the Project requirements and consult with the Owner as appropriate to further clarify requirements for the Project including Owner's budget, review of Owner's Project criteria, and available Owner-furnished information.
2. Evaluate the Project reference documents, including, but not limited to, the Owner's Project criteria and, after consultation with Owner, recommend to Owner any modifications to such documents which in Design-Builder's judgment would benefit the Project.
3. Prepare and submit a Draft PDR Deliverable Package, which shall include:
    a. Updated Owner's Project Criteria
    b. Preliminary Design Report
        i. Reports, memoranda, schematic layouts, sketches, design criteria, and appropriate exhibits indicating the applicable requirements, considerations involved, and recommended alternate solutions
            1. Well Development information
            2. Pump Sizing and Selection
            3. Hydraulics
            4. Roadway Design
            5. Stormwater Analysis
        ii. Topographic survey of the entire Project site
        iii. Preliminary geotechnical information
        iv. Environmental Risks and Mitigation
        v. Utility Coordination and Design Criteria
    c. Baseline Design-Build Cost Model
    d. Baseline Design-Build Schedule
    e. Permitting Approach and applicability

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4. For the PDR Deliverable Package, the Design-Builder shall: submit the draft for review; schedule and facilitate a review meeting with Owner to present the package and an overview of the initial Cost Model and Project schedule; and respond to Owner review comments.
5. The Design-Builder shall maintain and update the PDR as necessary through 60% design. The Design-Builder shall submit a final PDR Package with the 60% Design Package as described in Task 5.3.

Task 5.2—30% Design Package. After completion of the PDR, the Design-Builder shall proceed with further development and refinement of the design, including development and submittal of a 30% Design Package to the Owner including:

- 30% Drawings
- 30% Specifications TOC
- 30% Design-Build Cost Model
- 30% Design-Build Schedule
- 30% Constructability Review Report
- 30% Procurement and Long-Lead Equipment Plan
- Updated Risk Register for design and construction

Task 5.3—60% Design Package. After completion of the 30% Design Package, the Design-Builder shall proceed with further development and refinement of the design, including development and submittal of a 60% Design Package to the Owner for review and comment. The 60% Design Package shall include all documents, drawings, and specifications required under this task or identified as being submitted along with the 60% design under other tasks. At a minimum, the 60% Design Package shall include:

- Proposed Revisions to Owner's Project Criteria
- Final Adjudicated and Accepted Responses to Owner's 30% Review Comments
- Final PDR Deliverable Package
- 60% Drawings
- 60% Specifications
- Draft Construction Emergency Response Plan and Site Safety Plan
- Draft Construction Quality Management Plan
- Draft Preliminary Commissioning and Startup Plan
- Draft Preliminary Acceptance Test Plan (Draft Acceptance Test Plan shall identify any proposed changes to the Project performance standards of the RFP template)
- Draft Maintenance of Plant Operations Plan
- Draft Preliminary Operator and Maintenance Staff Training Plan
- Permit Logs
- Updated Project Cost Report, including schedule of values, contingency status, allowance status (if applicable), and forecast of cost impacts associated with approved and pending changes
- Updated Construction Risk Register

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- Design-Builder Proposed Contingency Justification (based on updated construction risk register)
- 60% Design-Build Schedule
- 60% Constructability Review Report
- 60% Procurement and Long-Lead Equipment Plan

Task 5.4—90% Design Package. After completion of the 60% Design Package, the Design-Builder shall proceed with further development and refinement of the design, including development and submittal of a 90% Design Package to the Owner for review and comment. The 90% Design Package shall include all documents, drawings, and specifications required under this task or identified as being submitted along with the 90% design under other tasks. At a minimum, the 90% Design Package shall include:

- Proposed Revisions to Owner's Project Criteria
- Final Adjudicated and Accepted Responses to Owner's 60% Review Comments
- Final PDR and 60% Design Comment Resolution Matrix
- 90% Drawings
- 90% Specifications
- Final Draft Construction Emergency Response Plan and Site Safety Plan
- Final Draft Construction Quality Management Plan
- 90% Commissioning and Startup Plan
- 90% Acceptance Test Plan (identifying any proposed changes to Project performance standards included in the RFP)
- 90% Maintenance of Plant Operations Plan
- 90% Operator and Maintenance Staff Training Plan
- Permit Logs and Permit Status Report
- Updated Project Cost and Forecast Report
- Updated Construction Risk Register
- 90% Design-Build Schedule
- 90% Constructability Review Report
- 90% Procurement Status Report
- Updated Risk Register
- Equipment and Material Submittal Status Log
- Draft O&M Manual Table of Contents and Development Status
- Value Engineering and Design Optimization Summary
- Draft Federal and Regulatory Compliance Monitoring Plan, including Davis-Bacon, AIS, environmental permit compliance, and other applicable federal, state, and local requirements
- Design Quality Control Certification
- Summary of Remaining Design Items Required for 100% Submission

Task 5.5—Final Design Package(s). For each Contract Price, the Design-Builder shall assemble the applicable design drawings, specifications, and other information necessary to document the basis of the Contract Price. The Baseline Document Design Package(s) will incorporate the

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adjudicated Owner review comments from all prior Design Package submissions.

1.5.1 Task 5 Deliverables:

- Draft PDR Package
- Owner Draft PDR Package Comments and Adjudicated Design-Builder Responses
- 30% Design Package
- 60% Design Package
- 90% Design Package
- Baseline Document Design Package(s)

1.6 Task 6—Project Delivery Services

Task 6.1—Project Controls and Cost Estimating. The Design-Builder will develop and maintain project controls to manage Project cost, schedule, procurement, and risk throughout Project delivery. As part of this task, the Design-Builder will complete the following:

1. Develop and submit a Baseline Project Controls Package based on the PDR design documents and associated Project deliverables. The package shall identify all major Project tasks and include a preliminary work breakdown structure (WBS) needed to complete and manage the Project scope, cost, schedule, procurement and risk. The Design-Builder should include the following with the Baseline Project Controls package:
    a. Baseline Project Schedule
    b. Initial Project Cost Report
    c. Draft Site Logistics Plan
    d. Draft Construction Emergency Response Plan and Site Safety Plan
    e. Draft Quality Management Plan that ensures conformance to the Contract Documents
    f. Draft Environmental Management Plan detailing programs for a stormwater pollution prevention plan and handling other environmental issues (dust, on-site chemicals and fuel, etc.) if required to comply with permits and regulations applicable to the Project
2. Develop and maintain a Project Risk Register throughout Project delivery. Lead periodic meetings with the Owner to review risks, mitigation measures, and potential cost and schedule impacts. Attendees include, at a minimum: project manager, engineering manager, preconstruction manager, lead estimator, and construction manager, along with any other necessary personnel.
3. Develop and maintain Design Decision Logs and Cost and Schedule Impact Logs. The logs shall track value engineering proposals, risk mitigation measures, Owner-directed changes, procurement impacts, design development decisions, and other items that may affect Project cost, schedule, quality, or performance. The Design-Builder shall identify potential impacts and recommended resolutions for Owner consideration.
4. Submit updated Project Cost Reports, Risk Registers, and Design Decision Logs at the following design milestones:
    a. 30% Design-Build Package —based on 30% design, including identification of construction phasing concepts that would result in schedule savings. Identify any

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material or equipment prepurchase and their cost(s). Identify risks and benefits associated with construction phasing concepts.

b. 60% Design-Build Package
c. 90% Design-Build Package

5. Develop and maintain a Design Decision Log and Cost and Schedule Impact Log. These logs may be maintained separately or combined with other Project decision logs. The logs shall track value engineering proposals, design optimization opportunities, risk mitigation measures, Owner-directed changes, procurement impacts, and significant design decisions that may affect Project cost, schedule, quality, constructability, or performance. For each item, the Design-Builder shall identify potential resolutions and evaluate associated cost and schedule impacts, as appropriate. The logs shall be reviewed periodically with the Owner during design. The Design-Builder shall promptly notify the Owner of significant issues that may adversely affect the Project budget, schedule, or performance requirements.

Task 6.2—Design-Build Schedule. The Design-Builder will:

1. Develop and submit a baseline Design-Build schedule. Incorporate permit application submittals, issuance, and compliance into baseline schedule. The baseline design-build schedule shall be a critical path method (CPM) schedule and will identify all critical path activities, including long-lead equipment procurement items, if any, and provide recommendations to the Owner to optimize the schedule and prevent or minimize Project delivery impacts, including consideration of multiple work packages, early equipment procurement, and other cost and schedule mitigation approaches, if required by the Project schedule. The Design-Builder shall demonstrate and justify the basis for proposed work packages, phased construction activities, long-lead procurement strategies, and schedule mitigation measures necessary to support Project delivery.
2. Submit updated CPM schedule at the following design milestones for formal evaluation and review by Owner:

   a. 30%
   b. 60%
   c. 90%
   d. 100%

Task 6.3—Constructability Reviews. The Design-Builder shall provide constructability reviews of the design as it progresses and at the 30%, 60% and 90% design submittal milestones. As part of design review meetings, the Design-Builder shall highlight potential constructability issues, cost and schedule-saving alternatives, Design-Builder's recommendations, and conduct follow-up activities as needed to resolve issues.

The Design-Builder will provide formal constructability and design optimization reviews at the 30%, 60% and 90% design milestones. The Design-Builder will also compile comments in a tabular format acceptable to the Owner with supporting documentation (descriptions, sketches, drawings, Bluebeam markup, PowerPoint presentation, etc.) as necessary to convey intent.

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Task 6.4—Procurement and Long-Lead Equipment Plan. The Design-Builder will:

1. Submit a Draft Procurement and Long-Lead Equipment Plan within 28 calendar days of issuance of the 30% design deliverable, addressing the following:
    a. Describe approach for packaging the work and identify work that the Design-Builder intends to self-perform. Identify and recommend which work, if any, should be procured through value-based competitive selections instead of low-bid selection.
    b. Describe approach to comply with for potential procurement cost impacts associated with Senate Bill 2075 (Act 87, SLH 2026).
    c. Describe approach to comply with HRS 103-55, applicable to public works projects with estimated values of $250,000 or greater. Section 103-55.6 HRS, as enacted by S.B. 19, Act 17, SLH 2009, and the State of Hawai'i Comptroller's Memorandum 2011-06 as amended and all applicable federal funding requirements, including 2 CFR Part 200, HUD requirements, and other applicable procurement and contracting regulations
    d. Describe the criteria and procedures that will be used to solicit, evaluate, and award subcontracts and major supplier procurements consistent with the Contract Documents and applicable funding requirements.
    e. Comply with 40 CFR 35.10030 and 33 U.S.C § 3914(b), American Iron and Steel.
    f. All procurement procedures shall be in compliance with Owner procurement rules as defined in the contract.
2. Update with each design deliverable.
3. Develop bid packages that align with the proposed sequence of work for efficient execution and to encourage market interest.
4. This includes evaluation of early procurement activities, phased construction work packages, and long-lead material and equipment procurement necessary to support the Project schedule.
5. Actively "premarket" the Project with local trade subcontractors, equipment vendors, and material suppliers to increase awareness and interest in submitting competitive bids and quotes. Execute prequalification activities where appropriate.
6. Owner shall provide input and feedback on updates to Procurement and Long-Lead Equipment Plan.

1.6.1 Task 6 Deliverables:

- Baseline Project Controls Package
- Design Decision Log
- Cost and Schedule Impact Log
- Project Risk Register
- Procurement and Long-Lead Equipment Plan
- Updated Procurement Status Reports

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2 CONSTRUCTION SERVICES

Construction services include the following:

2.1 Task 1—Project Management

1. Provide all Key Personnel identified in the RFP and other personnel necessary to fully meet the Design-Builder's obligations for construction services.
2. In conformance with the DB Contract, obtain the necessary bonds and insurance.
3. Within 30 calendar days after the construction NTP, update and implement required plans.
4. Convene and facilitate one (1) construction kickoff meeting(s).
5. Obtain construction permits and coordinate with various local and state agencies as necessary.
6. Implement procedures for the tracking, review, and approval of submittals, shop drawings, pay requests, change orders, and requests for information.
7. Manage shop drawing preparation for permanent equipment and materials to be incorporated into the Project.
8. Continue development of the CPM Project schedule, adding levels of detail to properly manage the work and to record actual construction progress. Monitor and update the construction schedule weekly; prepare look-ahead bi-weekly work schedules consistent with overall schedule.
9. Review and process all pay applications from subcontractors.
10. Conduct monthly progress meetings to be attended by Owner, on-site subcontract trade forepersons, and/or superintendents.
11. Develop and implement procedures for tracking and reporting Owner-controlled allowances, unit price items, and other Contract adjustments, if applicable under the Contract Documents.
12. Prepare and submit timely monthly progress reports and invoices with current cost and schedule information.

2.2 Task 2—Design Completion

The Design-Builder shall complete all remaining design activities necessary to support permitting, procurement, construction, testing, commissioning, startup, and Project closeout. The Design-Builder shall advance the design to 100% completion and incorporate applicable Owner and permitting agency comments. The Design-Builder may submit multiple design packages to support phased permitting, early procurement, long-lead equipment procurement, and phased construction activities, subject to Owner review and acceptance.

2.2.1 Task 2 Deliverables

- Final plans and specifications consistent with a typical 100% design milestone, stamped and signed by the Engineer of Record, registered in the state of Hawaii
- Issued-for-Construction (IFC) design packages, as applicable.
- Design package comment resolution matrices.
- Final design calculations, reports, and supporting documentation.

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2.3 Task 3—Construction

The Design-Builder will:

1. Perform construction in strict accordance with the DB Contract and design documents.
2. Set and maintain the site safety standards, policies, and procedures starting in construction and carrying through commissioning and startup.
3. Provide engineering support and construction phase services to verify that the Work is constructed in accordance with the Contract documents.
4. Maintain the Project site including stormwater runoff, dust control, removal of refuse, temporary utilities, etc.
5. Establish and implement procedures to track, expedite, and process all submittals, change orders, and requests for information.
6. Develop, review, and process shop drawings and other documents.
7. Procure material and equipment to support construction activities of the Design-Builder and its trade subcontractors.
8. Coordinate and manage all construction for all required facilities, appurtenances, site improvements, and other associated work in accordance with the contract documents within the Contract Price and Contract Time.
9. Coordinate regular inspections of all construction work performed by the Design-Builder and its subcontractors to ensure conformance with the contract documents and Quality Management Plan.
10. Maintain current copies of Project record drawings at the Project site, including all subcontracted work.
11. Prepare and coordinate maintenance of plant operations plans with the Owner during construction.

2.4 Task 4—Testing, Commissioning, and Startup

The Design-Builder will:

1. Expedite and coordinate delivery, storage, security, and installation of Owner-procured material and equipment, if applicable.
2. Develop, coordinate, and manage a commissioning, startup, and testing plan, as necessary, for the Owner to accept the Project as completed and ready to use.
3. Lead commissioning and process startup.
4. Develop operation and maintenance manuals for improvements.
5. Train Owner staff and provide standard operating procedures (SOPs), maintenance procedures, and supporting documentation required for operation of the completed facilities.
6. In collaboration with the Owner, provide the appropriate information to update and maintain the Owner’s asset management system, if required.
7. Complete all construction work, including testing, commissioning, and acceptance testing as defined by the DB Contract.

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2.5 Task 5—Warranty and Closeout

The Design-Builder will:

1. Supervise and manage the warranties provided to the Owner for the equipment and construction work.
2. Gather warranty work items from the subcontractors and vendors and provide these to the Owner upon final completion of the Project.
3. Close out construction permits issued to the Design-Builder.
4. Verify that all applicable permit conditions, regulatory requirements, environmental mitigation measures, testing requirements, and compliance obligations have been satisfied and documented prior to Final Completion.
5. Conduct a walk-through with the Owner to make sure that the Owner and Design-Builder agree that construction work is substantially complete before the warranty period defined in the DB Contract goes into effect.
6. Implement close-out procedures necessary for the Owner to accept the Project as being finally complete; provide lien waivers from the Design-Builder and its subcontractors and material suppliers.
7. Complete all warranty repairs, corrective work, and other warranty obligations required under the Contract Documents during the warranty period

2.5.1 Task 5 Deliverables

- Updated CPM Schedules
- Monthly Progress Reports
- Permit Status Reports
- Quality Management Documentation
- Testing and Commissioning Reports
- Acceptance Test Reports
- Operations and Maintenance Manuals
- Training Materials
- Standard Operating Procedures
- Record Drawings
- Asset Management Data
- Warranty Documentation
- Final Closeout Package

- END OF SCOPE OF DB SERVICES -

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ATTACHMENT 3 - MODEL CONTRACT PLACEHOLDER
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant -Disaster Recovery
2027-PROF-6

-- To be included in the Request for Proposals --

Attachment 4A

Form for Submission of Inquiries

DWS CIP JOB NO. 20-01-A-DV **Inquiry Form No. [_____]**

Launiupoko L1 Production Well RFQ

Community Development Block Grant –Disaster Recovery

Submit additional sheets of this Form for Submission of Inquiries if more than 10 questions are to be submitted

Bidder: **Date:**

No.	Question	RFQ Section or Document	RFQ or Document Page No.
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

ATTACHMENT 5 - General Terms and Conditions
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant -Disaster Recovery
2027-PROF-6

-- To be updated in the Request for Proposals documents for Design-Build Contracts --

Currently Includes:

- General Terms and Conditions for Professional Services Contracts
- General Terms and Conditions for Construction Contracts
- General Terms and Conditions for Goods & Services Contracts

COUNTY OF MAUI
GENERAL CONDITIONS
FOR PROFESSIONAL SERVICES CONTRACTS

1. COORDINATION OF SERVICES BY THE COUNTY. The Officer-in-Charge shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in this Contract. The CONTRACTOR shall maintain communications with the Officer-in-Charge at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any COUNTY department or division which is authorized to enter into contracts for the procurement of goods and services.

2. CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.

a. SUSPENSION AND DEBARMENT.

1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

2) The CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3) This certification is a material representation of fact relied upon by the County. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

4) The CONTRACTOR shall comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the term of this Contract, and further agrees to include a provision requiring such compliance in its lower tier covered transactions.

b. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

1) Overtime requirements. No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3) Withholding for unpaid wages and liquidated damages. County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4) Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

c. FRAUD AND FALSE OR FRAUDULENT OR RELATED ACTS. The CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR's actions pertaining to this contract.

d. INDEPENDENT CONTRACTOR. In the performance of services required under this Contract, the CONTRACTOR is an "independent CONTRACTOR," with the authority and responsibility to control and direct the performance and details of the work and services required under this agreement; however, the COUNTY shall have a general right to inspect work in progress to determine whether, in the COUNTY's opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the COUNTY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the COUNTY

e. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Contract, agents or employees of the COUNTY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the COUNTY any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to the COUNTY employees.

f. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.

g. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes and (iii) general excise taxes. Unless provided otherwise by agreement between the parties, the CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

h. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes ("HRS"), and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR have been paid and submit the same to the COUNTY prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under Section 103-53, HRS and Paragraph 17 of these General Conditions.

i. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

j. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and sections 3-122-112, Hawaii Administrative rules, ("HAR") that is current within six months of the date of issuance.

k. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.

3. PERSONNEL REQUIREMENTS.

a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Contract

b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under Federal, State or County law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. NONDISCRIMINATION. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable Federal, State, or County law.

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

6. SUBCONTRACTS AND ASSIGNMENTS; CHANGE OF NAME.

a. No assignment without consent. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (1) the CONTRACTOR obtains the prior written consent of the COUNTY and (2) the CONTRACTOR'S assignee or subcontractor submits to the COUNTY a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the COUNTY.

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

1) The Assignee assumes all of the CONTRACTOR'S obligations;

2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the COUNTY; and

3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

c. Change of name. When the CONTRACTOR asks to change the name under which it holds this Contract with the COUNTY, the contract officer of the purchasing agency shall, upon receipt of a document acceptable or satisfactory to said officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms or conditions of this Contract are thereby changed.

d. Reports. All assignment contracts and amendments to this Contract effecting changes of CONTRACTOR's name or novation hereunder shall be reported to the chief procurement officer as defined in section 103D-203(b), HRS, within 30 days of the date that the assignment contract or amendment becomes effective.

e. Actions affecting more than one purchasing agency. Notwithstanding the provisions of Subparagraphs b. through d. herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the COUNTY, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the County Department of Finance.

7. INDEMNIFICATION AND DEFENSE. Except as provided for in Section 103D-713, HRS, the CONTRACTOR shall defend, indemnify and hold harmless the COUNTY, the contracting department and their directors, employees and agents from and against all liability, loss, damage, cost and expense, including all attorneys' fees and costs, and all claims, suits and demands therefor, arising out of or in connection with any acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents or subcontractors under this Contract. The provisions of this Paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract for any reason.

8. COST OF LITIGATION. In case the COUNTY shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay any cost and expense incurred by or imposed on the COUNTY, including attorneys' fees.

9. LIQUIDATED DAMAGES. When the CONTRACTOR is given notice of delay or nonperformance as specified in Paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the COUNTY the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the COUNTY reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR's delay or nonperformance is excused under Subparagraph 13.d. (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other

than by delay. This Paragraph is of no force and effect unless the amount of liquidated damages is specified in the Contract.

10. COUNTY'S RIGHT OF OFFSET. The COUNTY may offset against any monies or other obligations the COUNTY owes to the CONTRACTOR under this Contract, any amounts owed to the COUNTY by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the COUNTY by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The COUNTY will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this Paragraph, amounts owed to the COUNTY shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the COUNTY, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the COUNTY under such payment or other settlement plan.

11. ADMINISTRATIVE, CONTRACTUAL, OR LEGAL REMEDIES. CONTRACTOR agrees to be bound by the administrative, contractual, or legal remedies set forth in these General Terms and Conditions, and HRS Section 103D-701, et seq., which govern CONTRACTOR's violation or breach of contract terms and appropriate sanctions and penalties.

12. SUSPENSION OF AGREEMENT. The COUNTY reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

a. Order to stop performance. The head of the purchasing agency may, by written order to the CONTRACTOR at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period of time not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the head of the purchasing agency shall either:

1) Cancel the stop performance order; or

2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

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

1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and

2) The CONTRACTOR asserts a claim for such adjustment within thirty (30) days after the end of the period of performance stoppage provided that if the head of the purchasing agency decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

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

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

13. TERMINATION FOR DEFAULT.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, or otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the head of the purchasing agency may notify the CONTRACTOR in writing of the delay or non-performance and if

not cured in ten (10) days or any longer time specified in writing by the head of the purchasing agency, the head of the purchasing agency may terminate the CONTRACTOR's right to proceed with the Contract or such part of the Contract as to which there has been delay or failure to properly perform. In the event of termination in whole or in part the head of the purchasing agency may procure similar goods or services in a manner and upon the terms deemed appropriate by the head of the purchasing agency. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods and services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the head of the purchasing agency, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the COUNTY has an interest.

c. Compensation. Payment for completed goods and services delivered and accepted by the COUNTY shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the head of the purchasing agency. If the parties fail to agree, the head of the purchasing agency shall set the amount subject to the CONTRACTOR's rights under chapter 3-126, HAR. The COUNTY may withhold from amounts due the CONTRACTOR such sums as the head of the purchasing agency deems to be necessary to protect the COUNTY against loss because of outstanding liens or claims of former lien holders and to reimburse the COUNTY for the excess costs incurred by the COUNTY in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, if the CONTRACTOR has notified the head of the purchasing agency within fifteen (15) days after the cause of the delay and the failure arises out of causes including acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the head of the purchasing agency shall ascertain the facts and extent of the failure, and, if he or she determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule or the time of performance shall be revised accordingly, subject to the rights of the COUNTY under the clause entitled, in fixed-price contracts, "Termination for Convenience," and in cost-reimbursement contracts, "Termination." As used in this Paragraph the term "subcontractor" means subcontractor at any tier.

e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under this Paragraph, it is determined for any reason that the CONTRACTOR was not in default under this Paragraph, or that the delay was excusable under the provisions of Subparagraph d., "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 14.

f. Additional rights and remedies. Additional rights and remedies. The rights and remedies provided in this Paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. TERMINATION FOR CONVENIENCE BY THE COUNTY.

a. Termination for convenience. The head of the purchasing agency may, when the interests of the COUNTY so require, terminate this Contract in whole or in part, for the convenience of the COUNTY. The head of the purchasing agency shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when such termination becomes effective.

b. CONTRACTOR's obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance, and on the date(s) set in the notice of termination the CONTRACTOR shall stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the County's approval. The head of the purchasing agency may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the COUNTY. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as are necessary to do so

c. Right to goods and work product. Right to goods and work product. The head of the purchasing agency may require the CONTRACTOR to transfer title and deliver to the COUNTY in the manner and to the extent directed by the head of the purchasing agency:

1) Any completed goods or work product or both; and

2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract. The CONTRACTOR shall, upon direction of the head of the purchasing agency, protect and preserve property in the possession of the CONTRACTOR in which the COUNTY has an interest. If the head of the purchasing agency does not exercise this right, the CONTRACTOR shall use CONTRACTOR's best efforts to sell such goods and manufacturing materials. Use of this Paragraph in no way implies that the COUNTY has breached the Contract by exercise of the termination for convenience provision

d. Compensation.

1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience, together with cost or pricing data to the extent required by subchapter 15, chapter 3-122 of the HAR, bearing on the claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the head of the purchasing agency may pay the CONTRACTOR, if at all, an amount set in accordance with (d)(3) below.

2) The head of the purchasing agency and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted to the extent required by subchapter 15, chapter 3-122, HAR, and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the COUNTY, the proceeds of any sales of goods and manufacturing materials under Subparagraph c. of this Paragraph, and the Contract price of the performance not terminated.

3) Absent complete agreement under Subparagraph (d)(2) above, the head of the purchasing agency shall pay the CONTRACTOR the following amounts, provided payments agreed to under Subparagraph d.2) shall not duplicate payments under this Subparagraph for the following:

(A) Contract prices for goods or services or both accepted under the Contract;

(B) Costs incurred in preparing to perform and performing the terminated portion of the work or performance plus a five per cent markup on actual direct costs on the portion of the work or performance, the markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services or both; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Subject to the prior approval of the head of the purchasing agency, costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph b. Subcontractors shall be entitled to a markup of no more than ten per cent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with Subparagraph (d)(3)(B);

(D) The total sum to be paid the CONTRACTOR under this Subparagraph shall not exceed the total Contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph c.3) and the Contract price of performance not terminated.

4) Costs claimed, agreed to, or established under Subparagraphs d.2) and d.3) above shall be in accordance with Chapter 3-123, HAR

15. CLAIMS BASED ON THE HEAD OF THE PURCHASING AGENCY'S ACTIONS OR OMISSIONS.

a. Change in scope. If any action or omission on the part of the head of the purchasing agency (which term includes the designee of such person) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of proper officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages or extension of time for completion, provided:

1) The CONTRACTOR shall have given written notice to the head of the purchasing agency:

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

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

(C) Within such further time as may be allowed by the head of the purchasing agency in writing.

2) This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages or an extension of time. The head of the purchasing agency or his or her designee, upon receipt of such a notice, may rescind such action, remedy such omission or take such other steps as may be deemed advisable in the discretion of the head of the purchasing agency or his or her designee;

3) The notice required by Subparagraph a.1) of this Paragraph must describe as clearly as practicable, at the time, the reasons why the CONTRACTOR believes that additional compensation, damages or an extension of time may be remedies to which the CONTRACTOR is entitled; and

4) The CONTRACTOR must maintain and, upon request, make available to the head of the purchasing agency within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the COUNTY, of the claimed additional costs or an extension of time in connection with such changes.

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

c. Any adjustment in the price made pursuant to this Paragraph shall be determined in accordance with the price adjustment provisions of the Contract and these General Conditions.

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

a. Reimbursement for air transportation shall be for actual cost or coach class airfare, whichever is less.

b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.

c. Unless prior written approval of the head of the purchasing agency is obtained, reimbursement for subsistence allowable allowance (i.e., hotel and meals) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel for County officers and employees in the executive branch who are excluded from collective bargaining coverage No other travel or living expense (e.g., tips, entertainment, alcohol, etc.) shall be reimbursed by the COUNTY, other than those items listed in Subparagraphs a. and b. of this Paragraph. Invoices shall document the days of travel by including the name of the traveler, itinerary, airfare receipt, hotel receipt, and ground transportation receipts. All travel must be pre-approved by the COUNTY Officer-in-Charge.

d. CONTRACTORS with an office located on the same island as the site of the services to be provided pursuant to this Contract are not entitled to per diem or transportation expense reimbursement unless expressly specified in the Contract

17. PAYMENT PROCEDURES; FINAL PAYMENT; TAX CLEARANCE.

a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.

b. Subject to available funds. Such payments are subject to availability of funds, and all payments shall be made in accordance with and subject to Article 9 of the County of Maui Charter.

c. Payment only for work under contract. The COUNTY is not responsible to pay for work performed by CONTRACTOR or its subcontractors that is not in this Contract and any amendments or change orders thereto. CONTRACTOR must follow Paragraph 19, Contract Modifications, or Paragraph 20, Change Orders, and must have proper authorization before performing work outside the original Contract.

d. Compensation retained.

1) Pursuant to §103-32.1(a), HRS, the County may retain a portion of the amount due under the contract to the CONTRACTOR to ensure proper performance of the contract, provided that the sum withheld shall not exceed five percent (5%) of the 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 Procurement Officer may continue to withhold as compensation retained sums not exceeding five

percent (5%) of the amount due the CONTRACTOR; provided further that the compensation retained shall not include sums deducted and withheld separately as liquidated damages from moneys due or that may become due the CONTRACTOR under the contract.

2) The County may enter into an agreement with the CONTRACTOR which will allow the CONTRACTOR to withdraw from time to time the whole or any portion of the sum retained under sub-paragraph (a) upon depositing with the County any general obligation bond of the State or its political subdivisions with a market value not less than the sum to be withdrawn; provided that the County may require that the total market value of such bond be greater than the sum to be withdrawn.

e. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section

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

19. CONTRACT MODIFICATIONS.

a. Modification in writing; no verbal modification. At any time, and without notice to any surety, the head of the purchasing agency, subject to mutual agreement of the parties to the Contract in writing and all appropriate adjustments, may make modifications within the general scope of this Contract to include any one or more of the following:

1) Drawings, designs, or specifications, for the goods to be furnished or services to be performed;
2) Method of shipment or packing;
3) Place of delivery;
4) Description of services to be performed;
5) Time of performance (i.e. hours of the day, days of the week, etc.);
6) Place of performance of the services; or
7) Other provisions of the contract accomplished by mutual action of the parties to the contract.

b. No verbal modification. No verbal modification, alteration, amendment, change or extension of any term, provision or condition of this Contract shall be permitted or acknowledged.

c. Adjustment of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be **allowed** if the claim is not received by the head of the purchasing agency prior to final payment under this Contract.

e. Other claims not barred. In the absence of a written modification to the Contract, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.

f. Professional Services Contract. If this is a professional services contract awarded pursuant to Section 103D-304, HRS, any modification, alteration, amendment, change or extension of any term, provision or extension of this Contract which increases the amount payable to the CONTRACTOR by at least $25,000.00 and ten per cent (10%) or more of the initial Contract price must receive the prior approval of the County Director of Finance.

g. Tax clearance. The COUNTY may, at its discretion, require the CONTRACTOR to submit to the COUNTY, prior to the COUNTY's approval of any modification, alteration, amendment, change or extension of any term, provision or condition of the Contract, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued against the CONTRACTOR have been paid.

h. Sole source agreements. Amendments to sole source agreements that would change the original scope of the agreement, or increase the original contract price by ten percent or more, may only be made with the approval of the Chief Procurement Officer. Annual renewal of a sole source agreement for services shall not be submitted as an amendment.

20. CHANGE ORDERS. A change order is a written order signed by the head of the purchasing agency, directing the CONTRACTOR to make changes which the "changes clause" described below authorizes the head of the purchasing agency to order without the consent of the CONTRACTOR.

a. Changes Clause Generally. By written order, at any time, and without notice to any surety, the head of the purchasing agency may, unilaterally, order of the CONTRACTOR:

1) Changes in the work within the scope of the Contract; and

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

b. Adjustments of 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, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment in contract price shall be resolved in accordance with Subparagraph a.5) of Paragraph 21 on Price Adjustment. Failure of the parties to agree to an adjustment in time shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the head of the purchasing agency, within fourteen days after the changed work commences, makes the provisional adjustments in time as the head of the purchasing agency 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 written notice requirements for disputes and claims established by the Contract.

c. Time period for claim. Except as may be provided otherwise by section 103D-501(b), HRS, the CONTRACTOR must file a written claim disputing the contract price or time provided in a change order within ten days after receipt of a written change order, unless such period for filing is extended by the head of the purchasing agency in writing. The requirement for filing a timely written claim cannot be waived and shall be a condition precedent to the assertion of a claim.

1) Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if the claim is not received by the head of the purchasing agency prior to final payment under this Contract

2) Other claims not barred. In the absence of such a change order, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract

21. PRICE ADJUSTMENT.

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

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

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

3) By the costs attributable to the events or situations covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;

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

5) In the absence of agreement between the parties, the adjustment shall be made pursuant to 103D-501(b)(5), HRS.

b. Submission of cost or pricing data. The CONTRACTOR shall be required to submit cost or pricing data for any price adjustment subject to the provisions of subchapter 15, chapter 3-122, HAR. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in Subparagraph (a)(1) through (a)(4) of this Paragraph shall be issued within ten days after agreement on the method of adjustment.

22. VARIATIONS IN QUANTITY FOR ANY DEFINITE QUANTITY CONTRACT. If this is a definite quantity goods or services contract, upon the agreement of the COUNTY and the CONTRACTOR, the quantity of

goods or services, or both, specified in this Contract, may be increased by a maximum of ten per cent (10%), provided (1) the unit prices will remain the same except for any price adjustments otherwise applicable; and (2) the head of the purchasing agency makes a written determination that such an increase will either be more economical than awarding another Contract or that it would not be practical to award another agreement.

23. CHANGES IN COST REIMBURSEMENT CONTRACT. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

a. The head of the purchasing agency may at any time by written order, and without notice to the sureties, in any, make changes within the general scope of the Contract in any one or more of the following:

1) Description of performance;

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

3) Place of performance of services;

4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the COUNTY in accordance with the drawings, designs, or specifications;

5) Method of shipment or packing of supplies; or

6) Place of delivery.

b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the head of the purchasing agency shall make an equitable adjustment in the 1) estimated cost, deliver or completion schedule, or both; 2) amount of any fixed fee; and 3) other affected terms and shall modify the Contract accordingly.

c. The CONTRACTOR must assert the CONTRACTOR's rights to an adjustment under this provision within 30 days from the day of receipt of the written order. However, if the head of the purchasing agency decides that the facts justify it, the head of the purchasing agency may receive and act upon a proposal submitted before final payment under the Contract.

d. Failure to agree to any adjustment shall be a dispute under the provision on Dispute herein. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed

e. Notwithstanding the terms and conditions of Subparagraphs a. and b. of this Paragraph, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if the contract is incrementally funded, the new amount allotted to the contract.

24. PROMPT PAYMENT OF SUBCONTRACTORS.

a. Generally. Any money paid to a CONTRACTOR shall be disbursed 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 on which the procurement agency has withheld payment.

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

c. Penalty. The procurement officer or the CONTRACTOR, as applicable, will be subject to a penalty of one and one-half per cent per month upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. Where a subcontractor has provided evidence to the CONTRACTOR of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in Subparagraph d. of this Paragraph, and:

1) Has provided to the CONTRACTOR an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 103-32.1, HRS; or

2) The following has occurred:

(A) 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

(B) The subcontractor has provided to the CONTRACTOR, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the CONTRACTOR; any other bond acceptable to the CONTRACTOR; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a

subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the CONTRACTOR and subsequently, upon receipt from the procurement officer, by the CONTRACTOR to the subcontractor within the applicable time periods specified in Subparagraph b. of this Paragraph and section 103-10, HRS. The penalty may be withheld from future payment due to the CONTRACTOR, if the CONTRACTOR was the responsible party. If a CONTRACTOR has violated Subparagraph b. three or more times within two years of the first violation, the CONTRACTOR shall be referred by the procurement officer to the CONTRACTOR's license board for appropriate action, including action under section 444-17(14), HRS.

d. A properly documented final payment request from a subcontractor, as required by Subparagraph c., shall include:

1) Substantiation of the amounts requested;

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

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

(B) The subcontractor has made payments due to its 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

(C) The payment request does not include any amount that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and

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

e. 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 Subparagraph c. of this Paragraph; provided that any such payments withheld shall be withheld by the procurement officer.

25. ACCEPTANCE OF GOODS AND SERVICES. The COUNTY shall accept goods and services or give CONTRACTOR notice of rejection within a reasonable time, notwithstanding any payment, prior test, or inspection. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance with the specifications, shall relieve CONTRACTOR of any obligations under this Contract or impair any rights or remedies of the COUNTY.

26. OBSOLETE PARTS/LONG TERM PARTS AVAILABILITY. CONTRACTOR shall timely report on the status of end of life (EOL) hardware that has been procured for the purchased or leased product. EOL hardware includes the following: electronic components/piece parts and mechanical hardware. CONTRACTOR shall provide advanced notification in writing to the Officer-in-Charge of any changes to tooling, facilities, materials, availability of parts, or processes that could affect the contracted product. This includes but is not limited to fabrication, assembly, handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. CONTRACTOR shall notify the COUNTY of any pending or contemplated future action to discontinue articles purchased or replacement parts for the articles purchased pursuant to this Contract and shall work with the COUNTY to determine the need to stockpile any parts for the likely life of the product and offer those parts to the COUNTY prior to the actual discontinuance. CONTRACTOR shall extend opportunities to the COUNTY to place last time buys of such articles with deliveries not to exceed twelve months after the last time buy date.

27. CONFIDENTIALITY OF MATERIAL.

a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the COUNTY.

b. All information, data, or other material provided by the CONTRACTOR to the COUNTY is subject to the Uniform Information Practices Act, chapter 92F, HRS.

28. PUBLICITY AND USE OF COUNTY, STATE, OR FEDERAL SEAL, LOGO, AND FLAGS. The CONTRACTOR shall not refer to the COUNTY or any office, agency, or officer thereof, or any COUNTY employee, including the head of the purchasing agency, the County procurement officers, the County council members, or

members or directors of any County board or commission, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR without the explicit written consent of the COUNTY. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the head of the purchasing agency.

The CONTRACTOR shall not use federal, state, or County seal(s), logos, crests, or reproductions of flags or likenesses of any agency official without specific pre-approval in writing.

29. OWNERSHIP RIGHTS AND COPYRIGHT. The COUNTY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Contract and all such material shall be considered "works for hire." All such materials shall be delivered to the COUNTY upon expiration or termination of this Contract. The COUNTY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Contract.

30. INSURANCE. During the term of this Contract, CONTRACTOR shall maintain at all times or cause to be maintained general and professional liability insurance coverage for CONTRACTOR and its employees rendering services to the COUNTY under this Contract. The insurance policies shall be issued by a company or companies authorized to do business in Hawaii and approved by the COUNTY, with combined single limits of not less than ONE MILLION DOLLARS ($1,000,000) per occurrence and TWO MILLION DOLLARS ($2,000,000) in the aggregate for Contracts with a total certified amount of $1,000,000 or less, and THREE MILLION DOLLARS ($3,000,000) in the aggregate for Contracts with a total certified amount of $1,000,001 or more, or such greater amount as may be required from time to time by the COUNTY. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR'S employees in the amounts required by applicable law. CONTRACTOR shall provide COUNTY not less than thirty (30) days' notice prior to any cancellation or material change or reduction in coverage. No such material change or reduction may be made without approval from the COUNTY. The COUNTY shall be listed as an additional insured on all policies, with the exception of professional liability and workers' compensation policies. Prior to the commencement of this Contract, CONTRACTOR shall provide the COUNTY with a certificate of insurance. Thereafter, prior to the expiration of each policy period, the insurance carriers for CONTRACTOR shall provide the COUNTY with certificates of insurance evidencing the foregoing coverage and provisions. The COUNTY reserves the right to request and receive a certified copy of the policies. Failure to maintain the necessary insurance in accordance with the provisions set forth herein shall constitute a material breach of this Contract and the COUNTY shall thereafter have the options of pursuing remedies for such breach and/or immediate termination of this Contract.

31. LIENS AND WARRANTIES.

a. Liens. All products provided under this Contract shall be free of all liens and encumbrances.

b. Warranties for products and services. In the event this Contract is for the provision of products (goods or equipment), CONTRACTOR warrants that it has all rights, title and interest in and to all products sold, leased or licensed to the COUNTY. CONTRACTOR also warrants that the products shall substantially conform to all descriptions, specifications, statements of work and representations set forth in the Contract, schedules, publications of CONTRACTOR and/or any order(s) and will be free from defects in materials, performance, workmanship and design. CONTRACTOR further warrants that it will perform any services required with promptness, diligence and in accordance with prevailing standards in the industry to the reasonable satisfaction of the COUNTY. The Warranty period shall commence after Acceptance, as defined in this Contract. Any specific warranty periods shall be as set forth in the proposals, schedules, orders or Special Conditions pertaining to this Contract but in any event such warranty period shall not be less than one (1) year.

32. ACCESS TO AND AUDIT OF BOOKS AND RECORDS OF THE CONTRACTOR. The COUNTY may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective CONTRACTOR, subcontractor, or prospective subcontractor which are related to:

a. The cost or pricing data.

b. Subcontracts, other than those related to a firm fixed-price Contract.

c. The following access to records requirements additionally apply to any Contract funded in whole or in part by the state or federal government:

1) The CONTRACTOR agrees to provide the County, State of Hawaii, Federal Emergency Management Agency or other federal agency, the Comptroller General of the United States, or any of their authorized

representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

2) The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

3) The CONTRACTOR agrees to provide access to construction or other work sites pertaining to the work being completed under the contract.

33. COST OR PRICING DATA.

a. Cost or pricing data must be submitted to the head of the purchasing agency and timely certified as accurate for contracts over $100,000 unless the contract is for a multiple-term or as otherwise specified by the head of the purchasing agency.

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

34. RECORDS RETENTION.

a. Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the COUNTY.

b. 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 COUNTY, and any cost or pricing data, for at least seven years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the seven year or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS, or returned to the County at the request of the County.

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

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

37. POLLUTION CONTROL. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the COUNTY and all other appropriate state, county, or federal agencies as required by law. The CONTRACTOR shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the COUNTY determines that this Contract requires and adjustment of the time for performance, the Contract shall be modified in writing accordingly.

CONTRACTOR further agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. § 7401-767l et seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251-1387, and will report violations to the County, Federal Emergency Management Agency, and the regional office of the Environmental Protection Agency. The CONTRACTOR agrees to include these requirements in each subcontract.

38. RECOVERED AND RECYCLED MATERIALS. To the extent applicable to this contract, CONTRACTOR agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002 requires CONTRACTOR to use only items, designated in guidelines of the Environmental Protection Agency at 40 C.RR. part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000.

a. In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired (i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements; or (iii) At a reasonable price.

b. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

39. ENERGY EFFICIENCY. To the extent applicable to this Contract, CONTRACTOR agrees to comply with all applicable mandatory standards and policies relating to energy efficiency of the State of Hawaii or County.

40. CONFIDENTIALITY OF PERSONAL INFORMATION.

a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

1) Social security number;

2) Driver's license number or Hawaii identification card number; or

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

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

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

b. Confidentiality of Material.

1) All material given to or made available to the CONTRACTOR by the COUNTY 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 COUNTY.

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 COUNTY to reduce the risk of unauthorized access to personal information.

4) CONTRACTOR shall report to the COUNTY 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 COUNTY, or personal information created or received by CONTRACTOR on behalf of the COUNTY.

c. Security awareness training and confidentiality agreements.

1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.

2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

(A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;

(B) Access to the personal information will be allowed only as necessary to perform the Contract; and

(C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for cause. In addition to any other remedies provided for by this Contract, if the COUNTY learns of a material breach by CONTRACTOR of this Paragraph by CONTRACTOR, the COUNTY 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.

41. GOVERNING LAW. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a State court of competent jurisdiction in Wailuku, Maui, Hawaii.

42. COMPLIANCE WITH LAWS. This is an acknowledgement that state or federal financial assistance may be used to fund the contract only. The CONTRACTOR shall comply with all federal, State, and county laws, ordinances, codes, rules, regulations, executive orders, and agency policies, procedures, and directives, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract. This specifically includes, without limitation, Sections 103-55 and 103-55.5, HRS, dealing with wages, hours and working conditions of employees of contractors providing services or construction.

The state and federal government are not party to this contract and is not subject to any obligations or liabilities to the County, CONTRACTOR, or any other party pertaining to any matter resulting from the contract.

43. CONFLICT BETWEEN GENERAL CONDITIONS AND PROCUREMENT RULES. In the event of a conflict between the General Conditions and the procurement rules in the HAR, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.

44. ELECTION-RELATED CONTRIBUTIONS BY COUNTY CONTRACTORS. CONTRACTOR acknowledges and shall comply with Section 11-355, HRS.

45. BYRD ANTI-LOBBYING AMENDMENT. If this contract is for an award of $100,000 or more, CONTRACTOR shall file a written declaration with the County certifying that CONTRACTOR has not and will not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Included within the written declaration shall be the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of CONTRACTOR with respect to this contract. CONTRACTOR also agrees to disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

46. EXCLUDED PARTIES LIST SYSTEM. Contractor understands and agrees that if Contractor is listed on the government-wide Excluded Parties List System in the System for Award Management at www.SAM.gov as suspended or debarred, or has been suspended or disbarred pursuant to Section 103D-702, HRS, Contractor cannot be awarded this contract.

47. FEDERAL EMERGENCY MANAGEMENT REQUIREMENTS. All contracts relying in whole or in part on Federal Emergency Management Agency Public Assistance Program shall comply with 2 C.F.R. §§200.318-200.326.

48. DRAFTING. No provision of this Contract shall be interpreted for or against any party on the basis that such party was the draftsman of such provision, and no presumption of burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Contract.

49. CAPTIONS. The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

50. COUNTERPARTS. This Contract may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronically and such facsimile or electronic execution and transmission shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile or electronic executions or a combination thereof shall be construed together and shall constitute one and the same Contract.

51. SEVERABILITY. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or non-enforceability shall not affect the validity or enforceability of the remaining Contract terms.

52. WAIVER. The failure of the COUNTY to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the COUNTY's right to enforce the same in accordance with this Contract. The fact that the COUNTY specifically refers to one provision of the law, and does not include other provisions shall not constitute a waiver or relinquishment of the COUNTY's rights or the CONTRACTOR's obligations under the law.

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

[END OF GENERAL CONDITIONS FOR PROFESSIONAL SERVICES]

SPECIAL CONDITIONS FOR CONTRACTS UTILIZING FEDERAL FUNDING, INCLUDING FEMA FUNDING

The contractor shall comply with all applicable federal law, regulations, executive orders, policies, procedures, and directives, including but not limited to the following:

(A) Violation or Breach of Contract. If the contract value is in excess of the simplified acquisition threshold, currently set at $250,000, the contractor is directed to Hawaii Revised Statutes § 103D-703 and Section 13 of the County's General Terms and Conditions for Professional Services Contracts (the "GT&Cs") attached herewith.

(B) Termination for Cause or Convenience. If the contract value is in excess of $10,000, the contractor is directed to Sections 13 and 14 of the GT&Cs.

(C) Equal Employment Opportunity. During the performance of the contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will

be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(D) Davis-Bacon Act. The contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the contractor must be required to pay wages not less than once a week. The contractor is directed to the current prevailing wage determination issued by the Department of Labor in the solicitation. Award of this contract is conditioned upon the acceptance of the wage determination. The contractor must report all suspected or reported violations to the County and the Federal awarding agency.

(E) Copeland "Anti-Kickback" Act: When applicable, the contractor must also comply with the Copeland "Anti–Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations. The contractor and any subcontractor are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The contractor must report all suspected or reported violations to the County and the Federal awarding agency.

(1) The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) The contractor shall insert into any subcontracts the clause above and such other clauses as may be appropriate, as well as a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(F) Contract Work Hours and Safety Standards. If the contract value is in excess of $100,000, the contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. When required the Contractor must also comply with the following:

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The County and the Contractor shall upon its own action or upon written request of an authorized representative of

the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(G) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the County wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Contract must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(H) Clean Air Act and the Federal Water Pollution Control Act. If the contract value is in excess of $150,000 the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Contractor shall report violations to the Federal awarding agency, the Regional Office of the Environmental Protection Agency ("EPA"), and the County.

(1) Clean Air Act:

(a) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(b) The contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State (if applicable), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(c) The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

(2) Federal Water Pollution Control Act:

(a) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(b) The contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State (if applicable), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(c) The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

(I) Suspension and Debarment. No contract may be awarded to any party listed on the government-wide exclusions in the System for Award Management ("SAM"). contractor hereby warrants and certifies that it is not listed on SAM and the contractor is not debarred, suspended, or otherwise ineligible to enter into this contract. The contractor further acknowledges that:

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the Contract and any warranty period. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(J) Byrd Anti-Lobbying Amendment. Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Contractor, who in turn will forward the certification(s) to the County.

(K) Procurement of Recovered Materials. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II(J); and 2 C.F.R. § 200.322. In the performance of this contract, the contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive- procurement-guideline-cpg-program. The contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(L) Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. In performance of the contract, the contractor is prohibited from obligating or expending funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(a) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(b) Telecommunications or video surveillance services provided by such entities or using such equipment.

(c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(M) Domestic Preferences Procurements. As appropriate and to the extent consistent with law, the contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(N) Changes to the Contract. Contractor is directed to Section 1, of the contract and the GT&Cs in its entirety for as those relate to the cost of a change, modification, amendment, change order, or constructive change which must be allowable and allocable within the scope of its grant or cooperative agreement and reasonable for the completion of project scope.

(O) Access to Records. The following access to records requirements apply to this contract:

(1) The Contractor agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(P) DHS Seal, Logo, and Flags. The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

(Q) FEMA Financial Assistance. The contractor acknowledges that this contract is funded partially or fully through financial assistance provided by FEMA. The contractor agrees to comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(R) Federal Obligations and Liabilities. The contractor acknowledges that the Federal Government is not a party to this contract and is not subject to any obligations or liabilities created hereunder.

(S) Remedies for False Claims and Statements. The contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to this contract.

(T) Policy and Conservation Act. Contractor shall comply with applicable standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(U) Contract Oversight. Pursuant to CFR §200.318, County will monitor and manage the day-to-day operations and activities to assure compliance with applicable Federal requirements and contract terms, conditions, and specifications.

(V) Affirmative Socioeconomic Steps: If subcontractors are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(W) License and Delivery of Works Subject to Copyright and Data Rights: The contractor grants the COUNTY, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produces in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and publicly display such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the COUNTY or acquires on its behalf a license of the same scope as for date first produced in the performance of this contract. Data as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, and written reports or literary works, software and/or course code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the COUNTY data first produces in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable to the COUNTY.

(X) Mandatory Purchase of Hawaii Products Inapplicable. Pursuant to HRS 103D-1002(i)(1), requirements related to the mandatory purchase of Hawaii Products shall not apply where doing so would disqualify the County from receiving federal funds or aid. 2 C.F.R. § 200.319(c) specifically prohibits the use of "statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals" and as such, the above referenced provisions shall not apply and will not be enforced by the County.

Anti-Lobbying Certification

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

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

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

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

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

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

By_____
(Signature)

_____
(Print Name)

Date_____

COUNTY OF MAUI

GENERAL TERMS AND CONDITIONS

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COUNTY OF MAUI
GENERAL TERMS AND CONDITIONS
CONSTRUCTION CONTRACTS

Preface

The General Terms and Conditions of the County of Maui, incorporated by reference in the solicitation document and the awarded contract, referred to as the "GTC" or "General Conditions," represent the County's policy and requirements relating to contracts as authorized by Hawaii Revised Statutes (HRS), Chapter 103D, and its promulgated rules under Hawaii Administrative Rules (HAR), Title 3, Department of Accounting and General Services (collectively referred to as the "Procurement Code"). References to HRS and/or HAR provisions in the GTCs are included for convenience only and may not be complete. Should any contractual term herein be inconsistent with the Procurement Code, the Procurement Code shall govern. Contractors should familiarize themselves with the Procurement Code.

Section 1 – Definitions

When used in these General Terms and Conditions or elsewhere in the Contract, the following terms, or pronouns used in place of them, shall have the meaning ascribed to them in this Section, unless it is apparent from the context that a different meaning is intended:

1.01 "Addendum (plural-Addenda)" means a written or graphic document, including drawings and specifications, issued by the Procurement Officer during the bidding period which modifies or interprets the bidding documents by additions, deletions, clarifications, or corrections which document shall be considered and made a part of the contract when executed.

1.02 "Bid Documents" mean the composition of the notice to bidders, instructions to bidders, bid proposal form, general terms and conditions, special provisions, construction plans, specifications, and all addenda issued prior to opening of bids.

1.03 "Calendar Day" means any day shown on the calendar, beginning at midnight and ending at midnight of the following day. If no designation of calendar or working day is made, "day" shall mean calendar day.

1.04 "Contract Documents" mean the composition of general terms and conditions, special provisions, construction plans, specifications, addenda, Contractor's bid proposal, notice of award, executed contract, contract amendments, Contractor's performance and payment bonds, Notice to Proceed, and change orders.

1.05 "Time of Performance" means the number of calendar days or working days provided in the contract for the completion of the work. The contract time shall commence on the effective date of the Notice to Proceed.

1.06 "County" means the County of Maui.

1.07 "Equipment" means all machinery, tools, and apparatus necessary to complete the work under the contract.

1.08 "HAR" means Hawaii Administrative Rules, as amended.

1.09 "Hazardous Materials" mean and include any and all radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, hazardous wastes, toxic substances, and any and all other substances or materials defined as "hazardous materials," "extremely hazardous materials," "hazardous wastes" or "toxic substances" under or for the purposes of hazardous materials laws.

1.10 "Hazardous Materials Laws" mean and include all federal, state or local laws, ordinances, rules, regulations or codes, now or hereafter in effect, relating to environmental conditions, human health or industrial hygiene, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42, U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 42 U.S.C. Section 1801, et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 - 2629, the Safe Drinking Water Act, 42, U.S.C. Sections 300f - 300j, HRS Chapter 128D, Environmental Response Law, HRS Chapter 342B, Air Pollution Control, HRS Chapter 342D, Water Pollution, HRS Chapter 342H, Solid Waste Pollution, HRS Chapter 342J, Hazardous Waste, HRS Chapter 342L, Underground Storage Tanks, Chapter 342P, Asbestos, and any similar state or local laws or ordinances and the regulations now in effect or hereafter adopted, published or promulgated thereto.

1.11 "HRS" means Hawaii Revised Statutes, as Amended.

1.12 "Inspector" means the County's authorized representative assigned to make detailed inspections of contract performance, prescribed work, and materials supplied.

1.13 "Liquidated Damages" mean the amount set forth in the contract to be paid by the Contractor to the County for each and every day the work remains uncompleted beyond the contract time.

1.14 "Lowest Responsive, Responsible Bidder" means the bidder who has the capability in all respects to perform fully the contract requirements, the integrity and reliability which will assure good faith performance and who has submitted the lowest bid which confirms in all material respects to the invitation for bids.

1.15 "Notice to Proceed" means the written notice given by the Officer-in-Charge to the Contractor designating the official commencement date of the performance under the contract.

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

1.17 "Payment Bond" means the security executed by the Contractor and the Contractor's sureties and furnished to the County to guarantee payment by the Contractor to laborers, materials suppliers, and subcontractors according to the terms of the contract.

1.18 "Performance Bond" means the security executed by the Contractor and the Contractor's securities and furnished to the County to guarantee the completion of the work according to the terms of the contract.

1.19 "Plans or Drawings" means any and all designs, plans, construction drawings, specifications, cost estimates, work schedules, proposals, studies, reports, notes, tables, notations and other similar items which show the location, character, dimension, and details of the work to be completed under the contract, including the current and applicable portions of the Water System Standards 2002, as amended, for Department of Water Supply contracts.

1.20 "Procurement Officer" means the Director of the Department of Finance of the County of Maui, acting directly or through the Director's duly authorized representative.

1.21 "Shop Drawings" mean the drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by the Contractor and submitted by the Contractor to illustrate some portion of the work.

1.22 "Special Provisions" or "Special Conditions" are the means by which the general terms and conditions are amended.

1.23 "State" means the State of Hawaii

1.24 "Subcontractor" means any person who enters into an agreement with the Contractor to perform a portion of the work for the Contractor

1.25 "Surety" means the qualified individual or entity, other than the Contractor, that insures the Contractor's acceptable performance of the contract.

1.26 "Total Sum Bid" means the total bid price submitted by the bidder for performing all work in accordance with the contract.

1.27 "Work" means the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient for the successful completion of the construction project and the execution of all duties and obligations imposed by the contract on the Contractor.

1.28 "Working Day" means a calendar day in which the Contractor is capable of working four (4) or more hours with its normal work force, exclusive of:

(a) Saturdays, Sundays, and State/County recognized legal holidays;

(b) Days in which work is suspended by the County for four (4) or more hours through no fault of the Contractor; and

(c) Days prevented by or resulting from inclement weather to permit the normal work force to proceed with construction operations for at least four (4) hours. Also the Contractor shall be performing the current controlling item or items of work.

Section 2 – Bidding Instructions

2.01 Obtaining Bid Documents. Bidders shall refer to the notice to bidders for instructions in obtaining bid documents.

2.02 Proposal Forms. The County will furnish prospective bidders with proposal forms. Papers bound with or attached to the proposal form are part of the proposal. The bidder shall not detach or alter these papers when submitting its bid. The bidder shall also consider other documents, including the plans and specifications, a part of the proposal form whether attached or not.

2.03 Contractor's License Required. All bidders and all their subcontractors shall be licensed in accordance with Chapter 444, HRS, and as required in the notice to bidders. It is the sole responsibility of the bidder to review the requirements of the project and determine the appropriate licenses that are required to complete the project.

2.04 Qualifications of Bidders. (a) The Procurement Officer shall determine whether the prospective bidder has the financial ability, resources, skills, capability, and business integrity necessary to perform the work. For this purpose, the Procurement Officer, in the Procurement Officer's discretion, may require any prospective bidder to submit answers, under oath, to questions contained in a standard form of questionnaire. Whenever it appears from the answers to the questionnaire or otherwise, that the prospective bidder is not fully qualified and able to perform the work, a written determination of non-responsibility of a bidder shall be made by the Procurement Officer. The reasonable failure of a bidder to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder. The decision of the Procurement Officer shall be final unless the bidder applies for administrative review pursuant to Section 103D-709, HRS. [§103D-310, HRS]

(b) Questionnaires, when required by the Procurement Officer, shall be submitted not less than forty-eight (48) hours prior to the time designated for opening of bids.

(c) All bidders shall be incorporated or organized under the laws of the State of Hawaii, or be registered to do business in the State as a separate branch or division that is capable of fully

performing under the contract. The bidder shall be in compliance with all laws governing entities doing business in the State. [§103D-310, HRS]

2.05 Preparation of Bids. (a) Bids shall be submitted on the proposal form furnished by the County. The bidder shall complete the proposal using words and figures, which shall be in ink or typed. If a discrepancy occurs between the prices written in words and the those written in figures, the prices written in words shall govern.

(b) Bids must be signed in ink by a duly authorized representative of the bidder on the spaces provided for signatures.

(c) If the bidder is a corporation, the title or titles of the person or persons signing must be stated and the corporate seal affixed thereto. If the corporation does not have a corporate seal, it should be indicated in the form of acknowledgment attached thereto. A copy of a resolution of the Board of Directors of the corporation, or other written evidence of authority signed by an officer of the corporation, authorizing the person or persons to execute bids, contracts, and other necessary documents in connection therewith shall be attached.

(d) Where the bidder is an association or group, the title or titles of the person or persons signing must be stated and an affidavit which acknowledges the authority of the signer or signers to sign bids and all other necessary documents in connection therewith for the association or group must be attached.

(e) Bids must be submitted in a sealed envelope, bearing on the outside the identity of the project and the bidder's name and address. Bids will be received only at the office designated in the notice to bidders. All bid envelopes will be stamped with the time and date received by the County. The County will reject and return a bid unopened if received after the time set for opening of bids.

2.06 Listing of Joint and Subcontractors. (a) The names of each person or entity to be engaged by the bidder as a joint Contractor or subcontractor and the nature and scope of work to be performed by each shall be submitted with the bidder's proposal. Bids that do not comply with this requirement may be accepted if acceptance is in the best interest of the County and the value of work to be performed by the joint Contractor or subcontractor is equal to or less than one percent (1%) of the total bid amount. [§103D-302, HRS]

(b) If no joint Contractor or subcontractor is to be engaged, the bidder must complete the form by writing "NONE." If left blank, the County will interpret the blank as no joint contractor or subcontractor will be used.

2.07 Examination of the Bid Documents and Project Site, and Conducting Investigations. (a) Before submitting a bid, bidders shall examine the bid documents and the project site, make inquiries at the appropriate offices of the County, State, and Federal governments, and the offices of persons and entities owning, controlling, or operating underground improvements, and conduct investigations to satisfy themselves as to the conditions to be encountered and to determine the correctness of the information contained in the bid documents.

(b) The submission of a bid shall be considered verification that the bidder:

(1) Has made such examinations and inquiries;

(2) Is satisfied with the conditions to be encountered in performing the work;

(3) Acknowledges and understands the terms and conditions contained in the bid documents; and

(4) Agrees to abide by such terms and conditions if awarded the contract.

2.08 Subsurface Investigations. (a) If the County has conducted subsurface investigations, bidders may inspect the data obtained from such investigations and examine samples, if available.

(b) Any subsurface information made available are for the bidders' convenience only. The information may have been obtained at specific locations, and no assurance is given that these conditions are necessarily typical of conditions at other locations. In addition, no assurance is given that conditions found at the time of the subsurface explorations, such as the presence or absence of water, will be the conditions that will prevail at the time of construction. The bidder shall be responsible for all assumptions, deductions, or conclusions made or derived from the subsurface information made available.

(c) Making available to bidders information from the subsurface explorations is not to be construed as a waiver of Subsection 2.07 - Examination of Bid Documents and Project Site, and Conducting of Investigations.

2.09 Pre-bid Conferences. At least fifteen days prior to submission of bids pursuant to an invitation for bids for a construction or design-build project with a total estimated contract value of $500,000 or more, and at least fifteen days prior to submission of proposals pursuant to a request for proposals for a construction or design-build project with a total estimated contract value of $100,000 or more, the head of the purchasing agency shall hold a pre-bid conference and shall invite all potential interested bidders, offerors, subcontractors, and union representatives to attend. The County may, for projects that have special or unusual requirements, [e.g., requiring physical inspection,] make attendance at a pre-bid conference a condition for submitting a bid. Pre-bid conferences shall be announced to all prospective bidders in the notice to bidders. Nothing stated at the pre-bid conference shall change the solicitation unless a change is made by written addendum as provided in Subsection 2.11 - Addenda.

2.10 Clarification of Bid Documents. (a) If it appears to a bidder that the performance of the work or any matter relating thereto is not sufficiently described or explained in the bid documents, or that a discrepancy exists between different parts thereof, or that the full intent of the bid documents is not clear, the bidder shall submit a written request to the Procurement Officer for clarification not less than ten (10) calendar days prior to the day designated for opening of bids.

(b) The written request may be faxed pursuant to Subsection 2.19 – Use of Facsimiles.

(c) If the Procurement Officer deems that a clarification is in order, it shall be issued in the form of an addendum.

2.11 Addenda. (a) Any addendum issued prior to the opening of bids shall be binding upon the bidder and shall be made a part of the contract.

(b) No addendum will be issued during the five (5) days immediately preceding the day designated for the opening of bids, unless the purpose of the addendum is to postpone the date of bid opening.

(c) Failure by the bidder to receive any addendum shall not relieve the bidder from any obligation under its bid as submitted.

(d) No oral interpretation, instruction, or information regarding the bid documents given by any officer or employee of the County shall be binding.

2.12 Determination of Intended Bid. (a) If the proposal form contains a list of unit price or lump sum items, or both, they do not necessarily describe all of the work involved in the performance of the contract, but merely indicate that the compensation for the performance of the contract will be based upon and limited to such items. If a bidder is in doubt as to the proper bid item to which the anticipated cost of any incidental item is to be allocated, the bidder shall include such cost in the bid item which the bidder deems most appropriate.

(b) If the proposal calls for unit price items, and the bidder's unit price bid multiplied by the number of units in any item is not equal to the total amount bid for that item, it will be assumed that the unit price bid represents the bidder's intention and an error was made in the multiplication. The Procurement Officer will correct the total amount bid for the item and total sum bid of the bidder's proposal.

(c) If the figure obtained by adding the individual bid items listed in the proposal does not equal to the total figure written in the proposal, it will be assumed that an error was made in the addition and the Procurement Officer will correct the total sum bid.

(d) The bid price shall include all applicable taxes, including the State of Hawaii General Excise Tax, and shall include delivery charges F.O.B. job site.

(e) The bid price shall be firm for a minimum of sixty (60) days from the bid opening date to allow for contract execution.

2.13 Disqualification of Bids. The County may disqualify a bidder and reject its bid for reasons including, but not limited to:

(a) The bidder is non-responsible;

(b) The bid is not responsive;

(c) The bid does not include a listing of subcontractors and joint contractors or contains only a partial or incomplete listing;

(d) The bid is unsigned or is not signed by an authorized representative of the bidder;

(e) Evidence indicating that unit price or lump sum price items are unbalanced in a bid;

(f) Evidence indicating that bidders are in collusion;

(g) Submission of more than one bid whether under the same name or a different name.

Without limiting the generality of the foregoing, a bidder shall be considered to have submitted more than one bid if the bidder submits more than one bid under the bidder's name, through bidder's agents, through joint ventures, partnerships, or corporations or which the bidder has more than twenty-five percent (25%) ownership in each of them, or through any combination of any of them;

(h) The bidder is suspended under Chapter 104 or Chapter 444, HRS;

(i) The bid is not accompanied by an acceptable form of bid security, or the bid security is in an amount less than five percent (5%) of the amount of the base bid, including additives;

(j) The bidder fails to submit a valid and timely certificate of good standing from the Department of Commerce and Consumer Affairs Business Registration Division and/or the bidder fails to submit a valid and timely certificate of compliance from the Department of Labor and Industrial Relations.

(k) The bidder failed to submit the standard form of questionnaire or failed to submit said questionnaire within the due time, when required by the County; or

(l) Evidence of assistance from a person who has been an employee of the County within the preceding two years and who participated while in County office or employment in the matter with which the contract is directly concerned, pursuant to Section 84-15, HRS.

2.14 Bid Security. (a) The County will not consider a bid proposal unless accompanied by bid security in an amount not less than five percent (5%) of the amount bid.

(b) Acceptable bid security shall be limited to the following:

(1) Surety bond underwritten by a company licensed to issue bonds in the State of Hawaii, which shall be substantially in the form provided in the project specifications;

(2) Legal tender;

(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 a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, and payable at sight or unconditionally assigned to the County. These instruments may be utilized only to a maximum of $100,000. 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) The County will return bid security to bidders within ten (10) working days following the execution of the contract by all Parties and after the successful bidder furnishes acceptable performance and payment bonds and certificates of insurances.

2.15 Mandatory Purchase of Hawaii Products. Bidders are instructed to refer to Section 103D-1002, HRS and Chapter 3-124, HAR. Pursuant to HRS 103D-1002(i)(1), requirements related to the mandatory purchase of Hawaii Products shall not apply where doing so would disqualify the County from receiving federal funds or aid. 2 C.F.R. § 200.319(c) specifically prohibits the use of "statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals" and as such, the above referenced provisions shall not apply and will not be enforced by the County.

2.16 Substitution of Materials and Equipment. (a) Bids shall be based on materials and equipment specified in the bid documents, unless the Procurement Officer approves substitution of material or equipment by addendum.

(b) A bidder may make a written request for a material or equipment substitution for the Procurement Officer's determination. The written request shall be submitted to the Procurement Officer not less than ten (10) calendar days prior to the day designated for opening of bids. The substitution request shall be accompanied by four (4) copies of any pertinent information for the Procurement Officer's determination. If the Procurement Officer is unable to determine the quality and suitability of the substitution based on the information provided by the bidder, the request shall

be rejected. The burden of proof as to the comparative quality and suitability of the substitution shall be the bidder's responsibility. The Procurement Officer shall be the sole judge as to the comparative quality and suitability of the substitution, and the Procurement Officer's decision shall be final. If the information provided to the Procurement Officer is determined incomplete or insufficient, whereas the Procurement Officer is unable to determine the quality and suitability of the substitution, the request shall be rejected.

(c) If the Procurement Officer approves a material or equipment substitution, an addendum shall be issued by the Procurement Officer.

(d) Bids based on a material or equipment substitution approved by the Procurement Officer, shall include the additional cost required for all modifications, including the cost of revising the construction plans and technical specifications required to accommodate the approved substitution.

2.17 Pre-Opening Modification and Withdrawal of Bids. (a) Bids may be modified prior to the bid submission deadline provided the Procurement Officer receives a written notice stating that a modification to the bid is submitted accompanied by the actual modified bid. The written notice may be faxed pursuant to Subsection 2.19 - Use of Facsimiles, provided the bidder submits the actual written notice and actual modified bid prior to the bid submission deadline and within two (2) working days following the faxed notice.

(b) Bids may be withdrawn provided the Procurement Officer receives a written notice stating the bidder's bid is withdrawn prior to the deadline for opening of bids. The written notice may be faxed pursuant to Subsection 2.19 - Use of Facsimiles. Bids may not be withdrawn after the bid opening.

2.18 Public Opening of Bids. Bids shall be opened publicly in the presence of one or more witnesses, at the time and place designated in the notice to bidders. The amount of each bid and other relevant information, together with the name of each bidder shall be recorded. The record and each bid shall be open to public inspection. [§103D-302, HRS]

2.19 Use of Facsimiles. Copies of documents may be transmitted by bidders via facsimile machine shall be limited to the following:

(a) The request for clarification of bid documents pursuant to Subsection 2.10 - Clarification of Bid Documents;

(b) The request for material or equipment substitution pursuant to Subsection 2.16 - Substitution of Materials and Equipment which includes four (4) copies of any pertinent information; and

(c) The request for modification or withdrawal of bids pursuant to Subsection 2.17 - Pre-Opening Modification and Withdrawal of Bids.

Documents will be received by facsimile machine at the number designated by the County it is the bidder's responsibility to assure the faxed documents are received by the Procurement Officer in a timely matter.

Section 3 – Award and Execution of Contract

3.01 Award of Contract. The award of the contract will be made by written notice by the Officer-in-Charge to the lowest responsive, responsible bidder. Said notice shall not be

construed to be authorization to proceed with the performance of services under the Contract. Any services performed by the Contractor prior to the date indicated in the Notice to Proceed from the Officer-in-Charge shall be at the Contractor's own risk. The contract will be awarded within sixty (60) days after the opening of the bids. If it appears that the contract cannot be awarded within such time, the award may be made after the specified time as mutually agreed upon between the County and the lowest responsive, responsible bidder. The County may cancel the award of the contract at any time before the execution of the contract.

3.02 Execution of Contract. Prior to the drafting of the Contract, discussions may be held between the Parties relative to the extent of the services to be performed by the Contractor and other pertinent matters. The Procurement Officer will submit the contract to the Contractor for review and signature. The Contractor shall enter into a contract with the County and provide sufficient performance and payment bonds and certificates of insurance within ten (10) calendar days after the execution of the contract or within such further time as the County may allow. The contract must be signed in ink by persons duly authorized to enter into contracts with the County. If the Contractor is an individual or partnership, the Contractor shall sign the contract before a notary public. If the Contractor is a corporation, the Contractor shall cause the contract to be signed before a notary public by an officer authorized to do so and shall affix to the contract its corporate seal, together with a certificate, resolution or other instrument vesting such officer with authority to sign the contract on the corporation's behalf. If the Contractor is an association or group, the title or titles of the person or persons signing must be stated and an affidavit which acknowledges the authority of the signer or signers to sign the contract and other necessary documents in connection therewith for the association or group must be attached. The signed contract shall be returned to the Procurement Officer for signature and further processing.

3.03 Performance and Payment Bonds. Within ten (10) calendar days after the execution of the contract or within such further time as the County may allow, the Contractor shall submit sufficient performance and payment bonds for the full and faithful performance of the contract in accordance with the terms and intent thereof and also for the prompt payment to all others for all labor and materials furnished by them to the successful bidder and used in the prosecution of the work provided for in the contract. Performance and payment bonds shall each be in an amount equal to one hundred percent (100%) of the contract price and shall be limited to:

(a) Surety bond underwritten by a company licensed to issue bonds in the State of Hawaii, which shall be substantially in the form provided in the project specifications;

(b) Legal tender; or

(c) 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 a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, and payable at sight or unconditionally assigned to the County. These instruments may be utilized only to a maximum of $100,000. 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.

3.04 Tax Clearance Requirement. Pursuant to §103D-328, HRS, the Contractor shall submit a tax clearance certificate issued by the Hawaii State Department of Taxation (“DOTAX”) and the Internal Revenue Service (“IRS”). The certificate shall be valid for six (6) months from the most recent approval stamp date on the certificate and must be valid on the date it is received by the County. The application for the tax clearance shall be the responsibility of the Contractor, and must be submitted directly to the DOTAX or IRS and not to the County.

3.05 Hawaii Business Requirement. The Contractor shall comply with either §103D-310(c)(1) or §103D-310(c)(2), HRS, as follows:

(a) §103D-310(c)(1), HRS, Hawaii business. A business entity meeting the requirement of §103D-310(c)(1), HRS, referred to as a "Hawaii business", is incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, the Contractor shall submit a "Certificate of Good Standing" issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG). A Hawaii business that is a sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate. A Contractor's status as a sole proprietor and its business street address indicated in Contractor's bid will be used to confirm that the Contractor is a Hawaii business.

(b) §103D-310(c)(2), HRS, Compliant non-Hawaii business. A business entity meeting the requirement of §103D-310(c)(2), HRS, 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 as a separate branch or division capable of fully performing under the contract. As evidence of compliance, the Contractor shall submit a "Certificate of Good Standing" issued by the BREG.

(c) The above certificates shall be current within six (6) months of issuance date and submitted to the County prior to award of contract. If a valid certificate is not submitted on a timely basis for award of a contract, a bid otherwise responsive and responsible may not receive the award. The application for the above certificates shall be the responsibility of the Contractor, and must be submitted directly to the BREG and not to the County.

3.06 Department of Labor and Industrial Relations. (a) The Contractor shall submit a certificate of compliance (DLIR Form LIR #27), issued by the DLIR stating the Contractor complies with Chapters 383, 386, 392, and 393 of the Hawaii Revised Statutes

(b) The above certificate shall be current within six (6) months of issuance date and submitted to the County prior to award of contract. If a valid certificate is not submitted on a timely basis for award of a contract, a bid otherwise responsive and responsible may not receive the award. The application for the above certificates shall be the responsibility of the Contractor, and must be submitted directly to the DLIR and not to the County.

3.07 Contract Not Binding Unless Properly Executed and Appropriation Available. The contract shall not be binding or of any force until said contract has been fully and properly signed by all of the Parties thereto and approved by the Procurement Officer as to availability of funds in the amount and for the purpose set forth therein. The Contractor's execution of the contract shall be considered verification that the Contractor has reviewed, understands, accepts, and agrees to abide by the terms and conditions contained in the bid documents, the proposal submitted by the Contractor, the proposed contract, and the performance and payment bonds.

3.08 Forfeiture of Bid Security. Failure to execute the contract and furnish sufficient performance and payment bonds shall be cause for the cancellation of award to the Contractor. The Contractor also forfeits the bid security which becomes the property of the County, which is not a penalty, but liquidated damages sustained by the County. The County may make award to the next lowest responsive, responsible bidder or the County may re-advertise the work contemplated.

Section 4 – Legal Relations and Responsibilities

4.01 Independent Contractor. The Contractor shall perform the contract as an independent contractor and shall not be entitled to any benefits and privileges of an employee of the County of Maui for purposes including, but not limited to, the County's civil service system, fringe benefits, unemployment benefits, worker's compensation benefits, federal and state taxes, social security tax, medicare tax, FICA tax and any other employment taxes. Upon execution of the contract, the Contractor shall comply with Chapter 237 (general excise tax); Chapter 383 (employment security); Chapter 386 (workers' compensation); Chapter 392 (temporary disability insurance); and Chapter 393 (pre-paid health care), HRS. The Contractor and Contractor's sureties shall be liable for any loss caused to the County by reason of the Contractor's failure to comply with Chapter 386, HRS.

4.02 Contractor's Inability to Contract for County. Notwithstanding anything herein contained to the contrary, Contractor shall not have the right to make any contracts or commitments for, or on behalf of, the County without first obtaining written consent of the County.

4.03 Insurance. (a) The Contractor shall submit to the Officer-in-Charge within ten (10) calendar days after execution of the contract, or within such further time as the County may allow, three (3) copies of insurance certification evidencing that the Contractor has in force the following types of insurance with the following minimum limits of liability:

(1) HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award. The Contractor shall submit an approved certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate shall be valid for six (6) months from the date of issue and must be valid on the date it is received by the County. The application for the certificate shall be the responsibility of the Contractor, and must be submitted directly to the DLIR and not to the County. [§103D-310(c), HRS]

(2) Employers' Liability Insurance. The Contractor and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain and require the Contractor's sub-contractors (if any) at their own expense to procure and maintain in full force at all times during the term of this Contract, employers' Liability insurance with minimum limits for bodily injury from accident of FIVE HUNDRED THOUSAND DOLLARS ($500,000), or such other limit acceptable to the County, - each accident; for bodily injury from disease of FIVE HUNDRED THOUSAND DOLLARS ($500,000), or such other limit acceptable to the County, - each employee; and for bodily injury from disease of FIVE HUNDRED THOUSAND DOLLARS ($500,000), or such other limit acceptable to the County, - each policy limit.

(3) Commercial General Liability Insurance. The Contractor and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain and require the Contractor's sub-contractors (if any) at their own expense to procure and maintain in full force at all times during the terms of this Contract, Commercial General Liability insurance with a bodily injury and property damage combined single limit of liability of at least ONE MILLION DOLLARS ($1,000,000), for any occurrence, and THREE MILLION DOLLARS ($3,000,000) in the aggregate, or such other limit acceptable to the County. Such insurance shall include coverage in like amount for products/completed operations, contractual liability, and personal

and advertising injury. “Claims made” policies are not acceptable under this Section.

(4) Automobile Liability Insurance. The Contractor and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain and require the Contractor's sub-contractors (if any) at their own expense to procure and maintain in full effect at all times during the term of this Contract, Automobile Liability insurance with a bodily injury and property damage combined single limit of at least ONE MILLION DOLLARS ($1,000,000), or such other limit acceptable to the County, per accident.

(5) Fire and Standard Extended Coverage Insurance. Except for contracts in which the scope of work is limited to roadway construction or utility improvements that do not include payment for stored materials on-site, the Contractor shall insure the work for one million dollars ($1,000,000), or such other limit acceptable to the County, plus one hundred percent (100%) of the replaceable value thereof for the life of the contract against all loss or damage by fire at the site and against all loss or damage covered by the Standard Extended Coverage Insurance endorsement, including vandalism and malicious mischief, by an insurance company or companies acceptable to the County. The amount of insurance may vary with the extent of the work complete, but shall at all times be at least equal to one million dollars ($1,000,000), or such other limit acceptable to the County, plus the replaceable value of the amount paid for the work and materials installed and delivered, plus the replaceable value of the work or materials furnished or delivered by the Contractor but not yet paid for by the County. The insurance policy or policies shall be held jointly in the name of the County, the Contractor, and the Contractor's subcontractors as their interest may appear. The Contractor shall submit to the County satisfactory proof of the amount of such insurance carried with each application for partial payment.

(6) County as Additional Insured. Insurance policies providing the insurance coverage required in this Section (except for Workers' Compensation) shall name the County, its agents, and its employees as additional insured for any claims arising from the Contractor's activities under this Contract. Coverage must be primary in respect to the additional insured. Any other insurance carried by the County shall be excess only and not contribute with this insurance. Such policies or certificates showing the above coverage shall be deposited with the County within ten (10) days of the execution of this Contract and shall contain the following statement:

> “The Named Insured, its Insurance Carrier or Broker shall notify the certificate holder of any cancellation, or reduction in coverage or limits, of any insurance within thirty (30) days of receipt of insurers' notification to that effect.”

(b) When a subcontractor is utilized, the Contractor shall furnish or require the subcontractor to furnish the Procurement Officer within ten (10) calendar days after execution of the contract, or within such further time as the County may allow, with a copy of a policy or policies of insurance and certificate of insurance covering the subcontractor and the subcontractor's employees or agents in the same amount and for the same liability specified above.

(c). In the event of cancellation or termination of any policy required above or any substitute policy as provided for hereinafter, the Contractor or the subcontractor, as the case may be, shall immediately furnish the Procurement Officer with a substitute policy of insurance in the same amount and for the same liability specified above.

4.04 Indemnification. The Contractor shall defend, indemnify and hold harmless the County and its officers and employees harmless from any and all deaths, injuries, losses and damages to persons or property, and any and all claims, demands, suits, action and liability therefor, caused by error, omissions, or negligence in the performance of the contract by the Contractor or Contractor's subcontractors, agents and employees. The Contractor's obligations under this Section shall survive and shall continue to be binding upon Contractor notwithstanding the expiration, termination or surrender of the contract.

4.05 Absence of Interest. The Contractor covenants that it currently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under the contract. The Contractor further covenants that in the performance of the contract, no person having such interest shall be employed.

4.06 Laws and Regulation. (a) The Contractor shall keep fully informed of all applicable federal, state, and county laws, ordinances, codes, rules and regulations, governmental general and development plans and all changes thereto including, but not limited to, the Americans with Disabilities Act, health and safety, labor, anti-discrimination and environmental laws and regulations, and the following:

(1) All Sections of the local County's Charter and Code;

(2) Article I of Title 10, Maui County Code, 1980, as amended, relating to the Maui Traffic Code;

(3) Title 12, Maui County Code, 1980, as amended, relating to Streets, Sidewalks, and Public Places;

(4) Chapter 16.04C, Maui County Code, 1980, as amended, relating to the Fire Code;

(5) Chapter 16.18B, Maui County Code, 1980, as amended, relating to the Electrical Code;

(6) Chapter 16.20B, Maui County Code, 1980, as amended, relating to the Plumbing Code;

(7) Chapters 103 and 103D, HRS, as amended, relating to Expenditure of Public Money and Public Contracts and the Hawaii Public Procurement Code, including Hawaii Administrative Rules Chapter 103D (Chapters 3-120, 3-121, 3-122, 3-123, 3-124, 3-125, 3-126, 3-128, 3-129, 3-130, 3-131, 3-132);

(8) Chapter 104, HRS, as amended, relating to Wages and Hours of Employees on Public Works;

(9) Chapter 22 of Subtitle 4 of Title 12, HAR, relating to Wage Determinations and the Administration and Enforcement of Chapter 104, HRS;

(10) Chapter 132, HRS, as amended, relating to the Fire Protection;

(11) Chapter 321, HRS, as amended, relating to the Department of Health;

(12) Chapter 378, HRS, as amended, relating to Fair Employment Practices;

(13) Chapter 386, HRS, as amended, relating to Workers' Compensation Law;

(14) Chapter 396, HRS, as amended, relating to Occupational Safety and Health, and specifically, all bids and proposals in excess of $100,000 for construction jobs shall have a signed certification from the bidder or offeror that a written safety and health plan for the job will be available and implemented by the notice to proceed date of the project (see §396-18, HRS);

(15) Chapter 444, HRS, as amended, relating to contractors for construction work. Provider shall use properly licensed contractors for all construction work as required by law;

(16) Part III of Subtitle 8 of Title 12, HAR, relating to Construction Standards; and

(17) Chapters 120 to 132 of Subtitle 11 of Title 3, HAR, relating to the Hawaii Public Procurement Code.

(b) The Contractor shall comply with all such laws, ordinances, codes, rules, regulations, design standards and criteria, governmental general and development plans. If any discrepancy or inconsistency is discovered between the contract and any such law, ordinance, code, rule, regulation, design standard, design criterion, and governmental general and development plans, the Contractor shall immediately report the same in writing to the Officer-in-Charge.

(c). The Contractor shall obtain all necessary permits and approvals for the performance of the contract and shall pay for all charges in connection with such permits.

Section 5 – County Responsibility

5.01 Cooperation by the County. The County, through the Officer-in-Charge, shall cooperate fully with the Contractor and will promptly place at the disposal of the Contractor all available pertinent information which the County may have in its possession. The Officer-in-Charge will certify to the accuracy of certain information in writing whenever it is possible to do so. The County does not represent that other information not certified as accurate is so and takes no responsibility therefor, and the Contractor shall rely on such information at the Contractor's own risk.

5.02 Review by the County. The Officer-in-Charge shall review all submissions and other work and data required to be made by the Contractor and reject or approve such submissions in their entirety or approve the same subject to such deletions, additions and revisions as the County may deem necessary and proper. For submissions specified in the special provisions, all items not required by the County to be deleted, added or revised after review by the Officer-in-Charge and not defective by reason or error, omissions or negligence on the part of the Contractor, subcontractors, agents or employers shall be deemed to have been approved.

5.03 Limitation of Liability. The County shall be responsible for damage or injury caused by the County's agents, officers, and employees in the course of their employment to the extent that the County's liability for such damage or injury has been determined by a court or otherwise agreed to by the County, and the County shall pay for such damage or injury to the extent permitted by law and approved by the Maui County Council. The County's total liability under the contract, if any, is strictly limited to the provisions in this Paragraph.

Section 6 – Performance of Contract

6.01 Time. (a) Time is of the essence herein. Performance of the services under the contract shall commence on the commencement date designated in the Notice to Proceed and the services described herein shall be completed within the time specified.

(b) If the Contractor cannot complete the contract within the time specified due to reasons beyond its control, a written request for a time extension accompanied by a detailed accounting of the causes and reasons for such delays may be submitted to the Officer-in-Charge for determination as to whether a time extension will be granted. The Officer-in-Charge's decision shall be final.

(c) If the scope of the work is amended during construction, an appropriate adjustment may be made to the contract time subject to approval by the Officer-in-Charge.

(d) Any adjustment to the contract time shall be made by contract amendment or change order.

6.02 Preconstruction Meeting. The County may schedule a pre-construction meeting after the execution of the contract.

6.03 Construction Schedule. (a) The Contractor shall submit to the Officer-in-Charge a detailed construction schedule in critical path method ("CPM") format, itemizing the various subdivisions of work and their durations at the pre-construction meeting, if held. If a pre-construction meeting is not held, the Contractor shall submit the schedule to the Officer-in-Charge not more than ten (10) calendar days after the Notice to Proceed is issued.

(b) The detailed construction schedule shall include: construction activities, the submission and approval of samples of materials and shop drawings, the procurement of materials and equipment, fabrication of materials and equipment and their delivery, installation, and testing, and start-up in CPM format.

(c) The Contractor shall revise the construction schedule whenever any delays are anticipated in any of the various items of work, or the performance of such items of work are obviously not in accordance with the construction schedule, and submit it to the Officer-in-Charge, together with the reasons for such anticipated or actual delays, and the planned courses of action to prevent or minimize any delay in the completion of the contract. Acceptance of the revised construction schedule and the reasons for such revisions shall not be construed to mean concurrence or acceptance as a basis for any time extension by the Officer-in-Charge.

6.04 Construction Progress. (a) The Contractor shall furnish such manpower, materials, facilities and equipment as may be necessary to insure the prosecution and completion of the work in accordance with the accepted schedule. If work falls fourteen (14) days or more behind the accepted construction schedule, the Contractor agrees to take some or all of the following actions to return the project to the accepted schedule. These actions may include the following:

(1) Increase manpower in quantities and crafts;

(2) Increase the number of working hours per shift, shifts per working day, working days per week, or the amount of equipment, or any combination of the foregoing; and/or

(3) Reschedule activities.

(b) Upon demand by the Officer-in-Charge, the Contractor shall prepare a proposed construction schedule revision demonstrating a plan to make up the lag in progress and insure completion of the work within the contract time. Upon receipt of an acceptable proposed schedule, the revision to the construction schedule shall be included a change order to the contract in accordance with Section 8 – Contract Amendments/Change Orders.

(c) All actions to return the project to the accepted schedule are at the Contractor's sole expense. The Contractor shall pay all costs incurred by the County which result from the Contractor's action to return the project to its accepted schedule. Contractor agrees that County shall deduct such charges from payments due the Contractor. It is further understood and agreed that none of the services performed by the Officer-in-Charge in monitoring, reviewing and reporting project status and progress shall relieve the Contractor of responsibility for planning and managing construction work in conformance with the construction schedule.

(d) When the Contractor foresees a delay in the prosecution of the work and, in any event, immediately upon the occurrence of a delay which the Contractor regards as unavoidable, the Contractor shall notify the Officer-in-Charge in writing of the probability of the occurrence of such delay, the extent of the delay, and its possible cause. The Contractor shall take immediate steps to prevent, if possible, the occurrence or continuance of the delay. If this cannot be done, the Officer-in-Charge shall determine how long the delay shall continue, to what extent the prosecution and completion of the work are being delayed thereby, and whether the delay is to be considered avoidable or unavoidable. The Officer-in-Charge shall notify the Contractor of the Officer-in-Charge's determination. The Contractor agrees that no claim shall be made for delays which are not called to the attention of the Officer-in-Charge at the time of occurrence.

(e) In case the work is not completed in the time specified, including extension of time as may have been granted for unavoidable delays, the Contractor shall be assessed damages for those costs incurred by the County which are attributable to the fact that the work was not completed on schedule.

6.05 Avoidable Delays. (a) Avoidable delays in the prosecution of the work shall include delays which could have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor or its subcontractors. Avoidable delays include:

(1) Delays which may in themselves be unavoidable but which affect only a portion of the work and do not necessarily prevent or delay the prosecution of other parts of the work nor the completion of the whole work within the contract time.

(2) Time associated with the reasonable interference of other contractors employed by the County which do not necessarily prevent the completion of the whole work within the contract time.

(b). The County may grant an extension of time for avoidable delay if deemed in the County's best interest. If the County grants an extension of time for avoidable delay, the Contractor agrees to pay actual costs, including charges for construction management, engineering and administration incurred during the extension, and other damages incurred by the County. Such time extension shall be included in the contract as a change order pursuant to Section 8 – Contract Amendments/Change Orders.

6.06 Unavoidable Delays. (a) Unavoidable delays in the prosecution or completion of the work shall include delays which result from causes beyond the control of the Contractor and which could not have been avoided by the exercise of care, prudence, foresight and diligence on

the part of the Contractor or its subcontractors. Delays in completion of the work of other contractors employed by the County will be considered unavoidable delays insofar as they interfere with the Contractor's completion of the work. Delays due to normal weather conditions shall not be regarded as unavoidable as the Contractor agrees to plan work with prudent allowances for interference by normal weather conditions. Delays caused by fire, unusual storms, floods, tidal waves, earthquakes, strikes, labor disputes, freight embargoes and shortages of materials shall be considered as unavoidable delays insofar as they prevent the Contractor from proceeding with at least seventy-five percent (75%) of the normal labor and equipment force for at least four (4) hours per day toward completion of the current controlling item on the accepted critical path schedule.

(b) Should unavoidable delays prevent the work from beginning at the usual starting time, or prevent the Contractor from proceeding with seventy-five percent (75%) of the normal labor and equipment force for a period of at least four (4) hours per day, and the crew is dismissed as a result thereof, the Contractor will not be charged for a working day whether or not conditions change so that the major portion of the day could be considered to be suitable for work on the controlling item.

(c) For delays which the Contractor considers to be unavoidable, the Contractor shall submit to the Officer-in-Charge complete information demonstrating the effect of the delay on the critical path in the construction schedule. The submission shall be made within thirty (30) calendar days of the occurrence which is claimed to be responsible for the unavoidable delay. The Officer-in-Charge shall review the Contractor's submission and determine the number of days of unavoidable delay and the effect of such unavoidable delay on the critical path of the work. The County agrees to grant an extension of time, but no monetary compensation, to the extent that unavoidable delays affect the critical path in the construction schedule. During such extension of time, neither extra compensation or engineering inspection and administration nor damages for delay will be charged to the Contractor. It is understood and agreed by the Contractor and County that time extensions due to unavoidable delays will be granted only if such unavoidable delay involve critical activities which would prevent completion of the whole work within the specified contract time.

6.07 Furnishing of Plans and Specifications. The County will furnish the Contractor with up to six (6) sets of the plans and specifications at no cost to the Contractor. The Contractor shall be responsible for the cost of printing any additional plans and specifications.

6.08 Breakdown of Lump Sum Items. If the bid form calls for a total sum bid without bid items, or contains lump sum items, the Contractor shall submit a detailed cost breakdown of the total sum bid or such lump sum items not less than twenty (20) calendar days following issuance of Notice to Proceed.

6.09 Commencement of Work. The Contractor shall not commence with any work prior to the effective date of the Notice to Proceed.

6.10 Prosecution of Work. The Contractor shall be available upon reasonable demand to discuss the progress of the services being performed under the contract. All questions arising during the performance of the contract which must be resolved by the Procurement Officer or Officer-in-Charge shall be brought to their immediate attention by Contractor.

6.11 Contractor to Report Errors or Discrepancies. Should the Contractor discover any apparent inconsistencies within the contract documents, discrepancies between the contract documents and the conditions on the ground, or any error or omission in the contract documents or instructions, the Contractor shall immediately advise the Officer-in-Charge in writing thereof. If, after discovery, the Contractor elects to perform any work which may require revisions without

authorization by the Officer-in-Charge, such work shall be performed solely at the Contractor's risk.

6.12 Authority of the Procurement Officer and Officer-in-Charge. Any question or dispute concerning any provision of the contract which may arise during its performance shall be decided by the Officer-in-Charge. The decisions of the Officer-in-Charge shall be final and binding upon all Parties unless the same is fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence, provided that decisions on questions or disputes relating to acceptance of the services performed under the contract, suspension or termination of the contract, extension of time, reduction or increase in the compensation of the Contractor and payment shall become final and binding upon all Parties only upon approval of the Procurement Officer, and provided further that nothing herein shall be construed as making final and binding any decision of the Officer-in-Charge and/or Procurement Officer on a question of law. Pending final decision of any dispute or question, the Contractor shall proceed diligently with the performance of services under the contract in accordance with the decision of the Officer-in-Charge and/or Procurement Officer.

6.13 Subcontracting. (a) The Contractor shall not subcontract any part of the contract except to those subcontractors specifically listed in the proposal submitted by the Contractor; provided that the Contractor may, for good cause, engage other subcontractors with the Officer-in-Charge's approval.

(b) Subcontractors and their employees shall be considered employees of the Contractor. Engaging subcontractors to perform any work shall not relieve the Contractor of its duty to complete the work in accordance with the contract.

(c) The Contractor shall replace any subcontractor for not performing in accordance with the contract when required and so notified by the Officer-in-Charge.

6.14 Rate of Wages for Laborers and Mechanics. (a) Every laborer and mechanic performing work on the job site for the construction of the work shall be paid no less than the prevailing wages provided that:

(1) Prevailing wages shall be not less than the wages that the Director of Labor and Industrial Relations, shall have determined to be the prevailing wages for corresponding classes of laborers and mechanics on projects of similar character in the State;

(2) The prevailing wages shall be not less than the wages payable under federal law to corresponding classes of laborers and mechanics employed on public works in the State that are prosecuted under contract or agreement with the government of the United States; and

(3) Notwithstanding the provisions of the contract, the prevailing wages shall be periodically adjusted during the performance of the contract in an amount equal to the change in the prevailing wages as periodically determined by the Director of Labor and Industrial Relations. [§104-2(b), HRS]

(b) No laborer or mechanic employed on the job site of any public work of the County 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 purposes of determining overtime compensation under this Subsection, the basic hourly rate of any laborer or mechanic shall not be less than the basic

hourly rate determined by the Director 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 State. [§104-2(c), HRS]

(c) The Contractor or the Contractor's subcontractors shall pay all mechanics and laborers employed on the job site, unconditionally and not less often than once a week, and without deduction or rebate on any account, except as allowed by law, the full amounts of their wages including overtime, accrued to not more than five (5) working days prior to the time of payment, at wage rates not less than those deemed to be prevailing, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and the laborers and mechanics.

(d) The rates and wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the job site, and a copy of the rates of wages required to be posted shall be given to each laborer and mechanic employed under the contract by the Contractor at the time each laborer and mechanic is employed, except that where there is a collective bargaining agreement the Contractor does not have to provide the Contractor's employees the wage rate schedules. [§104-2(d), HRS]

(e) The Contractor shall be solely responsible for any increase in rates and wages during the contract.

(f) The County may withhold from the Contractor so much of the accrued payments as the County may consider necessary to pay to the laborers and mechanics employed by the Contractor or any subcontractor on the job site the difference between the prevailing wages and the wages received and not refunded by the laborers and mechanics. [§104-2(e), HRS]

6.15 Payrolls and Payroll Records. (a) A certified copy of all payrolls shall be submitted weekly to the Officer-in-charge for review The Contractor shall be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the prevailing wages and the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed. Any certification discrepancy found by the County shall be reported to the Contractor and Director of Labor and Industrial Relations. [§104-3(a), HRS]

(b) Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the Contractor and the Contractor's subcontractors during the course of the work and preserved for a period of three (3) years thereafter. The records shall contain the name of each employee, the employees' correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. [§104-3(b), HRS]

(c) The Contractor shall make payroll records available for examination within ten (10) calendar days from the date of the written request by the County, Director of Labor and Industrial Relations of the State, or any authorized representatives thereof. Any Contractor who:

(1) Fails to make payroll records accessible within ten (10) calendar days;

(2) Fails to provide information requested for the proper enforcement of Chapter 104-3, HRS, within ten (10) calendar days; or

(3) Fails to keep or falsifies any record required under Chapter 104-3, HRS, shall be assessed a penalty as set forth in Section 104-22(b), HRS. [§104-3(c), HRS]

6.16 Prompt Payment by Contractor to Subcontractors and Vendors. (a) Any money, other than compensation retained, paid to the Contractor shall be dispersed to subcontractors and vendors within ten (10) calendar days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor met all the terms and conditions of the subcontract and there are no bona fide disputes on which the County has withheld payment. [§103-10.5(a), HRS]

(b) Upon final payment to the Contractor, full payment to the subcontractor, including compensation retained, shall be made within ten (10) calendar days after receipt of money, provided that there are no bona fide disputes over the subcontractor's performance under the subcontract. [§103-10.5(b), HRS]

(c) 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 (b) above, and:

(1) Has provided the Contractor an acceptable performance and payment bond for the work under the contract executed by a surety company authorized to do business in the State of Hawaii, as provided in Section 103-32.1, HRS; or

(2) The following has occurred:

(A) A period of ninety (90) days) after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to Contractor or surety, as provided in Section 103D-324, HRS; and

(B) The subcontractor has provided to the Contractor:

(i) 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;

(ii) Any other bond acceptable to the Contractor; or

(iii) Any other form of mutually acceptable collateral, 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 Procurement Officer to the Contractor and subsequently, upon receipt from the Procurement Officer, by the Contractor to the subcontractor within the applicable time periods specified in Subsection (b) and Section 103-10. If the Procurement Officer or the Contractor fails to pay in accordance with this Section, a penalty of one and one-half percent 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 (b) three or more times within two years of the first violation, the Contractor shall be referred by the Procurement Officer to the Contractor license board for action under Section 444-17(14), HRS.

(d) A properly documented final payment request from a subcontractor, as required by Subsection (c), shall include:

(1) Substantiation of the amounts requested;

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

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

(B) The subcontractor has made payments due to its 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

(C) The payment request does not include any amounts that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and

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

The Procurement Officer shall return any final payment request that is defective to the Contractor within seven days after receipt, with a statement identifying the defect.

(e) In the case of a construction contract, a payment request made by a contractor to the Procurement Officer that includes a request for sums that were withheld or retained from a subcontractor and are due to a subcontractor may not be approved under Subsection (c) unless the payment request includes:

(1) Substantiation of the amounts requested; and

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

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

(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

(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.

(f) 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 (c) of this Section; provided that any such payments withheld shall be withheld by the Procurement Officer.

6.17 Termination of Work on Failure to Pay Agreed Wages. If the County finds that any laborer or mechanic employed on the job site by the Contractor or any subcontractor has been or is being paid wages at a rate less than the required rate by the contract or specifications, or has not received the laborer's or mechanic's full overtime compensation, the County may, by written

notice to the Contractor, terminate the Contractor's right, or the right of any subcontractor, to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid and may complete such work or part by contract or otherwise, and the Contractor and the Contractor's sureties shall be liable to the County for any excess costs occasioned thereby. [§104-4, HRS]

6.18 Vehicular and Pedestrian Traffic, Public Convenience, and Safety. (a) If the project requires the closing or obstruction of any public thoroughfare, the Contractor shall comply with the Manual on Uniform Traffic Control Devices, U. S. Department of Transportation, Federal Highway Administration, and the Maui Traffic Code of the Maui County Code, 1980, as amended.

(b) No pedestrian or vehicular traffic within public rights of way shall be altered without authorization from the Hawaii State Department of Transportation, Department of Public Works, Police Department, and Department of Fire and Public Safety.

(c) The Contractor shall minimize, to the extent possible, hazardous conditions; shall provide additional safety devices as deemed prudent; shall maintain all signs, signals, lighting devices, markings, and barricades provided to minimize public inconvenience; and shall exercise safety practices during all hours of the day for as long as such hazardous conditions exist. The Contractor shall prudently extend applicable provision of this Subsection to areas, other than streets and highways, which involve the project.

(d) The presence of inspectors on the project or their oversight to discover or to point out any noncompliance on the part of the Contractor shall not relieve the Contractor from its responsibility under this Subsection.

6.19 Work on Weekends and Holidays, Night Work, and Overtime Work. (a) No work, except for resolution of an emergency event, shall be performed on Saturdays, Sundays, or State/County recognized legal holidays, unless authorized by the Officer-in-Charge.

(b) No work shall be performed between sunset and sunrise, unless required by the contract documents or authorized by the Officer-in-Charge.

(c) No work in excess of eight (8) hours per day or in excess of forty (40) hours per week shall be performed unless authorized by the Officer-in-Charge.

(d) The Contractor shall be responsible for costs incurred by the County under Paragraphs (a), (b), and (c).

6.20 Value Engineering. (a) Except with specific approval from the Officer-in-Charge, this Subsection shall be applicable only if the contract price is in excess of $100,000 and will result in a net savings in the project of at least $1,000.

(b) Any cost reduction proposal intended to be considered as a value engineering change proposal (VECP) shall be so identified as a value engineering change proposal and submitted to the Officer-in-Charge.

(c) In order that any proposal be accepted as a VECP, it must result in a net cost savings to the County by providing a system, structure, procedure or process better than the design specified or by providing less costly items than those specified in the contract documents without impairing any of their essential functions and characteristics such as service life, reliability, economy of operation, ease of maintenance, and necessary standardized features. [§103-49, HRS]

(d) With the submission of any VECP, the Contractor shall submit the following information:

(1) A description of the difference between the existing contract requirements and the VECP, and the comparative advantages and disadvantages of each;

(2) An itemization of the requirements of the contract which must be changed if the VECP is accepted and recommendations as to how each change should be made;

(3) An estimate of the reduction in construction costs or the net cost savings to the County that would result from acceptance of the VECP, taking into account the costs of implementation by the Contractor, including costs attributable to subcontractors, and the basis of the estimate;

(4) A prediction of effects the VECP would have on other costs to the County, such as County-furnished property costs, costs of related items, and costs of maintenance and operations;

(5) A statement of the time by which a change order accepting the VECP should be issued to obtain the maximum cost reduction during the remainder of the contract period, noting any effect on the contract period; and

(6) The dates of any previous submissions of the value engineering change proposals, the number of any governmental contracts under which submitted and the previous actions by the various branches of government.

(e) The submission of any VECP by the Contractor and the receipt thereof by the Officer-in-Charge, or verbal acceptance of any VECP by any employee, assign, or agent of the County shall not obligate the County to accept or approve any such proposal. The Contractor shall comply with the provisions of the contract until such time that a VECP is approved.

(f) The County may accept in whole or in part any VECP. Its decision in the acceptance of any VECP is final. The County will approve value engineering change proposals by issuing change orders.

(g) The Contractor may restrict the County's right to use any sheet of a value engineering change proposal or of the supporting data in accordance with the terms of the following legend if it is marked as follows on such the sheet:

“This data furnished pursuant to a value engineering incentive clause shall not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under said clause. This restriction does not limit the County's right to use information contained in this data if it is or has been obtained from another source, or is otherwise available, without limitations. If after use of the data in evaluating a value engineering change proposal, the County accepts the proposal by issuing a change order, the County shall have the right to duplicate, use, and disclose any data pertinent to the proposal as accepted, in any manner and for any purpose whatsoever, and authorize others to do likewise.”

(h) If the VECP is approved, the Contractor grants to the County all rights to use, duplicate or disclose in whole or part, in any manner and for any purpose, and to have or permit others to do likewise, any data reasonably necessary to fully utilize such a proposal. Contract modifications made as a result of this clause will state that they are made pursuant to it.

(i) If a VECP is accepted, affected portions of the construction plans and specifications shall be modified by change order.

(j) An equitable adjustment shall be made in the contract price so that the Contractor will share a portion of the realized cost reduction.

(k) If a VECP is accepted, an adjustment shall be made to the contract time, as required.

(l) Previously accepted or previously submitted but not accepted value engineering change proposals under other contracts, or both, may be submitted for consideration; provided that previously accepted value engineering change proposals under other contracts shall not be grounds for automatic acceptance under the contract.

(m) The County may impose, as a condition of acceptance of any VECP, a requirement that the Contractor warrants the statements, claims, and other information contained in the VECP regarding essential functions and characteristics such as service life, reliability, economy of operation, ease of maintenance, and desired appearance, such warranty to be for an appropriate period to be determined by the County.

(n) The determination of the proposed VECP shall be at the County's sole discretion and the decision will be final.

(o) The County shall not be liable for costs or delays incurred by the Contractor regarding the County's determination with respect to a proposed VECP including development costs, anticipated profits, and increased material or labor costs. Non-conforming work and the annulment of VECP review shall not be the basis of claim against the County including claims for delay.

6.21 Plans to be Furnished by the Contractor. (a) Working or shop drawings shall be submitted only by the Contractor for approval by the Officer-in-Charge. Upon approval by the Officer-in-Charge, such drawings shall become part of the contract documents. The Contractor shall not proceed with work and shall not order any material, equipment, or device affected by such drawings, until such drawings are approved by the Officer-in-Charge.

(b) The Contractor shall submit six (6) copies of working or shop drawings and/or catalog cuts for fabricated items and manufactured items (including mechanical and electrical equipment). Submission shall be made in sufficient time to allow the Officer-in-Charge not less than twenty-one (21) calendar days for examining submissions, unless such submissions are for major equipment that requires review by more than one engineering discipline, in which case the time period shall be increased to thirty (30) calendar days.

(c) Drawing size shall be (8.5" x 11"), (11" x 17"), or (24" x 36"). Drawings shall be accurate, distinct, and complete, and shall contain all required information, including satisfactory identification of items, units, and assemblies in relation to the contract drawings and specifications.

(d) The Contractor shall mark drawings by a signed stamp, or other approved means, indicating that the Contractor has checked the shop drawings, and that the work shown is in accordance with contract requirements and has been checked for dimensions and relationship with work of all other trades involved. The practice of submitting incomplete or unchecked drawings will not be acceptable and will be returned to the Contractor for re-submission in the proper form.

(e) After the Officer-in-Charge's review, two (2) sets of submissions will be returned to the Contractor appropriately stamped. If major changes or corrections are necessary, the drawings may be rejected and will be returned to the Contractor with one (1) set of the submissions indicating such changes or corrections, and the Contractor shall correct and resubmit six (6) revised copies.

No changes shall be made by the Contractor to resubmitted shop drawings other than those changes indicated by the Officer-in-Charge.

(f) The Officer-in-Charge's review of shop and working drawings and catalog cuts shall not relieve the Contractor from responsibility for correctness of dimensions, fabrication details, and space requirements.

(g) Operation and maintenance data shall be assembled in three ring binders (Slant "D" style), which shall be indexed and tabbed. The Contractor shall provide six (6) copies of originals (not photocopies) of the operation and maintenance data to the Officer-in-Charge.

6.22 Contract Documents to be Kept on Project Site. The Contractor shall keep a copy of the contract documents at the project site, and in such a location where they shall be readily accessible for reference.

6.23 Additional Plans to be Furnished by the Officer-in-Charge. The construction plans are intended to be fairly comprehensive and indicate in detail the scope of the work. If during the progress of construction, the Contractor should request supplemental plans to clarify or define in greater detail the intent of the contract documents, the Officer-in-Charge may furnish such supplemental plans, and such additional plans shall become a part of the contract documents, and the Contractor shall perform the work in conformance with such supplemental plans.

6.24 Personal Supervision. (a) The Contractor shall either be personally present or have a responsible representative, authorized to act on behalf of the Contractor, at the project site at all times.

(b) The Contractor shall provide the Officer-in-Charge, in writing, with the name(s) of the Contractor's representative(s).

6.25 Character of Workers, Methods, and Equipment. (a) The Contractor shall employ persons who possess the skills required to perform the work under the contract.

(b) When required by the Officer-in-Charge, the Contractor shall replace any employee who lacks the skill to perform the work assigned to such employee, or is discourteous or disorderly while performing such work. A person who has been replaced may be assigned other work with the approval of the Officer-in-Charge.

(c) The Contractor shall use proper and efficient methods and equipment based upon standard construction industry practices for the performance of the contract.

6.26 Lines and Grades. (a) The laying out of base lines, establishment of grades and staking out the entire work shall be done by a surveyor or civil engineer licensed in the State of Hawaii at the expense of the Contractor, and the Contractor shall be solely responsible for their accuracy. The Contractor shall be responsible for costs of replacing the horizontal and vertical control points or monuments if disturbed or destroyed by the Contractor.

(b) Should any discrepancy be discovered in the dimensions given in the plans, the Contractor shall immediately notify the Officer-in-Charge before proceeding any further with the work, otherwise the Contractor will be held responsible for any costs involved in correction of construction placed due to such discrepancy.

6.27 Contractor's Entry Upon Private Properties. Unless explicitly stated in the contract documents or informed in writing by the Officer-in-Charge, the Contractor is not authorized to enter any property other than the project site. If the Contractor enters any property,

whether authorized by the landowner or any other person claiming an interest in the property, or without any authorization, and causes property damage, personal injury, or wrongful death thereupon, the Contractor shall be responsible to settle any and all claims made by the landowner or person claiming an interest in the property.

6.28 Existing Underground Improvements. (a) Whenever the existence of drainage, gas, oil, sewer, or water pipelines (if applicable, see also Article 301.10 of the Water Systems Standards); cable TV, electric, or telephone lines, or other underground utility facilities are indicated in the construction plans, or are not indicated in the construction plans, but inquiries indicate their existence, the Contractor shall exercise utmost caution, keeping in mind the possible existence of unrecorded laterals and other incidental facilities, and protect all such improvements from damage. The Contractor shall be responsible for any and all damages to all such improvements resulting from its operations.

(b) The Contractor is not eligible for additional compensation and shall not make any claims against the County for extra effort required to prevent any damages or extra work caused or resulting from its operations under this Subsection.

6.29 Quality of Materials. All materials furnished and installed shall be new, be of standard quality of their respective kinds, and be free of defects. Rejected materials must be removed from the project site immediately or within such time as allowed by the Officer-in-Charge and replaced with materials of the quality required by the contract documents. Failure by the Officer-in-Charge to reject materials or to require the removal of such rejected materials shall not relieve the Contractor from responsibility as to the quality and character of materials used on the project.

6.30 Defective Work. Any defective work which may be discovered before the completion of the work shall be corrected as soon as possible. The fact that the Officer-in-Charge may not be aware of defective work shall not constitute the acceptance of the same. Payment, whether partial or final, shall not be construed to be an acceptance of defective work or improper material.

6.31 Inspectors. (a) The Officer-in-Charge may place inspectors on the project. They shall have free access to inspect any and all portions of the project at all times and shall be afforded all means to inspect the materials furnished and work performed on the project. No defective or noncomplying material or workmanship will be considered as accepted as a consequence of the failure of the inspectors to discover or to point out said defects or deficiencies during the construction; nor will the presence of inspectors on the project relieve the Contractor from responsibility for securing the quality and progress of work required by the contract documents.

(b) The inspectors may not alter or waive the provisions of the contract, issue instructions contrary to the contract, or act as foreman for the Contractor. The inspectors shall be free to perform their duties at all times and any intimidation of any inspector by the Contractor or the Contractor's agents or employees, shall be sufficient reason for the County to terminate the contract.

(c) If the Contractor wishes to work at such time of the day which is during the period other than the regular business hours of the County, or on a Saturday, Sunday, or legal State/County holiday, the Contractor shall submit a written request to the Officer-in-Charge for inspection services during such period not less than forty-eight (48) hours in advance of the time when such inspection services are required. If the Contractor's request is granted, the Contractor shall pay the County at the rate per hour designated by the County for each inspector provided. A deposit of legal tender or certified check in an amount estimated by the County to be the cost of be incurred by the County. The Contractor shall be refunded any unused portion of the deposit or be

responsible for additional payment based on actual cost incurred by the County for the additional inspection. The County may reject the request for additional inspection services, and consequently deny the Contractor's request to work overtime if inspectors are not available during the period the Contractor is planning to work.

6.32 Findings Confidential. Any reports, information, or data which the County deems confidential and is given to or prepared or assembled by the Contractor under the contract shall not be made available to any individual or entity by the Contractor without the prior written approval of the Officer-in-Charge.

6.33 Ownership Vested in County. It is expressly understood that any and all equipment, materials, data, information, results and any other thing derived or obtained directly or indirectly as a result of the contract, including, but not limited to, equipment, materials, data, information, and results shall be the sole and exclusive property of the County and that the Contractor shall have no interest, right or title to or in any of the foregoing.

6.34 Pollution. In accordance with Section 103D-411, HRS, the Contractor shall control any pollution in accordance with applicable federal, state, and county regulations when pollution is encountered in the performance of the contract. The Contractor shall immediately notify the Officer-in-Charge if pollution is encountered in the performance of the contract.

6.35 Best Efforts. Contractor agrees that it will, at all times, faithfully, industriously, and to the best of Contractor's ability, experience and talents, perform all of the duties that may be required of Contractor pursuant to the express and implicit terms hereof to the reasonable satisfaction of the County, as determined by the Officer-in-Charge.

6.36 Clean Up. Upon the completion of the work, the Contractor shall remove all temporary structures, surplus materials, rubbish, and obstructions. Should the Contractor fail to do so, the Officer-in-Charge may undertake the work and deduct the cost of performing such work from compensation due the Contractor.

6.37 Responsibility of the Contractor Prior to Final Acceptance of the Work. The Contractor shall be responsible for the work until final acceptance by the County. Use of any portion of the work which may be necessitated by tie-ins to existing and live water systems and which portion of the work must be kept live and use of other portions of the work other than water system improvements by the public, with or without permission by the County, shall not be construed as an acceptance of the work and shall not relieve the Contractor from its responsibility hereunder.

6.38 Substantial Completion. (a) The Contractor, on considering the work to be substantially complete and ready for its intended use, shall so notify the Officer-in-Charge in writing. The notification shall include an itemized list of remaining incomplete work. If the Officer-in-Charge determines that the work is not substantially complete, the Officer-in-Charge will so notify the Contractor in writing identifying the reasons for such a determination. If the Officer-in-Charge finds the work substantially complete, the Officer-in-Charge will meet with the Contractor to:

(1) Prepare a punch list of incomplete work items;

(2) Define the division of responsibility between County and Contractor with respect to security, operation, maintenance, heat utilities, insurance, and warranties, and;

(3) Describe an other issues related to acceptance of the substantially completed work.

The Officer-in-Charge will notify the Contractor in writing of the terms of the County's acceptance of substantial completion. The written notification shall include a punch list of incomplete work items, set the date for their completion, describe the division of responsibility between the County and Contractor, and describe any other terms of acceptance of substantial completion. The Contractor shall acknowledge, in writing, acceptance of all terms specified in the written notice before the project is determined substantially complete by the County.

(b) Upon receipt of the Contractor's written acknowledgment, the County shall take possession of the work or portion of the work and put it into its intended service. The date that the work or portion of the work is put into service will become the date of substantial completion.

(c) Subsequent to the substantial completion date, the County may exclude the Contractor from the work during such periods when construction activities might interfere with the operation of the project. The County, however, shall allow the Contractor reasonable access for completion or correction of incomplete punch list items.

(d) Except for any portion(s) of work specified for early completion or required by the County for early possession, substantial completion will not occur for any work until the entire project is ready for possession and use.

(e) The Officer-in-Charge shall have sole discretion for determination of substantial completion.

6.39 Possession of Portions of the Project. Should the Contractor fail to meet any date specified for substantial completion of the work or any portion of the work requiring early possession and use by the County, the County may, after a 10-day written notice to the Contractor, take over such portion or all of the work that is behind schedule. In such case, the Officer-in-Charge will prepare a punch list of incomplete work. The County may allow the Contractor reasonable access to the work at such times that the operation of the project will not be affected or the County may complete the work itself after giving the Contractor notice of the County's intention to do so. The cost of County's work will be charged to and deducted from amounts due to the Contractor. The substantial completion date will be established as the date when the County actually begins using the project or portion of the project for its intended purpose. Division of responsibilities between the County and Contractor, beginning of warranties, and any other issues relating to substantial completion shall be as specified in the contract.

6.40 Acceptance of the Project. (a) Upon completion of the work, including portions of the work previously accepted as substantially complete, the Contractor shall so notify the Officer-in-Charge in writing. Upon receipt of the notification, the Officer-in-Charge will determine if the work conforms to the terms of the contract. If the Officer-in-Charge finds materials, equipment, or workmanship which do not meet the terms of the con-tract, the Officer-in Charge shall prepare a punch list of such items and submit it to the Contractor. Following completion of the corrective work by the Contractor, the Contractor shall notify the Officer-in-Charge that the work has been completed in accordance with the contract. Final determination of the acceptability shall be made by the Officer-in-Charge. Upon acceptance of the project, the Officer-in-Charge shall immediately file a notice of completion. For portions of the project not previously accepted as substantially complete, the conditions of guarantee shall commence on the date that the Officer-in-Charge files a notice of completion.

(b) The final application for payment shall be accompanied by all required documentation called for in the contract including complete and legally effective releases or waivers of liens in a form acceptable to the County. Subject to prior approval of the County, the Contractor may submit in lieu of the lien releases and waivers: (1) receipts of releases in full; (2) an affidavit that the releases and receipts cover all labor, services, materials, and equipment for which a lien could be

filed and that all payrolls, materials, and equipment bills and other indebtedness connected with the work for which the County or the County's property might in any way be responsible have been paid or otherwise satisfied; and (3) consent of the surety, if any, to final payment.

(c) If any subcontractor or supplier fails to furnish a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to the County to indemnify the County against any lien.

(d) If, after reviewing the Contractor's final application for payment including all documentation required, the Officer-in-Charge determines that the work is complete, the Officer-in-Charge will recommend that final payment, including all retainages, be made by the County. The final payment will be due and payable by the County within thirty (30) days after any legal notice periods have expired.

6.41 Warranty. (a) The Contractor and Contractor's sureties shall be responsible for the work for a period of one (1) year following final acceptance to be free from defects in workmanship and materials. Product warranties, as applicable, beyond the one (1) year Contractor warranty shall be secured in the name of the County of Maui and furnished to the County prior to final payment request.

(b) The performance and payment bond shall remain in force during the Contractor's warranty period, or the Contractor may elect to withdraw the performance and payment bond and deposit a replacement bond in an amount not less than ten percent (10%) of the final contract price; provided that the Contractor and Contractor's sureties for the replacement bond shall be responsible for any and all costs which exceed the replacement bond amount during the warranty period.

(c) The Contractor and Contractor's sureties shall be responsible for the repair or replacement, or both, of all defective work or materials.

(d) If the Contractor or Contractor's sureties fail to perform the responsibilities under this Subsection in a timely manner, the Officer-in-Charge may undertake or cause the undertaking of such work, and the Contractor and Contractor's sureties shall be responsible for all costs thereunder.

(e) If the work or any portion thereof fails, and the Officer-in-Charge determines that the public's safety, health, or welfare is jeopardized, the Officer-in-Charge may, with or without notice to the Contractor or the Contractor's surety, undertake the repair or replacement work, and the Contractor and Contractor's sureties shall be responsible for all costs incurred by the County.

Section 7 – Compensation

7.01 Compensation. The Contractor shall be paid the amount stated in the contract less any reduction in compensation and plus any increase in compensation pursuant to the contract change order and modification Sections herein, as full compensation for the performance of the services under the contract.

7.02 Compensation Retained. (a) The County may retain a portion of the amount due under the contract to the Contractor to insure proper performance of the contract, provided that the sum withheld shall not exceed five percent (5%) of the 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 Procurement Officer may continue to withhold as compensation retained sums not exceeding five percent (5%) of the amount due the Contractor; provided further that the compensation retained shall not include sums

deducted and withheld separately as liquidated damages from moneys due or that may become due the Contractor under the contract.[§103-32.1(a), HRS]

(b) The retention amount withheld by the Contractor from its subcontractors shall be the same percentage of compensation retained as that of the Contractor, provided that the subcontractor has provided evidence to the Contractor of:

(1) A valid performance and payment bond for the project that is acceptable to the Contractor and executed by a surety company authorized to do business in the State of Hawaii;

(2) Any other bond acceptable to the Contractor; or

(3) Any other form of collateral acceptable to the Contractor.

This Subsection shall also apply to the subcontractors who subcontract work to other subcontractors. [§103-32.1(b), HRS]

(c) The County may enter into an agreement with the Contractor which will allow the Contractor to withdraw from time to time the whole or any portion of the sum retained under Sub-Paragraph (a) upon depositing with the County any general obligation bond of the State or its political subdivisions with a market value not less than the sum to be withdrawn; provided that the County may require that the total market value of such bond be greater than the sum to be withdrawn. [§103-32.2, HRS]

7.03 Monthly Progress Payments. (a) The County shall pay the Contractor monthly progress payments based on the actual quantities of work done and the actual quantities of materials delivered to and safely stored at a site approved by the County. The Contractor shall submit monthly progress payment request to the Officer-in-Charge no later than the fifth (5th) day of each month for work performed during the previous calendar month.

(b) Subject to the retainage provisions of Subsection 7.02 – Compensation Retained, the County shall pay the Contractor an amount equal to the value of the completed and installed portion of the work for which the Contractor certifies has not previously been paid. The County shall also pay the Contractor for seventy-five percent (75%) of the value of materials furnished, delivered and stored in an approved manner, provided that:

(1) A copy of the paid receipts for the stored materials must be submitted with the pay estimate;

(2) Fire and Standard Extended Coverage Insurance is required if payment for stored materials is requested; and

(3) Payment for perishable stored materials, such as live plants and similar materials, will not be allowed.

(c) The Officer-in-Charge may decline to process a progress payment request if the total value of the work done since last estimate is less than $1,000.

(d) Monthly progress payments may be subject to compensation retained.

7.04 Death or Disability of Contractor. In the case of an individual Contractor, if the Contractor dies or becomes physically or mentally disabled, the Contractor or the Contractor's

estate shall be compensated in the same proportion of the compensation under the contract as the services performed bear to the services to be performed under the contract.

7.05 Campaign Contributions Prohibited. It is understood and agreed by the Parties that no portion of the Contractor's compensation to be paid under the terms of the contract shall be used as a campaign contribution.

7.06 Authority to Withhold Money Due or Payable. The Procurement Officer may withhold such amounts from the money due or to become payable under the contract to the Contractor, or any assignee thereof, as may be necessary to protect the County against liability, to satisfy the obligations of the Contractor to the County, employees, subcontractors and material men who have performed labor or furnished material and equipment under the contract, or to satisfy any outstanding debts owed to the County by the Contractor and may make such payments from such amounts as may be necessary to discharge such obligations, satisfy County debts and protect the County.

7.07 Final Payment – Final Acceptance. (a) Final payment will be made only after the issuance of a notice of final approval and acceptance by the Officer-in-Charge advising the Contractor of the satisfactory fulfillment of the terms of the contract, provided that the Director of Finance has determined that the Contractor has fully satisfied all outstanding debts to the County. Acceptance by the Contractor of the final payment shall constitute payment in full for all services performed under the contract.

(b) Upon completion and acceptance of the work under the contract, the County shall pay the Contractor the balance due after deducting previous payments and amounts to be retained or deducted according to the contract.

(c) The County shall not make final payment until the following is received:

(1) Written consent of the Contractor's sureties on the Contractor's bonds;

(2) Tax clearance certificate from the State Director of Taxation stating that all delinquent taxes levied or accrued against the Contractor have been paid. The tax clearance for final payment shall be an original certificate with a green certified copy stamp, not over two (2) months old, with box 3a of the application completed for a specific job number, and indicating tax clearances from the Hawaii State Department of Taxation and the Internal Revenue Service on Tax Clearance Application A-6;

(3) An affidavit stating that payment due to all subcontractors and all persons, companies, corporations for labor, tools, materials, and equipment used in the prosecution of the work under the contract have been paid or have been satisfactorily secured; and

(4) A "Certification of Compliance for Final Payment" (SPO Form-22).

Section 8 – Contract Amendments/Change Orders

8.01 Change Order. In accordance with Sections 103D-202, HRS and 3-125-4, HAR, 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 shall 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 of performance.

8.02 Adjustments of Price or Time for Performance. In accordance with Section 3-125-4, HAR, 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 the contract, whether or not changed by the order, an adjustment may be made and the contract modified in writing accordingly.

(a) Any adjustment in contract price shall be determined in accordance with Section 11 – Price Adjustment Clause.

(b) Failure of the parties to agree to an adjustment in time shall not excuse a Contractor from proceeding with the contract as changed, provided that the Procurement Officer, within fourteen (14) days after the changed work commences, makes such provisional adjustments in time as the Procurement Officer deems reasonable.

(c) 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 written notice requirements for disputes and claims established by the contract.

(d) The County may choose to formalize a change to the scope of work or contract time by a contract amendment.

8.03 Time Period for Claim. Within thirty (30) days after receipt of a written change order under Paragraph 8.01, 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.

8.04 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 the contract.

8.05 Other Claims Not Barred. In the absence of such a change order, nothing in this Section shall restrict the Contractor's right to pursue a claim arising under the contract or for breach of contract.

Section 9 – Stop Work Orders

9.01 Suspension of Work. The Procurement Officer may, by written order, suspend the performance of the work, either in whole or in part for periods as the Procurement Officer may deem necessary for any cause, including but not limited to:

(a) Weather or soil conditions unsuitable for prosecuting of the work;

(b) Failure on the part of the Contractor to:

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

(2) Carry out orders given by the Procurement Officer;

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

(4) Provide adequate supervision on the job site.

(c) Whenever a redesign that may affect the work is deemed necessary by the Procurement Officer;

(d) Unacceptable noise or dust arising from the construction even if it does not violate any law or regulation; or

(e) The convenience of the County.

9.02 Partial and Total Suspension. Suspension of work on some but not all items of work shall be considered a "partial suspension". Suspension of work on all items shall be considered "total suspension". The period of suspension shall be computed from the date set out in the written order for work to cease until the date of the order for work to resume.

9.03 Reimbursement to Contractor. In the event that the Contractor is ordered by the Procurement Officer in writing as provided herein to suspend all work under the contract in accordance with Paragraph (c), (d), or (e) of Subsection 9.01 – Suspension of Work, the Contractor may be reimbursed for actual money expended towards the project during the period of suspension. No allowance will be made for anticipated profits.

9.04 Cost Adjustment. If the performance of all or part of the work is suspended for reasons beyond the control of the Contractor, an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such suspension, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension:

(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 the contract.

9.05 Claims for Adjustment. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the provisions on changes and claims for adjustment. Claims for compensation shall be filed in writing with the Procurement Officer within thirty (30) days after the date of the order to resume work or the claims will not be considered. Together with the claim, the Contractor shall submit substantiating documents covering the entire amount shown on the claim. The Procurement Officer shall take the claim under consideration, may make such investigations as are deemed necessary, and shall be the sole judge as to the equitable nature of the claim. The Procurement Officer's decision shall be final.

9.06 No Adjustment. No provision of this Section shall entitle the Contractor to any adjustments for delays due to failure of surety, suspensions made at the request of the Contractor, any delay required under the contract, or suspensions, either partial or whole, made by the Procurement Officer under Paragraph (b) of Subsection 9.01 - Suspension of Work.

Section 10 – Variations in Estimated Quantities

10.01 Variations Requiring Adjustments. Where the estimated quantity of a pay item in the contract is an estimated quantity and where the actual quantity of such pay item varies by more than fifteen percent (15%) above or below the estimated quantity in the 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. If the quantity

variation is such as to cause an increase in the time necessary for completion, the Procurement Officer shall, upon receipt of a timely written request for an extension of time, prior to final payment of the contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the Procurement Officer the findings justify.

10.02 Adjustment of Price. Any adjustment in contract price shall be determined in accordance with Section 11 - Price Adjustment Clause.

Section 11 – Price Adjustment Clause

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

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

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

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

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

(e) In the absence of agreement between the Parties, the provisions of Section 103D-501(b)(5), HRS shall apply.

11.02 Submission of Cost or Pricing Data. The Contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 103D-312, HRS (Cost or pricing data), as amended. The submission of any cost or pricing shall be made subject to the provisions of Subchapter 15, Chapter 3-122, HAR. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in Paragraphs 11.1(a) through 11.1(d) shall be issued within ten (10) days after agreement on the method of adjustment.

11.03 Determining the Adjustments in Price. (a) In determining the adjustment in price to the County resulting from a change, the allowances for all overhead, extended overhead resulting from adjustments to contact time (including home office and branch office overhead) and profit combined shall not exceed the percentages set forth below:

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

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

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

(b) In no event shall overhead and profit exceed a total of twenty percent (20%) of direct costs, regardless of the number of tier subcontractors.

(c) The Contractor may add up to one percent (1%) of direct costs for bonds.

(d) If the bid contains lump sum items, the Officer-in-Charge may delete the lump sum item, which shall be deducted from the contract price based on the bid price of the lump sum item.

(e) If the bid contains unit price items, the Officer-in-Charge may increase or decrease the quantities of such items, or delete such items in their entirety. If quantities are increased, the Contractor shall perform such work at the unit price bids for such items. If quantities are decreased or such unit price items are deleted in their entirety, the deductions from the contract price shall be based on the unit price bids for such items.

11.04 Change Order Work by Force Account. (a) Compensation for change work by force account (time and expenses basis) shall be an amount equal to the sum of the following items:

(1) The cost to the Contractor of all material delivered for the change order work evidenced by bills or vouchers;

(2) The cost of all labor including foremen, except general superintendence, necessary to incorporate the above material in the change work or to finish the change order if no materials are required, to be determined from the Contractor's payrolls or by inspections performed by the inspectors, or both;

(3) Ten percent (10%) of the amount from Sub-Paragraph (2), which shall be considered as covering the cost of superintendence, hand tools, and clerical work in connection with the change order work and the Contractor's overhead costs;

(4) A rental charge for the use of all construction equipment approved by the Officer-in-Charge. The rental rates shall be agreed upon by the Contractor and the Officer-in-Charge, and may or may not, include the cost of fuel oil, gasoline, electric energy, lubricating oil, repairs, and maintenance. The Contractor shall submit a proposed schedule of equipment rental charges to the Officer-in-Charge for approval prior to entering into a change order. The cost of small tools shall not be included;

(5) The cost of workers' compensation insurance and public liability premiums, unemployment tax, social security tax, or other taxes on the labor for Sub-Paragraph (2);

(6) Fifteen percent (15%) of the sums of Sub-Paragraphs (1) through (4), which shall be considered as covering all other expenses and profit;

(7) Where force account work is performed by a subcontractor, the Contractor may add five percent (5%) to the subcontractor's computed compensation to cover its overhead and profit, provided that overhead and profit shall be limited to a total of twenty percent (20%) of direct costs;

(8) One percent (1%) of direct costs for Paragraphs (1) through (7) for bonds. The addition for bond cost is applicable only to the Contractor's compensation; and

(9) The cost of state excise tax on the sum of Paragraphs (1) through (8).

(b) The performance of change order work on a force account basis shall be under the supervision of the Officer-in-Charge, and the Officer-in-Charge's decision shall be final. The method of performing such work, the equipment to be used, and the amount and character of labor

to be employed shall meet with the approval of the Officer-in-Charge. The force account formula may also apply to deleted work.

(c). Whenever the Contractor is directed to perform extra work on a time and expense basis, the Contractor will maintain accurate records. Each day a record of labor, materials and equipment costs shall be submitted to the Officer-in-Charge for verification. These records shall reflect the actual and necessary expenses pertaining to the extra work and shall be available for audit. Audits conducted under this provision shall be in accordance with generally acceptable auditing standards and established procedures and guidelines of the reviewing or auditing agencies.

11.05 Materials Ordered. If the Officer-in-Charge deletes any item, or decreases the quantity of any item in the bid, and the Contractor has already ordered materials involved in such deletions or decreases, the Contractor shall make every effort to return the materials if requested by the Officer-in-Charge. If the materials are returnable, the County shall pay the actual costs incurred to the Contractor to return the materials evidenced by receipt or invoice. If the materials cannot be returned, the County shall pay the actual cost to the Contractor of the materials evidenced by receipt or invoice; provided that the materials are free from defect upon inspection and acceptance by the County. Materials ordered prior to the issuance of the Notice to Proceed shall be the Contractor's responsibility and the County will not make payment for such materials.

11.06 Work by County. If additional work is required to complete the contract, the County reserves the right to (1) perform the additional work itself; and (2) employ another contractor to perform the work. The Contractor shall fully cooperate with the County to schedule the completion of the additional work.

Section 12 – Differing Site Conditions

12.01 Notification. The Contractor shall promptly, and before such conditions are disturbed, notify the Procurement Officer of:

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

(b) 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 the contract.

12.02 Adjustments of Price or Time of Performance. After receipt of the notice, the Procurement Officer shall promptly investigate the site, and if it is found that the conditions do materially so differ and cause an increase in the Contractor's cost of, or the time required for, performance of any part of the work under the contract, whether or not changed as a result of the conditions, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this Section shall be determined in accordance with Section 11 - Price Adjustment Clause.

12.03 Timeliness of Claim. No claim of the Contractor under this Section shall be allowed unless the Contractor has given the notice required in this Section; provided, however, that the time prescribed therefore may be extended by the Procurement Officer in writing.

12.04 No Claim After Final Payment. No claim by the Contractor for an adjustment thereunder shall be allowed if asserted after final payment under the contract.

12.05 Knowledge. Nothing contained in this Section shall be grounds for an adjustment in compensation if the Contractor had actual knowledge of the existence of such conditions prior to the submission of bids.

Section 13 – Novation or Change of Name

13.01 No Assignment. No County contract is transferable, or otherwise assignable, without the written consent of the Procurement Officer. A Contractor may assign monies receivable under a contract with written consent of the Procurement Officer.

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

13.03 Change of Name. When a Contractor requests to change the name in which it holds a contract with the County, the Procurement Officer 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 a novation 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.

Section 14 – Claims Based on Oral Directives

14.01 Notice Required. Any oral order, direction, instruction, interpretation, or determination from the Procurement Officer which, in the opinion of the Contractor, causes any change, can be considered as a change only if the Contractor gives the Procurement Officer written notice of its intent to treat the oral order, direction, instruction, interpretation, or determination as a change directive. The written notice must be delivered to the Procurement Officer 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. The written notice may not be waived and shall be a condition precedent to the filing of a claim by the Contractor. Unless the Contractor acts in accordance with this procedure, any oral order shall not be treated as a change and the Contractor waives any claim for an increase in the contract time or contract price related to the work.

14.02 Change Order Issued. Not more than five (5) working days after receipt of the written notice from the Contractor, the Procurement Officer shall issue a change order for the subject work if the Procurement Officer agrees that it constitutes a change. If no change order is issued in the time established, it shall be deemed a rejection of the Contractor's claim for a change. If the Contractor objects to the Procurement Officer's refusal to issue a change order, it shall file a written protest with the Procurement Officer within thirty (30) days after delivery to the Procurement Officer 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 17 - Remedies.

Section 15 – Default, Delay, and Time Extensions

15.01 Default. If the Contractor refuses or fails to perform the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in the contract, or any extension thereof, fails to complete the work within such time, or commits any other substantial breach of the contract, and further fails within seven (7) days after receipt of written

notice from the Procurement Officer to commence and continue correction of the refusal or failure with diligence and promptness, the Procurement Officer 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 that event, the County may take over the work and perform the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, the materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, the Contractor and the Contractor's sureties shall be liable for any damage to the County resulting from the Contractor's refusal or failure to complete the work within the specified time.

15.02 Liquidated Damages Upon Termination. If fixed and agreed liquidated damages are provided in the contract, and if the County so terminates the Contractor's right to proceed, the resulting damage will consist of the liquidated damages for the time as may be required for final completion of the work.

15.03 Liquidated Damages in Absence of Termination. If fixed and agreed liquidated damages are provided in the contract, and if the County does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages accumulated until the work is completed or accepted.

15.04 Time Extension. The Contractor's right to proceed shall not be so terminated nor shall the Contractor be charged with resulting damage if:

(a) The delay in the completion of the work arises from causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in either a sovereign or contractual capacity; acts of another Contractor in the performance of a contract with the County; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the Contractor furnishes to the Procurement Officer proof that the Contractor has diligently made every effort to obtain the materials from all known sources, and further proof that the inability to obtain the materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the Contractor's operations; and

(b) The Contractor, within ten (10) days from the beginning of the delay (unless the Procurement Officer grants a further period of time before the date of final payment under the contract), notifies the Procurement Officer in writing of the causes of delay. The Procurement Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in the judgment of the Procurement Officer, the findings of fact justify such an extension.

15.05 Additional Rights and Remedies. The rights and remedies of the County provided in the contract are in addition to any other rights and remedies provided by law.

Section 16 – Termination for Convenience

16.01 Terminations. The Procurement Officer may, when the interests of the County so require, terminate the contract in whole or in part, for the convenience of the County. The Procurement Officer shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

16.02 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 County's approval. The Procurement Officer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the County. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

16.03 Right to Construction and Goods. The Procurement Officer may require the Contractor to transfer title and deliver to the County in the manner and to the extent directed by the Procurement Officer.

(a) Any completed constructions; and

(b) The partially completed construction, goods, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "construction material") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of the contract. The Contractor shall protect and preserve property in the possession of the Contractor in which the County has an interest. If the Procurement Officer does not exercise this right, the Contractor shall use the Contractor's best efforts to sell the construction, goods, and construction materials in accordance with the standards of Section 490:2-706, HRS. This in no way implies that the County has breached the contract by exercise of the termination for convenience clause.

16.04 Compensation. (a) The 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 Sub-Chapter 15, Chapter 3-122, HAR, bearing on such claim. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the Contractor, if at all, an amount set in accordance with Clause (2) of Paragraph (c).

(b) The Procurement Officer and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the County, the proceeds of any sales of construction, goods, and construction materials under Clause (3) of Paragraph (c), and the contract price of the work not terminated.

(c) Absent complete agreement under Paragraph (b), the Procurement Officer shall pay the Contractor the following amounts, provided payments under Paragraph (b) shall not duplicate payments under this Paragraph, for the total (without duplication of any items) of:

(1) The cost of all contract work performed prior to the effective date of the notice of termination plus a five percent (5%) markup on actual direct costs on the portion of the work (the markup shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of the 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;

(2) Subject to the prior approval of the Procurement Officer, the costs of settling and paying claims arising out of the termination of subcontracts or order pursuant to the "Contractor's obligations" provisions of the contract. Subcontractors shall be entitled to a markup of no more than ten percent (10%) on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with Clause (1);

(3) The total sum to be paid to the Contractor under this Paragraph shall not exceed the total contract price reduced by the amount of any sales of construction, goods, and construction materials under Subsection 16.03 – Right to Construction and Goods, and the contract price of work not terminated.

(d) Cost claimed, agreed to, or established under Paragraphs (b) and (c) shall be in accordance with Chapter 3-123, HAR.

Section 17 – Remedies

17.01 General. Any dispute arising under or out of the contract is subject to Chapter 3-126, HAR.

17.02 Disputes. (a) All controversies between the County and the Contractor which arise under, or are by virtue of, the Contract and which are not resolved by mutual agreement shall be decided by the Procurement Officer in writing, within ninety calendar days after a written request by the Contractor for a final decision concerning the controversy; provided that if the Procurement Officer does not issue a written decision within ninety calendar days after written request for a final decision, or within such longer period as may be agreed upon by the Parties, then the Contractor may proceed as if an adverse decision had been received.

(b) The Contractor shall comply with any decision of the Procurement Officer and proceed diligently with performance of the contract pending final resolution by the Circuit Court of the Second Circuit, State of Hawaii, County of Maui, of any controversy arising under, or by virtue of, the contract, except where there has been a material breach of contract by the County; provided that in any event the Contractor shall proceed diligently with the performance of the contract where the Procurement Officer has made a written determination that work under the contract is essential to the public health and safety.

(c) Any such decision shall be final and conclusive, unless fraudulent, or unless the Contractor brings an action seeking judicial review of the decision in the Circuit Court of the Second Circuit, State of Hawaii, County of Maui, within the six months from the date of receipt of the decision

(d) The Contractor shall comply with any decision of the Procurement Officer and proceed diligently with performance of the contract pending final resolution by the Circuit Court of the Second Circuit, State of Hawaii, County of Maui, of any controversy arising under, or by virtue of, the contract, except where there has been a material breach of contract by the County; provided that in any event the Contractor shall proceed diligently with the performance of the contract where the Procurement Officer has made a written determination that work under the contract is essential to the public health and safety.

Section 18 – Miscellaneous Provisions

18.01 Severability. If any provision of the contract is held invalid, the other provisions of the contract shall not be affected thereby. If the application of the contract or any of its

provisions as to any person or circumstance is held invalid, the application of the contract and its provisions as to other persons or circumstances shall not be affected thereby.

18.02 Entire Agreement. The contract contains the complete agreement concerning the subject arrangement between the Parties and shall, as of the effective date hereof, supersede all other agreements between the Parties. The Parties stipulate that neither has made any representations with respect to the subject matter, execution and delivery of the contract except as such representations are specifically set forth herein. Each party acknowledges that the party has relied on the party's own judgment in entering into the contract. The Parties further acknowledge that any payments or representations that may have previously been made by either of them to the other are of no effect and that neither has relied thereon in connection with its dealing with the other.

18.03 Notices. (a) Any written notice required to be given by a party to the contract shall be:

(1) Delivered personally to the Contractor's designated representative on the project site, or

(2) Sent by United States first class mail, postage prepaid to the party's address listed in the contract.

(b). A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The Contractor shall notify the County in writing of any change of address. The Contractor shall maintain a post office address within the County of Maui and file the same with the Officer-in-Charge prior to or with the execution of the contract. All notices addressed in compliance with the directions of the Contractor and properly mailed shall be effective when mailed, or delivered by any of the above methods.

18.04 Assistance of Legal Counsel. The Parties have carefully read and fully understand all of the provisions and effects of the contract. The Parties shall consult with their respective counsel if any provision of the contract is not fully understood. The Parties are voluntarily entering into the contract and neither Party has made representations concerning the terms or effects of the contract other than those contained herein.

18.05 Applicable Law and Venue. The contract shall be governed by the laws of the State of Hawaii. Any action or court proceeding which may arise from the contract shall be heard in the Circuit Court of the Second Circuit, State of Hawaii, County of Maui.

[END OF GENERAL TERMS AND CONDITIONS]

SPECIAL CONDITIONS FOR CONTRACTS UTILIZING FEDERAL FUNDING, INCLUDING FEMA FUNDING

The contractor shall comply with all applicable federal law, regulations, executive orders, policies, procedures, and directives, including but not limited to the following:

(A) Violation or Breach of Contract. If the contract value is in excess of the simplified acquisition threshold, currently set at $250,000, the contractor is directed to Hawaii Revised Statutes § 103D-703 and Section 17 of the County's General Terms and Conditions for Construction Contracts (the "GT&Cs") attached herewith.

(B) Termination for Cause or Convenience. If the contract value is in excess of $10,000, the contractor is directed to Sections 15 and 16 of the GT&Cs.

(C) Equal Employment Opportunity. During the performance of the contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will

be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(D) Davis-Bacon Act. The contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the contractor must be required to pay wages not less than once a week. The contractor is directed to the current prevailing wage determination issued by the Department of Labor in the solicitation. Award of this contract is conditioned upon the acceptance of the wage determination. The contractor must report all suspected or reported violations to the County and the Federal awarding agency.

(E) Copeland "Anti-Kickback" Act: When applicable, the contractor must also comply with the Copeland "Anti–Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations. The contractor and any subcontractor are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The contractor must report all suspected or reported violations to the County and the Federal awarding agency.

(1) The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) The contractor shall insert into any subcontracts the clause above and such other clauses as may be appropriate, as well as a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12

(F) Contract Work Hours and Safety Standards. If the contract value is in excess of $100,000, the contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. When required the Contractor must also comply with the following:

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $31 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The County and the Contractor shall upon its own action or upon written request of an authorized representative of

the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(G) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the County wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Contract must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(H) Clean Air Act and the Federal Water Pollution Control Act. If the contract value is in excess of $150,000 the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Contractor shall report violations to the Federal awarding agency, the Regional Office of the Environmental Protection Agency ("EPA"), and the County.

(1) Clean Air Act:

(a) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(b) The contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State (if applicable), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(c) The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

(2) Federal Water Pollution Control Act:

(a) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(b) The contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State (if applicable), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(c) The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

(I) Suspension and Debarment. No contract may be awarded to any party listed on the government-wide exclusions in the System for Award Management ("SAM"). contractor hereby warrants and certifies that it is not listed on SAM and the contractor is not debarred, suspended, or otherwise ineligible to enter into this contract. The contractor further acknowledges that:

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the Contract and any warranty period. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(J) Byrd Anti-Lobbying Amendment. Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Contractor, who in turn will forward the certification(s) to the County.

(K) Procurement of Recovered Materials. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II(J); and 2 C.F.R. § 200.322. In the performance of this contract, the contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive- procurement-guideline-cpg-program. The contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(L) Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. In performance of the contract, the contractor is prohibited from obligating or expending funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(a) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(b) Telecommunications or video surveillance services provided by such entities or using such equipment.

(c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(M) Domestic Preferences Procurements. As appropriate and to the extent consistent with law, the contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(N) Changes to the Contract. Contractor is directed to Section 1, of the contract and the GT&Cs in its entirety for as those relate to the cost of a change, modification, amendment, change order, or constructive change which must be allowable and allocable within the scope of its grant or cooperative agreement and reasonable for the completion of project scope.

(O) Access to Records. The following access to records requirements apply to this contract:

(1) The Contractor agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(P) DHS Seal, Logo, and Flags. The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

(Q) FEMA Financial Assistance. The contractor acknowledges that this contract is funded partially or fully through financial assistance provided by FEMA. The contractor agrees to comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(R) Federal Obligations and Liabilities. The contractor acknowledges that the Federal Government is not a party to this contract and is not subject to any obligations or liabilities created hereunder.

(S) Remedies for False Claims and Statements. The contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to this contract.

(T) Policy and Conservation Act. Contractor shall comply with applicable standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(U) Contract Oversight. Pursuant to CFR §200.318, County will monitor and manage the day-to-day operations and activities to assure compliance with applicable Federal requirements and contract terms, conditions, and specifications.

(V) Affirmative Socioeconomic Steps: If subcontractors are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(W) License and Delivery of Works Subject to Copyright and Data Rights: The contractor grants the COUNTY, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produces in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and publicly display such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the COUNTY or acquires on its behalf a license of the same scope as for date first produced in the performance of this contract. Data as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, and written reports or literary works, software and/or course code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the COUNTY data first produces in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable to the COUNTY.

(X) Mandatory Purchase of Hawaii Products Inapplicable. Pursuant to HRS 103D-1002(i)(1), requirements related to the mandatory purchase of Hawaii Products shall not apply where doing so would disqualify the County from receiving federal funds or aid. 2 C.F.R. § 200.319(c) specifically prohibits the use of "statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals" and as such, the above referenced provisions shall not apply and will not be enforced by the County.

Anti-Lobbying Certification

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

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

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

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

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

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

By_____
(Signature)

_____
(Print Name)

Date_____

CONTRACT NO. C[Contract No.]

PERFORMANCE BOND WITH SURETY

BOND NO._____

KNOW TO ALL BY THESE PRESENTS:

That [CONTRACTOR NAME], a [Hawaii/Other] [corporation/limited liability company/nonprofit company/etc.], [dba CONTRACTOR DBA], whose mailing address is [Contractor's Mailing Address], as Contractor, hereinafter called "Principal," and _____, 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 COUNTY OF MAUI, a political subdivision of the State of Hawaii, Wailuku, Maui, Hawaii, its successors and assigns, hereinafter called "Obligee" in the amount of $0.00 as performance bond, (being $0.00 in the amount of one hundred percent (100%) of the contract price as required by Section 103D-324, Hawaii Revised Statutes), lawful money of the United States of America, for the payment of which to the said Obligee, well and truly made, Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has signed a contract with Obligee dated _____, for the project entitled "[Name of Project]", identified under [IFB/RFP/Project/Job No.], hereinafter called "Contract," which Contract is incorporated herein by reference and made a part hereof.

NOW THEREFORE, the condition of this obligation is such that:

If the Principal shall promptly and faithfully perform, and fully complete the Contract in strict accordance with the terms of the Contract as said Contract may be modified or amended from time to time; then this obligation shall be void; otherwise to remain in full force and effect.

Surety to this bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

In the event of Default by the Principal, of the obligations under the Contract, then after written Notice of Default from the Obligee to the Surety and the Principal and subject to the limitation of the penal sum of this bond, Surety shall remedy the Default, or take over the work to be performed under the Contract and complete such work, or pay moneys to the Obligee in satisfaction of the surety's performance obligation on this bond.

Signed this ____ day of _____, 20____.

[EXECUTION PAGES TO FOLLOW]

CONTRACT NO. C[Contract No.]

PRINCIPAL EXECUTION PAGE

PRINCIPAL:

[CONTRACTOR NAME]

By_____
(Signature)

_____
(Print Name)

Its_____
(Title)

Date_____

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

CONTRACT NO. C[Contract No.]

STATE OF _____)
) SS.
COUNTY OF_____)

On this ____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

_____
Notary Public, State of _____

Print name:_____

My commission expires:_____

NOTARY PUBLIC CERTIFICATION

Doc. Date:		No. of Pages:	
Notary Name:		Judicial Circuit:	
Doc. Description:	Performance Bond with Surety		
	Contract No. [Contract Number]		
		[Stamp or Seal]	
Notary Signature:			
Date:			

CONTRACT NO. C[Contract No.]

SURETY EXECUTION PAGE

SURETY:

_____

By_____
(Signature)

_____
(Print Name)

Its_____
(Title)

Date_____

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

CONTRACT NO. C[Contract No.]

STATE OF _____)
) SS.
COUNTY OF_____)

On this ____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

_____
Notary Public, State of _____

Print name:_____

My commission expires:_____

NOTARY PUBLIC CERTIFICATION

Doc. Date: _____ No. of Pages: _____

Notary Name: _____ Judicial Circuit: _____

Doc. Description: Performance Bond with Surety,
Contract No. [Contract Number]

_____ [Stamp or Seal]

_____

Notary Signature: _____

Date:

CONTRACT NO. C[Contract No.]

PAYMENT BOND WITH SURETY

BOND NO._____

KNOW TO ALL BY THESE PRESENTS

That we, [CONTRACTOR NAME], a [Hawaii/Other] [corporation/limited liability company/nonprofit company/etc.], [dba CONTRACTOR DBA], whose mailing address is [Contractor's Mailing Address], as Contractor, hereinafter called "Principal," and _____, 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 COUNTY OF MAUI, a political subdivision of the State of Hawaii, Wailuku, Hawaii, its successors and assigns, as Obligee, hereinafter called "Obligee," in the amount of $0.00 as payment bond (being $0.00 in the amount of one hundred percent (100%) of the contract price as required by Section 103D-324, Hawaii Revised Statutes), lawful money of the United States of America, for the payment of which to the said Obligee, well and truly made, Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, above-bound Principal has signed a contract with the Obligee dated _____ for the project entitled "[Name of Project]", identified under [IFB/RFP/Project/Job No.], hereinafter called "Contract," which Contract is incorporated herein by reference and made a part hereof.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor and materials supplied to the Principal for the use in the performance of the Contract, then this obligation shall be void; otherwise to remain in full force and effect.

1. Surety to this bond hereby stipulates and agrees that no charges, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawing accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

2. A "Claimant" shall be defined herein as any person who has furnished labor or materials to the principal for the work provided in the Contract.

Every Claimant who has not been paid amounts due for labor and materials furnished for work provided in the Contract may institute an action against the Principal and its Surety on this bond at the time and in the manner prescribed in Section 103D-324, Hawaii Revised Statutes, and have the rights and claims adjudicated in the action, and judgment rendered thereon; subject to the Obligee's priority in this bond. If the full amount of the liability of the Surety on this bond is insufficient to pay the full amount of the claims, then after paying the full amount due the Obligee, the remainder shall be distributed pro rata among the claimants.

Signed this ____ day of _____, 20____.

[EXECUTION PAGES TO FOLLOW]

CONTRACT NO. C[Contract No.]

PRINCIPAL EXECUTION PAGE

PRINCIPAL:

[CONTRACTOR NAME]

By_____
(Signature)

_____
(Print Name)

Its_____
(Title)

Date_____

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

CONTRACT NO. C[Contract No.]

STATE OF _____)
) SS.
COUNTY OF_____)

On this ____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

_____
Notary Public, State of _____

Print name:_____

My commission expires:_____

NOTARY PUBLIC CERTIFICATION

Doc. Date:		No. of Pages:	
Notary Name:		Judicial Circuit:	
Doc. Description:	Payment Bond with Surety		
	Contract No. [Contract Number]		
			[Stamp or Seal]
Notary Signature:			
Date:			

CONTRACT NO. C[Contract No.]

SURETY EXECUTION PAGE

SURETY:

_____

By_____
(Signature)

_____
(Print Name)

Its_____
(Title)

Date_____

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

CONTRACT NO. C[Contract No.]

STATE OF _____)
) SS.
COUNTY OF_____)

On this ____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

_____
Notary Public, State of _____

Print name:_____

My commission expires:_____

NOTARY PUBLIC CERTIFICATION

Doc. Date: _____ No. of Pages: _____

Notary Name: _____ Judicial Circuit: _____

Doc. Description: Payment Bond with Surety,

Contract No. [Contract Number]

_____ [Stamp or Seal]

_____

Notary Signature: _____

Date:

COUNTY OF MAUI
GENERAL CONDITIONS
FOR GOODS & SERVICES CONTRACTS

1. COORDINATION OF SERVICES BY THE COUNTY. The Officer-in-Charge shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in this Contract. The CONTRACTOR shall maintain communications with the Officer-in-Charge at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any COUNTY department or division which is authorized to enter into contracts for the procurement of goods and services.

2. CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.

a. SUSPENSION AND DEBARMENT.

1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

2) The CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3) This certification is a material representation of fact relied upon by the County. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

4) The CONTRACTOR shall comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the term of this Contract, and further agrees to include a provision requiring such compliance in its lower tier covered transactions.

b. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

1) Overtime requirements. No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3) Withholding for unpaid wages and liquidated damages. County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4) Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

c. FRAUD AND FALSE OR FRAUDULENT OR RELATED ACTS. The CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR's actions pertaining to this contract.

d. INDEPENDENT CONTRACTOR. In the performance of services required under this Contract, the CONTRACTOR is an "independent CONTRACTOR," with the authority and responsibility to control and direct the performance and details of the work and services required under this agreement; however, the COUNTY shall have a general right to inspect work in progress to determine whether, in the COUNTY's opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the COUNTY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the COUNTY

e. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Contract, agents or employees of the COUNTY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the COUNTY any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to the COUNTY employees.

f. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.

g. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes and (iii) general excise taxes. Unless provided otherwise by agreement between the parties, the CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

h. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes ("HRS"), and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR have been paid and submit the same to the COUNTY prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under Section 103-53, HRS and Paragraph 17 of these General Conditions.

i. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

j. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and sections 3-122-112, Hawaii Administrative rules, ("HAR") that is current within six months of the date of issuance.

k. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.

3. PERSONNEL REQUIREMENTS.

a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Contract

b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under Federal, State or County law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. NONDISCRIMINATION. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable Federal, State, or County law.

5. CONFLICTS OF INTEREST. The CONTRACTOR represents that neither the CONTRACTOR, nor any employees or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or

indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Contract.

6. SUBCONTRACTS AND ASSIGNMENTS; CHANGE OF NAME.

a. No assignment without consent. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (1) the CONTRACTOR obtains the prior written consent of the COUNTY and (2) the CONTRACTOR'S assignee or subcontractor submits to the COUNTY a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the COUNTY.

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

1) The Assignee assumes all of the CONTRACTOR'S obligations;

2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the COUNTY; and

3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

c. Change of name. When the CONTRACTOR asks to change the name under which it holds this Contract with the COUNTY, the contract officer of the purchasing agency shall, upon receipt of a document acceptable or satisfactory to said officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms or conditions of this Contract are thereby changed.

d. Reports. All assignment contracts and amendments to this Contract effecting changes of CONTRACTOR's name or novation hereunder shall be reported to the chief procurement officer as defined in section 103D-203(b), HRS, within 30 days of the date that the assignment contract or amendment becomes effective.

e. Actions affecting more than one purchasing agency. Notwithstanding the provisions of Subparagraphs b. through d. herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the COUNTY, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the County Department of Finance.

7. INDEMNIFICATION AND DEFENSE. Except as provided for in Section 103D-713, HRS, the CONTRACTOR shall defend, indemnify and hold harmless the COUNTY, the contracting department and their directors, employees and agents from and against all liability, loss, damage, cost and expense, including all attorneys' fees and costs, and all claims, suits and demands therefor, arising out of or in connection with any acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents or subcontractors under this Contract. The provisions of this Paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract for any reason.

8. COST OF LITIGATION. In case the COUNTY shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay any cost and expense incurred by or imposed on the COUNTY, including attorneys' fees.

9. LIQUIDATED DAMAGES. When the CONTRACTOR is given notice of delay or nonperformance as specified in Paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the COUNTY the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the COUNTY reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR's delay or nonperformance is excused under Subparagraph 13.d. (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other than by delay. This Paragraph is of no force and effect unless the amount of liquidated damages is specified in the Contract.

10. COUNTY'S RIGHT OF OFFSET. The COUNTY may offset against any monies or other obligations the COUNTY owes to the CONTRACTOR under this Contract, any amounts owed to the COUNTY by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the COUNTY by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The COUNTY will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this Paragraph, amounts owed to the COUNTY shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the COUNTY, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the COUNTY under such payment or other settlement plan.

11. ADMINISTRATIVE, CONTRACTUAL, OR LEGAL REMEDIES. CONTRACTOR agrees to be bound by the administrative, contractual, or legal remedies set forth in these General Terms and Conditions, and HRS Section 103D-701, et seq., which govern CONTRACTOR's violation or breach of contract terms and appropriate sanctions and penalties.

12. SUSPENSION OF AGREEMENT. The COUNTY reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

a. Order to stop performance. The head of the purchasing agency may, by written order to the CONTRACTOR at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period of time not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the head of the purchasing agency shall either:

1) Cancel the stop performance order; or

2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

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

1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and

2) The CONTRACTOR asserts a claim for such adjustment within thirty (30) days after the end of the period of performance stoppage provided that if the head of the purchasing agency decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

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

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

13. TERMINATION FOR DEFAULT.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, or otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the head of the purchasing agency may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the head of the purchasing agency, the head of the purchasing agency may terminate the CONTRACTOR's right to proceed with the Contract or such part of the Contract as to which there has been delay or failure to properly perform. In the event of termination in whole or in

part the head of the purchasing agency may procure similar goods or services in a manner and upon the terms deemed appropriate by the head of the purchasing agency. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods and services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the head of the purchasing agency, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the COUNTY has an interest.

c. Compensation. Payment for completed goods and services delivered and accepted by the COUNTY shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the head of the purchasing agency. If the parties fail to agree, the head of the purchasing agency shall set the amount subject to the CONTRACTOR's rights under chapter 3-126, HAR. The COUNTY may withhold from amounts due the CONTRACTOR such sums as the head of the purchasing agency deems to be necessary to protect the COUNTY against loss because of outstanding liens or claims of former lien holders and to reimburse the COUNTY for the excess costs incurred by the COUNTY in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, if the CONTRACTOR has notified the head of the purchasing agency within fifteen (15) days after the cause of the delay and the failure arises out of causes including acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the head of the purchasing agency shall ascertain the facts and extent of the failure, and, if he or she determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule or the time of performance shall be revised accordingly, subject to the rights of the COUNTY under the clause entitled, in fixed-price contracts, "Termination for Convenience," and in cost-reimbursement contracts, "Termination." As used in this Paragraph the term "subcontractor" means subcontractor at any tier.

e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under this Paragraph, it is determined for any reason that the CONTRACTOR was not in default under this Paragraph, or that the delay was excusable under the provisions of Subparagraph d., "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 14.

f. Additional rights and remedies. Additional rights and remedies. The rights and remedies provided in this Paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. TERMINATION FOR CONVENIENCE BY THE COUNTY.

a. Termination for convenience. The head of the purchasing agency may, when the interests of the COUNTY so require, terminate this Contract in whole or in part, for the convenience of the COUNTY. The head of the purchasing agency shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when such termination becomes effective.

b. CONTRACTOR's obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance, and on the date(s) set in the notice of termination the CONTRACTOR shall stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the County's approval. The head of the purchasing agency may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the COUNTY. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as are necessary to do so

c. Right to goods and work product. Right to goods and work product. The head of the purchasing agency may require the CONTRACTOR to transfer title and deliver to the COUNTY in the manner and to the extent directed by the head of the purchasing agency:

1) Any completed goods or work product or both; and

2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract. The CONTRACTOR shall, upon direction of the head of the purchasing agency, protect and preserve property in the possession of the CONTRACTOR in which the COUNTY has an interest. If the head of the purchasing agency does not exercise this right, the CONTRACTOR shall use CONTRACTOR's best efforts to sell such goods and manufacturing materials. Use of this Paragraph in no way implies that the COUNTY has breached the Contract by exercise of the termination for convenience provision

d. Compensation.

1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience, together with cost or pricing data to the extent required by subchapter 15, chapter 3-122 of the HAR, bearing on the claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the head of the purchasing agency may pay the CONTRACTOR, if at all, an amount set in accordance with (d)(3) below.

2) The head of the purchasing agency and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted to the extent required by subchapter 15, chapter 3-122, HAR, and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the COUNTY, the proceeds of any sales of goods and manufacturing materials under Subparagraph c. of this Paragraph, and the Contract price of the performance not terminated.

3) Absent complete agreement under Subparagraph (d)(2) above, the head of the purchasing agency shall pay the CONTRACTOR the following amounts, provided payments agreed to under Subparagraph d.2) shall not duplicate payments under this Subparagraph for the following:

(A) Contract prices for goods or services or both accepted under the Contract;

(B) Costs incurred in preparing to perform and performing the terminated portion of the work or performance plus a five per cent markup on actual direct costs on the portion of the work or performance, the markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services or both; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Subject to the prior approval of the head of the purchasing agency, costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph b. Subcontractors shall be entitled to a markup of no more than ten per cent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with Subparagraph (d)(3)(B);

(D) The total sum to be paid the CONTRACTOR under this Subparagraph shall not exceed the total Contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph c.3) and the Contract price of performance not terminated.

4) Costs claimed, agreed to, or established under Subparagraphs d.2) and d.3) above shall be in accordance with Chapter 3-123, HAR

15. CLAIMS BASED ON THE HEAD OF THE PURCHASING AGENCY'S ACTIONS OR OMISSIONS.

a. Change in scope. If any action or omission on the part of the head of the purchasing agency (which term includes the designee of such person) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of proper officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages or extension of time for completion, provided:

1) The CONTRACTOR shall have given written notice to the head of the purchasing agency:

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

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

(C) Within such further time as may be allowed by the head of the purchasing agency in writing.

2) This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages or an extension of time. The head of the purchasing agency or his or her designee, upon receipt of such a notice, may rescind such action, remedy such omission or take such other steps as may be deemed advisable in the discretion of the head of the purchasing agency or his or her designee;

3) The notice required by Subparagraph a.1) of this Paragraph must describe as clearly as practicable, at the time, the reasons why the CONTRACTOR believes that additional compensation, damages or an extension of time may be remedies to which the CONTRACTOR is entitled; and

4) The CONTRACTOR must maintain and, upon request, make available to the head of the purchasing agency within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the COUNTY, of the claimed additional costs or an extension of time in connection with such changes.

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

c. Any adjustment in the price made pursuant to this Paragraph shall be determined in accordance with the price adjustment provisions of the Contract and these General Conditions.

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

a. Reimbursement for air transportation shall be for actual cost or coach class airfare, whichever is less.

b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.

c. Unless prior written approval of the head of the purchasing agency is obtained, reimbursement for subsistence allowable allowance (i.e., hotel and meals) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel for County officers and employees in the executive branch who are excluded from collective bargaining coverage No other travel or living expense (e.g., tips, entertainment, alcohol, etc.) shall be reimbursed by the COUNTY, other than those items listed in Subparagraphs a. and b. of this Paragraph. Invoices shall document the days of travel by including the name of the traveler, itinerary, airfare receipt, hotel receipt, and ground transportation receipts. All travel must be pre-approved by the COUNTY Officer-in-Charge.

d. CONTRACTORS with an office located on the same island as the site of the services to be provided pursuant to this Contract are not entitled to per diem or transportation expense reimbursement unless expressly specified in the Contract

17. PAYMENT PROCEDURES; FINAL PAYMENT; TAX CLEARANCE.

a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.

b. Subject to available funds. Such payments are subject to availability of funds, and all payments shall be made in accordance with and subject to Article 9 of the County of Maui Charter.

c. Payment only for work under contract. The COUNTY is not responsible to pay for work performed by CONTRACTOR or its subcontractors that is not in this Contract and any amendments or change orders thereto. CONTRACTOR must follow Paragraph 19, Contract Modifications, or Paragraph 20, Change Orders, and must have proper authorization before performing work outside the original Contract.

d. Compensation retained.

1) Pursuant to §103-32.1(a), HRS, the County may retain a portion of the amount due under the contract to the CONTRACTOR to ensure proper performance of the contract, provided that the sum withheld shall not exceed five percent (5%) of the 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 Procurement Officer may continue to withhold as compensation retained sums not exceeding five percent (5%) of the amount due the CONTRACTOR; provided further that the compensation retained shall not include sums deducted and withheld separately as liquidated damages from moneys due or that may become due the CONTRACTOR under the contract.

2) The County may enter into an agreement with the CONTRACTOR which will allow the CONTRACTOR to withdraw from time to time the whole or any portion of the sum retained under sub-paragraph (a)

upon depositing with the County any general obligation bond of the State or its political subdivisions with a market value not less than the sum to be withdrawn; provided that the County may require that the total market value of such bond be greater than the sum to be withdrawn.

e. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section

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

19. CONTRACT MODIFICATIONS.

a. Modification in writing; no verbal modification. At any time, and without notice to any surety, the head of the purchasing agency, subject to mutual agreement of the parties to the Contract in writing and all appropriate adjustments, may make modifications within the general scope of this Contract to include any one or more of the following:

1) Drawings, designs, or specifications, for the goods to be furnished or services to be performed;
2) Method of shipment or packing;
3) Place of delivery;
4) Description of services to be performed;
5) Time of performance (i.e. hours of the day, days of the week, etc.);
6) Place of performance of the services; or
7) Other provisions of the contract accomplished by mutual action of the parties to the contract.

b. No verbal modification. No verbal modification, alteration, amendment, change or extension of any term, provision or condition of this Contract shall be permitted or acknowledged.

c. Adjustment of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be **allowed** if the claim is not received by the head of the purchasing agency prior to final payment under this Contract.

e. Other claims not barred. In the absence of a written modification to the Contract, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.

f. Professional Services Contract. If this is a professional services contract awarded pursuant to Section 103D-304, HRS, any modification, alteration, amendment, change or extension of any term, provision or extension of this Contract which increases the amount payable to the CONTRACTOR by at least $25,000.00 and ten per cent (10%) or more of the initial Contract price must receive the prior approval of the County Director of Finance.

g. Tax clearance. The COUNTY may, at its discretion, require the CONTRACTOR to submit to the COUNTY, prior to the COUNTY's approval of any modification, alteration, amendment, change or extension of any term, provision or condition of the Contract, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued against the CONTRACTOR have been paid.

h. Sole source agreements. Amendments to sole source agreements that would change the original scope of the agreement, or increase the original contract price by ten percent or more, may only be made with the approval of the Chief Procurement Officer. Annual renewal of a sole source agreement for services shall not be submitted as an amendment.

20. CHANGE ORDERS. A change order is a written order signed by the head of the purchasing agency, directing the CONTRACTOR to make changes which the "changes clause" described below authorizes the head of the purchasing agency to order without the consent of the CONTRACTOR.

a. Changes Clause Generally. By written order, at any time, and without notice to any surety, the head of the purchasing agency may, unilaterally, order of the CONTRACTOR:

1) Changes in the work within the scope of the Contract; and

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

b. Adjustments of 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, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment in contract price shall be resolved in accordance with Subparagraph a.5) of Paragraph 21 on Price Adjustment. Failure of the parties to agree to an adjustment in time shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the head of the purchasing agency, within fourteen days after the changed work commences, makes the provisional adjustments in time as the head of the purchasing agency 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 written notice requirements for disputes and claims established by the Contract.

c. Time period for claim. Except as may be provided otherwise by section 103D-501(b), HRS, the CONTRACTOR must file a written claim disputing the contract price or time provided in a change order within ten days after receipt of a written change order, unless such period for filing is extended by the head of the purchasing agency in writing. The requirement for filing a timely written claim cannot be waived and shall be a condition precedent to the assertion of a claim.

1) Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if the claim is not received by the head of the purchasing agency prior to final payment under this Contract

2) Other claims not barred. In the absence of such a change order, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract

21. PRICE ADJUSTMENT.

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

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

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

3) By the costs attributable to the events or situations covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;

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

5) In the absence of agreement between the parties, the adjustment shall be made pursuant to 103D-501(b)(5), HRS.

b. Submission of cost or pricing data. The CONTRACTOR shall be required to submit cost or pricing data for any price adjustment subject to the provisions of subchapter 15, chapter 3-122, HAR. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in Subparagraph (a)(1) through (a)(4) of this Paragraph shall be issued within ten days after agreement on the method of adjustment.

22. VARIATIONS IN QUANTITY FOR ANY DEFINITE QUANTITY CONTRACT. If this is a definite quantity goods or services contract, upon the agreement of the COUNTY and the CONTRACTOR, the quantity of goods or services, or both, specified in this Contract, may be increased by a maximum of ten per cent (10%), provided (1) the unit prices will remain the same except for any price adjustments otherwise applicable; and (2) the head of the purchasing agency makes a written determination that such an increase will either be more economical than awarding another Contract or that it would not be practical to award another agreement.

23. CHANGES IN COST REIMBURSEMENT CONTRACT. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

a. The head of the purchasing agency may at any time by written order, and without notice to the sureties, in any, make changes within the general scope of the Contract in any one or more of the following:

1) Description of performance;

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

3) Place of performance of services;

4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the COUNTY in accordance with the drawings, designs, or specifications;

5) Method of shipment or packing of supplies; or

6) Place of delivery.

b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the head of the purchasing agency shall make an equitable adjustment in the 1) estimated cost, deliver or completion schedule, or both; 2) amount of any fixed fee; and 3) other affected terms and shall modify the Contract accordingly.

c. The CONTRACTOR must assert the CONTRACTOR's rights to an adjustment under this provision within 30 days from the day of receipt of the written order. However, if the head of the purchasing agency decides that the facts justify it, the head of the purchasing agency may receive and act upon a proposal submitted before final payment under the Contract.

d. Failure to agree to any adjustment shall be a dispute under the provision on Dispute herein. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed

e. Notwithstanding the terms and conditions of Subparagraphs a. and b. of this Paragraph, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if the contract is incrementally funded, the new amount allotted to the contract.

24. PROMPT PAYMENT OF SUBCONTRACTORS.

a. Generally. Any money paid to a CONTRACTOR shall be disbursed 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 on which the procurement agency has withheld payment.

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

c. Penalty. The procurement officer or the CONTRACTOR, as applicable, will be subject to a penalty of one and one-half per cent per month upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. Where a subcontractor has provided evidence to the CONTRACTOR of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in Subparagraph d. of this Paragraph, and:

1) Has provided to the CONTRACTOR an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 103-32.1, HRS; or

2) The following has occurred:

(A) 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

(B) The subcontractor has provided to the CONTRACTOR, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the CONTRACTOR; any other bond acceptable to the CONTRACTOR; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the CONTRACTOR and subsequently, upon receipt from the procurement officer, by the CONTRACTOR to the subcontractor within the applicable time periods specified in Subparagraph b. of this Paragraph and section 103-10, HRS. The penalty may be withheld from future payment due to the CONTRACTOR,

if the CONTRACTOR was the responsible party. If a CONTRACTOR has violated Subparagraph b. three or more times within two years of the first violation, the CONTRACTOR shall be referred by the procurement officer to the CONTRACTOR's license board for appropriate action, including action under section 444-17(14), HRS.

d. A properly documented final payment request from a subcontractor, as required by Subparagraph c., shall include:

1) Substantiation of the amounts requested;

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

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

(B) The subcontractor has made payments due to its 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

(C) The payment request does not include any amount that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and

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

e. 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 Subparagraph c. of this Paragraph; provided that any such payments withheld shall be withheld by the procurement officer.

25. ACCEPTANCE OF GOODS AND SERVICES. The COUNTY shall accept goods and services or give CONTRACTOR notice of rejection within a reasonable time, notwithstanding any payment, prior test, or inspection. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance with the specifications, shall relieve CONTRACTOR of any obligations under this Contract or impair any rights or remedies of the COUNTY.

26. OBSOLETE PARTS/LONG TERM PARTS AVAILABILITY. CONTRACTOR shall timely report on the status of end of life (EOL) hardware that has been procured for the purchased or leased product. EOL hardware includes the following: electronic components/piece parts and mechanical hardware. CONTRACTOR shall provide advanced notification in writing to the Officer-in-Charge of any changes to tooling, facilities, materials, availability of parts, or processes that could affect the contracted product. This includes but is not limited to fabrication, assembly, handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. CONTRACTOR shall notify the COUNTY of any pending or contemplated future action to discontinue articles purchased or replacement parts for the articles purchased pursuant to this Contract and shall work with the COUNTY to determine the need to stockpile any parts for the likely life of the product and offer those parts to the COUNTY prior to the actual discontinuance. CONTRACTOR shall extend opportunities to the COUNTY to place last time buys of such articles with deliveries not to exceed twelve months after the last time buy date.

27. CONFIDENTIALITY OF MATERIAL.

a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the COUNTY.

b. All information, data, or other material provided by the CONTRACTOR to the COUNTY is subject to the Uniform Information Practices Act, chapter 92F, HRS.

28. PUBLICITY AND USE OF COUNTY, STATE, OR FEDERAL SEAL, LOGO, AND FLAGS. The CONTRACTOR shall not refer to the COUNTY or any office, agency, or officer thereof, or any COUNTY employee, including the head of the purchasing agency, the County procurement officers, the County council members, or members or directors of any County board or commission, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR without the explicit written consent of the COUNTY. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the head of the purchasing agency.

The CONTRACTOR shall not use federal, state, or County seal(s), logos, crests, or reproductions of flags or likenesses of any agency official without specific pre-approval in writing.

29. OWNERSHIP RIGHTS AND COPYRIGHT. The COUNTY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Contract and all such material shall be considered "works for hire." All such materials shall be delivered to the COUNTY upon expiration or termination of this Contract. The COUNTY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Contract.

30. INSURANCE. During the term of this Contract, CONTRACTOR shall maintain at all times or cause to be maintained general and professional liability insurance coverage for CONTRACTOR and its employees rendering services to the COUNTY under this Contract. The insurance policies shall be issued by a company or companies authorized to do business in Hawaii and approved by the COUNTY, with combined single limits of not less than ONE MILLION DOLLARS ($1,000,000) per occurrence and TWO MILLION DOLLARS ($2,000,000) in the aggregate for Contracts with a total certified amount of $1,000,000 or less, and THREE MILLION DOLLARS ($3,000,000) in the aggregate for Contracts with a total certified amount of $1,000,001 or more, or such greater amount as may be required from time to time by the COUNTY. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR'S employees in the amounts required by applicable law. CONTRACTOR shall provide COUNTY not less than thirty (30) days' notice prior to any cancellation or material change or reduction in coverage. No such material change or reduction may be made without approval from the COUNTY. The COUNTY shall be listed as an additional insured on all policies, with the exception of professional liability and workers' compensation policies. Prior to the commencement of this Contract, CONTRACTOR shall provide the COUNTY with a certificate of insurance. Thereafter, prior to the expiration of each policy period, the insurance carriers for CONTRACTOR shall provide the COUNTY with certificates of insurance evidencing the foregoing coverage and provisions. The COUNTY reserves the right to request and receive a certified copy of the policies. Failure to maintain the necessary insurance in accordance with the provisions set forth herein shall constitute a material breach of this Contract and the COUNTY shall thereafter have the options of pursuing remedies for such breach and/or immediate termination of this Contract.

31. LIENS AND WARRANTIES.

a. Liens. All products provided under this Contract shall be free of all liens and encumbrances.

b. Warranties for products and services. In the event this Contract is for the provision of products (goods or equipment), CONTRACTOR warrants that it has all rights, title and interest in and to all products sold, leased or licensed to the COUNTY. CONTRACTOR also warrants that the products shall substantially conform to all descriptions, specifications, statements of work and representations set forth in the Contract, schedules, publications of CONTRACTOR and/or any order(s) and will be free from defects in materials, performance, workmanship and design. CONTRACTOR further warrants that it will perform any services required with promptness, diligence and in accordance with prevailing standards in the industry to the reasonable satisfaction of the COUNTY. The Warranty period shall commence after Acceptance, as defined in this Contract. Any specific warranty periods shall be as set forth in the proposals, schedules, orders or Special Conditions pertaining to this Contract but in any event such warranty period shall not be less than one (1) year.

32. ACCESS TO AND AUDIT OF BOOKS AND RECORDS OF THE CONTRACTOR. The COUNTY may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective CONTRACTOR, subcontractor, or prospective subcontractor which are related to:

a. The cost or pricing data.

b. Subcontracts, other than those related to a firm fixed-price Contract.

c. The following access to records requirements additionally apply to any Contract funded in whole or in part by the state or federal government:

1) The CONTRACTOR agrees to provide the County, State of Hawaii, Federal Emergency Management Agency or other federal agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

2) The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

3) The CONTRACTOR agrees to provide access to construction or other work sites pertaining to the work being completed under the contract.

33. COST OR PRICING DATA.

a. Cost or pricing data must be submitted to the head of the purchasing agency and timely certified as accurate for contracts over $100,000 unless the contract is for a multiple-term or as otherwise specified by the head of the purchasing agency.

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

34. RECORDS RETENTION.

a. Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the COUNTY.

b. 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 COUNTY, and any cost or pricing data, for at least seven years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the seven year or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS, or returned to the County at the request of the County.

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

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

37. POLLUTION CONTROL. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the COUNTY and all other appropriate state, county, or federal agencies as required by law. The CONTRACTOR shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the COUNTY determines that this Contract requires and adjustment of the time for performance, the Contract shall be modified in writing accordingly.

38. ENERGY EFFICIENCY. To the extent applicable to this Contract, CONTRACTOR agrees to comply with all applicable mandatory standards and policies relating to energy efficiency of the State of Hawaii or County.

39. CONFIDENTIALITY OF PERSONAL INFORMATION.

a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

1) Social security number;

2) Driver's license number or Hawaii identification card number; or

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

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

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

b. Confidentiality of Material.

1) All material given to or made available to the CONTRACTOR by the COUNTY 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 COUNTY.

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 COUNTY to reduce the risk of unauthorized access to personal information.

4) CONTRACTOR shall report to the COUNTY 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 COUNTY, or personal information created or received by CONTRACTOR on behalf of the COUNTY.

c. Security awareness training and confidentiality agreements.

1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.

2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

(A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;

(B) Access to the personal information will be allowed only as necessary to perform the Contract; and

(C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for cause. In addition to any other remedies provided for by this Contract, if the COUNTY learns of a material breach by CONTRACTOR of this Paragraph by CONTRACTOR, the COUNTY 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.

40. GOVERNING LAW. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a State court of competent jurisdiction in Wailuku, Maui, Hawaii.

41. COMPLIANCE WITH LAWS. This is an acknowledgement that state or federal financial assistance may be used to fund the contract only. The CONTRACTOR shall comply with all federal, State, and county laws, ordinances, codes, rules, regulations, executive orders, and agency policies, procedures, and directives, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract. This specifically includes, without limitation, Sections 103-55 and 103-55.5, HRS, dealing with wages, hours and working conditions of employees of contractors providing services or construction.

The state and federal government are not party to this contract and is not subject to any obligations or liabilities to the County, CONTRACTOR, or any other party pertaining to any matter resulting from the contract.

42. CONFLICT BETWEEN GENERAL CONDITIONS AND PROCUREMENT RULES. In the event of a conflict between the General Conditions and the procurement rules in the HAR, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.

43. ELECTION-RELATED CONTRIBUTIONS BY COUNTY CONTRACTORS. CONTRACTOR acknowledges and shall comply with Section 11-355, HRS.

44. EXCLUDED PARTIES LIST SYSTEM. Contractor understands and agrees that if Contractor is listed on the government-wide Excluded Parties List System in the System for Award Management at www.SAM.gov as suspended or debarred, or has been suspended or disbarred pursuant to Section 103D-702, HRS, Contractor cannot be awarded this contract.

45. DRAFTING. No provision of this Contract shall be interpreted for or against any party on the basis that such party was the draftsman of such provision, and no presumption of burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Contract.

46. CAPTIONS. The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

47. COUNTERPARTS. This Contract may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronically and such facsimile or electronic execution and transmission shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile or electronic executions or a combination thereof shall be construed together and shall constitute one and the same Contract.

48. SEVERABILITY. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or non-enforceability shall not affect the validity or enforceability of the remaining Contract terms.

49. WAIVER. The failure of the COUNTY to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the COUNTY's right to enforce the same in accordance with this Contract. The fact that the COUNTY specifically refers to one provision of the law, and does not include other provisions shall not constitute a waiver or relinquishment of the COUNTY's rights or the CONTRACTOR's obligations under the law.

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

[END OF GENERAL CONDITIONS FOR GOODS & SERVICES CONTRACTS]

SPECIAL CONDITIONS FOR CONTRACTS UTILIZING FEDERAL FUNDING, INCLUDING FEMA FUNDING

The contractor shall comply with all applicable federal law, regulations, executive orders, policies, procedures, and directives, including but not limited to the following:

(A) Violation or Breach of Contract. If the contract value is in excess of the simplified acquisition threshold, currently set at $250,000, the contractor is directed to Hawaii Revised Statutes § 103D-703 and Section 13 of the County's General Terms and Conditions for Goods & Services Contracts (the "GT&Cs") attached herewith.

(B) Termination for Cause or Convenience. If the contract value is in excess of $10,000, the contractor is directed to Sections 13 and 14 of the GT&Cs.

(C) Equal Employment Opportunity. During the performance of the contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will

be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(D) Davis-Bacon Act. The contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the contractor must be required to pay wages not less than once a week. The contractor is directed to the current prevailing wage determination issued by the Department of Labor in the solicitation. Award of this contract is conditioned upon the acceptance of the wage determination. The contractor must report all suspected or reported violations to the County and the Federal awarding agency.

(E) Copeland "Anti-Kickback" Act: When applicable, the contractor must also comply with the Copeland "Anti–Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations. The contractor and any subcontractor are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The contractor must report all suspected or reported violations to the County and the Federal awarding agency.

(1) The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) The contractor shall insert into any subcontracts the clause above and such other clauses as may be appropriate, as well as a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(F) Contract Work Hours and Safety Standards. If the contract value is in excess of $100,000, the contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. When required the Contractor must also comply with the following:

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The County and the Contractor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor

or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(G) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the County wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Contract must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(H) Clean Air Act and the Federal Water Pollution Control Act. If the contract value is in excess of $150,000 the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Contractor shall report violations to the Federal awarding agency, the Regional Office of the Environmental Protection Agency ("EPA"), and the County.

(1) Clean Air Act:

(a) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(b) The contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State (if applicable), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(c) The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

(2) Federal Water Pollution Control Act:

(a) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(b) The contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State (if applicable), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(c) The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

(I) Suspension and Debarment. No contract may be awarded to any party listed on the government-wide exclusions in the System for Award Management ("SAM"). contractor hereby warrants and certifies that it is not listed on SAM and the contractor is not debarred, suspended, or otherwise ineligible to enter into this contract. The contractor further acknowledges that:

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the Contract and any warranty period. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(J) Byrd Anti-Lobbying Amendment. Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Contractor, who in turn will forward the certification(s) to the County.

(K) Procurement of Recovered Materials. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II(J); and 2 C.F.R. § 200.322. In the performance of this contract, the contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive- procurement-guideline-cpg-program. The contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(L) Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. In performance of the contract, the contractor is prohibited from obligating or expending funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(a) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(b) Telecommunications or video surveillance services provided by such entities or using such equipment.

(c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(M) Domestic Preferences Procurements. As appropriate and to the extent consistent with law, the contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase,

acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(N) Changes to the Contract. Contractor is directed to Section 1, of the contract and the GT&Cs in its entirety for as those relate to the cost of a change, modification, amendment, change order, or constructive change which must be allowable and allocable within the scope of its grant or cooperative agreement and reasonable for the completion of project scope.

(O) Access to Records. The following access to records requirements apply to this contract:

(1) The Contractor agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(P) DHS Seal, Logo, and Flags. The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

(Q) FEMA Financial Assistance. The contractor acknowledges that this contract is funded partially or fully through financial assistance provided by FEMA. The contractor agrees to comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(R) Federal Obligations and Liabilities. The contractor acknowledges that the Federal Government is not a party to this contract and is not subject to any obligations or liabilities created hereunder.

(S) Remedies for False Claims and Statements. The contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to this contract.

(T) Policy and Conservation Act. Contractor shall comply with applicable standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(U) Contract Oversight. Pursuant to CFR §200.318, County will monitor and manage the day-to-day operations and activities to assure compliance with applicable Federal requirements and contract terms, conditions, and specifications.

(V) Affirmative Socioeconomic Steps: If subcontractors are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(W) License and Delivery of Works Subject to Copyright and Data Rights: The contractor grants the COUNTY, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produces in the

performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and publicly display such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the COUNTY or acquires on its behalf a license of the same scope as for date first produced in the performance of this contract. Data as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, and written reports or literary works, software and/or course code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the COUNTY data first produces in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable to the COUNTY.

(X) Mandatory Purchase of Hawaii Products Inapplicable. Pursuant to HRS 103D-1002(i)(1), requirements related to the mandatory purchase of Hawaii Products shall not apply where doing so would disqualify the County from receiving federal funds or aid. 2 C.F.R. § 200.319(c) specifically prohibits the use of "statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals" and as such, the above referenced provisions shall not apply and will not be enforced by the County.

Anti-Lobbying Certification

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

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

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

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

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

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

By_____
(Signature)

_____
(Print Name)

Date_____

ATTACHMENT 6
MINIMUM PERFORMANCE REQUIREMENTS
Launiupoko L1 Production Well
Community Development Block Grant – Disaster Recovery
County of Maui – Department of Water Supply
DWS CIP JOB NO. 20-01-A-DV

INTRODUCTION

This document represents the performance metrics and requirements for Design-Build Construction Services. The Selected Respondent shall adhere to the requirements of this document. The Selected Respondent shall develop workplans, schedules, reports, and/or any other document as may be requested by Department of Water Supply or its representative in connection with the metrics and requirements set forth herein. The Selected Respondent shall submit any of such documents for review and approval as requested by the Department of Water Supply within the specified time frame provided for such request. Department of Water Supply reserves the right to request any information as part of the Grantee's responsibilities. The Selected Respondent is responsible for compliance with all aspects of the Scope of Design-Build Construction Services included as Attachment 1.

The requirements and metrics included in these Minimum Performance Requirements may be modified, including the addition of new requirements based on the Program's development and implementation, at the discretion of Department of Water Supply for the Program's Benefit. Modifications shall become binding between the parties upon agreement and will not require an amendment to the contract.

LIQUIDATED DAMAGES & PENALTIES

The Respondent shall pay to the Department of Water Supply liquidated damages for each calendar day that a required deliverable is late until deemed in compliance, subject to a maximum to be established in the Contract between Department of Water Supply and the Respondent. Said sums, in view of the difficulty of accurately ascertaining the loss which Department of Water Supply will suffer by reason of delay in the completion of works requested, are hereby fixed and agreed as the liquidated damages that Department of Water Supply will suffer by reason of such delay. Liquidated damages received are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the Department of Water Supply's right to indemnification, or the Contractor's obligation to indemnify the Department of Water Supply, or to any other remedy provided for as a provision of the contract or law. Liquidated damages may be assessed at the sole discretion of Department of Water Supply. For the purpose of applying and calculating such liquidated damages, a grace period of **ten (10) days** shall be observed, and the schedule may be extended by any additional time or delays outside the control of the Contractor caused by act of omission of the Department of Water Supply, HUD, or any of their representatives. The Department of Water Supply may deduct and retain out of the monies which may become due to the Contractor, the amount of any such liquidated damages; and in case the amount which may become due is less than the amount of liquidated damages due to the Department of Water Supply, the Contractor shall be liable to pay the difference.

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PERFORMANCE METRICS

DELIVERABLES	TARGET COMPLETION DATE
Project management plan and schedule	30 – Days following contract execution
Environmental compliance documentation and mitigation plans	April 2028
Interim Design Milestones (Based on Design-Build Approach Submitted with RFP Proposal)	TBD
100% design drawings and specifications	September 2028
Construction cost estimates at each milestone	
Permit applications and approvals	April 2029
Construction documents	October 2027
Meeting agendas, minutes, and public outreach materials (as required)	Ongoing
Construction	December 2030
Closeout/Final Documentation	February 28, 2031

Performance Standards and Benchmarks

The selected firm shall perform all services in a professional, timely, and cost-effective manner consistent with industry best practices, applicable laws and regulations, and County standards. Performance will be evaluated against the following standards and benchmarks:

Schedule Performance

- Deliverables shall be submitted in accordance with the approved project schedule and milestone dates established by the County.
- Interim and final design submittals (e.g., concept, preliminary, and final design) shall be completed within the timeframes specified in the contract.
- Schedule adherence will be measured by timely submission of deliverables and responsiveness to County review comments within agreed-upon review cycles.
- Unexcused delays or repeated late submittals may be grounds for corrective action.

Quality and Technical Accuracy

- All design documents shall meet applicable County of Maui standards, State of Hawai‘i requirements, and generally accepted engineering and design practices.
- Deliverables shall be internally quality-controlled prior to submission and substantially free of errors, omissions, and inconsistencies.
- Performance will be measured by the number and materiality of revisions required to attain County acceptance and by minimization of redesign during later project stages.

Regulatory and Environmental Compliance

- Design work shall fully comply with all applicable federal, state, and County regulatory requirements, including environmental compliance under HRS Chapter 343 and NEPA, permitting requirements, and coordination with reviewing agencies.
- No choice-limiting actions shall be incorporated into the design outside of approved environmental clearances.

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- Performance will be evaluated based on successful completion of design packages capable of supporting permits, approvals, and construction without delay.

Coordination and Responsiveness

- The firm shall actively coordinate with County departments, utility providers, regulatory agencies, and stakeholders as directed by the County.
- The firm shall attend required meetings, provide clear documentation of decisions, and respond promptly to County inquiries and comments.
- Responsiveness will be benchmarked by timely communication, effective issue resolution, and documented coordination outcomes.

Cost Control and Design Efficiency

- The design shall reflect cost-effective solutions aligned with the County's anticipated construction budget and recovery objectives.
- The firm shall identify potential cost risks, constructability concerns, and value-engineering opportunities as design progresses.
- Performance will be measured by alignment between engineer's estimates and County budgeting expectations and by minimizing the likelihood of future change orders attributable to design deficiencies.

Deliverable Readiness

- All design deliverables shall be complete, coordinated, and suitable for construction procurement.
- Plans, specifications, estimates, and supporting technical documents shall be sufficiently detailed to allow competitive bidding without material clarification.
- Readiness will be benchmarked by acceptance of final design documents by the County without conditions requiring rework prior to construction.

END OF ATTACHMENT

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Proposer's Initials: _____

Attachment 7
Special Provisions and Regulations Required by HUD
Launiupoko L1 Production Well
Community Development Block Grant – Disaster Recovery
DWS CIP JOB NO. 20-01-A-DV

PROPOSER AGREES TO COMPLY WITH THE FOLLOWING SPECIAL PROVISIONS AND REGULATIONS.

Federal Law and Regulations: Contractor shall ensure that all its activities under this Contract shall be conducted in conformance with these provisions, as applicable: 45 C.F.R. Part 75, 29 C.F.R. Part 95, 2 CFR Part 200, 20 CFR Part 601, et seq., and all other applicable federal regulations.

CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE FEDERAL LAWS, INCLUDING BUT NOT LIMITED TO:

(1) **The Temporary Assistance for Needy Families Program ("TANF")**, 45 CFR Parts 260- 265, the Social Services Block Grant ("SSBG"), 42 U.S.C. 1397d, and other applicable federal regulations and policies promulgated thereunder.

(2) **Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, et seq**., which prohibits discrimination on the basis of race, color or national origin.

(3) **Section 503 and 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794**, which prohibits discrimination on the basis of disability.

(4) **Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681, et seq.**, which prohibits discrimination on the basis of sex in educational programs.

(5) **The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, et seq**., which prohibits discrimination on the basis of age.

(6) **Section 109 of the Housing and Community Development Act of 1974, as amended,** which prohibits discrimination in programs and activities receiving HUD financial assistance.

(7) **Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended, 42 U.S.C. 9849**, which prohibits discrimination on the basis of race, creed, color, national origin, sex, handicap, political affiliation or beliefs.

(8) **The American with Disabilities Act of 1990, Public Law 101-336,** which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.

(9) **The Pro-Children Act:** Contractor agrees to comply with the Pro-Children Act of 1994, 20 U.S.C. 6083. Failure to comply with the provisions of the law may result in the imposition of civil monetary penalty up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. This clause is applicable to all approved sub- contracts. In compliance with Public Law (Pub. L.) 103-277, the Contract shall not permit smoking in any portion of any indoor facility used for the provision of federally funded services including health, day care, early childhood development, education or library services on a routine or regular basis, to children up to age 18.

(10) **The Davis-Bacon Act, as amended, 40 U.S.C. 276a to 276a-7**, and as supplemented by the Department of Labor (DOL) regulations 29 CFR Part 5, the Copeland Anti-Kickback Act, 40 U.S.C. 276c and 18 U.S.C. 874, as supplemented by the DOL regulations 29 CFR Part 3, and the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327-333, as supplemented by the DOL regulations 29 CFR Part 5, regarding labor standards for federally assisted construction subagreements.

(11) **The Clean Air and Water Act**: If this Contract is in excess of $100,000, Contractor shall comply with all applicable standards, orders or regulations issued under the Clean Air Act, as amended, 42 U.S.C. 7401, Section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368, et seq., Executive Order 11738 and Environmental Protection Agency Regulations. Contractor shall report any violation of the above to County of Maui.

(12) **Energy Efficiency:** Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State's energy conservation plan issued in compliance with the Energy Policy and Conservation Act, Pub. L. 94- 163.

(13) **The Byrd Anti-Lobbying Amendment (31 U.S.C. 1352):** Contractors who apply or bid for an award of $100,000 or more shall file the required certification (see Certification Regarding Lobbying Form within Attachment 2 of this Contract). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient.

(14) **Debarment and Suspension:** When applicable, as required by the regulation implementing Executive Order (EO) No. 12549 and EO No. 12689, Debarment and Suspension, 2 CFR Part 2998, Contractor must not be, nor within the three-year period preceding the effective date of the Contract have been, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency. No contract shall be awarded to parties listed on the U. S. Government Services Administration List of Parties Excluded from Federal Procurement or Non-Procurement Programs. Contractor must provide a completed Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

(15) **Public Announcements and Advertising:** When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with federal money, Contractor shall clearly state: (1) the percentage of the total costs of the program or project which will be financed with federal money, (2) the dollar amount of federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.

(16) **Purchase of American-Made Equipment and Products:** Contractor assures that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Agreement will be American-made.

(17) **Equal Treatment for Faith-Based Organizations.** Prohibits any State or local government receiving funds under any Department program, or any intermediate organization with the same duties as a governmental entity, from discriminating for or against an organization on the basis of the

organization's religious character or affiliation. Prohibits religious organizations from engaging in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance. Prohibits an organization that participates in programs funded by direct financial assistance from the Department, in providing services, from discriminating against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Any restrictions on the use of grant funds shall apply equally to religious and non-religious organizations.

(18) **Rights to Inventions Made Under Contract or Agreement:** Contracts or agreements for the performance of experimental, development, or research work shall provide for the rights of the Federal Government and Contractor in any resulting invention in accordance with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contract and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(19) **The Consolidated Appropriations Act, 2010, Division E, Section 511 (Pub. L. 111-117)**, which prohibits distribution of federal funds made available under the Act to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries. The Continuing Appropriations Act, 2011, Sections 101 and 103 (Pub. L. 111-242), provides that appropriations made under Pub. L. 111-117 are available under the conditions provided by Pub. L. 111-117.

(20) **E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375**, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

(21) **Contract Work Hours and Safety Standards Act (40 U.S.C. §327–333)** — If this Contract involves federal funding in excess of $2,000 for construction contracts or in excess of $2,500 for other contracts that involve the employment of mechanics or laborers, compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR Part 5) is required. Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(22) **Resource Conservation and Recovery Act (RCRA).** Under RCRA (Pub. L. 94–580 codified at 42 U.S.C. 6962), state and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

(23) **Immigration Reform and Control Act.** Contractor shall comply with the requirements of the Immigration Reform and Control Act of 1986, which requires employment verification and retention

of verification forms for any individuals hired who will perform any services under the contract.

(24) **Section 3. Section 3 of the Housing Urban Development Act of 1968, as amended, 12 USC 1701u**, and implementing its implementing regulations at 24 CFR part 75 (formerly 24 CFR part 135). For more information regarding Section 3 visit: https://www.hudexchange.info/programs/section-3/. Offerors must comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u)(Section 3) in order to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low- income persons.

FURTHER, CONTRACTOR CERTIFIES THAT IT:

1. Has the legal authority to apply for federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure non- discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or state.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

10. Will comply with all federal statutes relating to non- discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681- 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i)any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchases.

12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

13. Will comply, as applicable, with the provisions of the Davis- Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327- 333) regarding labor standards for federally-assisted construction subagreements.

14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91- 190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of

underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other federal laws, executive orders, regulations, and policies governing this program.

EXHIBITS
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant -Disaster Recovery
2027-PROF-6

EXHIBIT A-1
SUBMISSION REQUIREMENTS SOQ CHECKLIST
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant -Disaster Recovery
DWS CIP JOB NO. 20-01-A-DV

Submitted Request for Qualifications **(RFQ)** shall incorporate the following documents in the order provided. The forms included as part of the RFQ must be completed and incorporated as part of the proposal. Department of Water Supply reserves the right to reject any proposal that does not fully satisfy these requirements. Proposer shall mark their initials in the space provided below to indicate compliance with the Checklist's requirements.

Initials	Document Description
RFQ	
	Company Cover Page
	One (1) electronic copy of the Proposal One (1) redacted copy of the Proposal (if applicable)
	Exhibit A-1: Submission Requirements Proposal Checklist
	Cover Letter: The cover letter shall be signed by an authorized representative of the Proposer.
	Executive Summary. The executive summary should include a brief overview of the project approach and the key staff who will be responsible for the services to be provided.
	Organizational Documents: Include all documents that demonstrate that the Proposer is properly organized and/or registered in compliance with the laws of its place of incorporation and that the Proposer is in "good standing". Such documents may include (but are not limited to) Certificates of Incorporation, Partnership Agreements, and Certificates of Good Standing.
	Financial Stability: Year-end Financial Statements
	Financial Stability: Interim Financial Statements
	Financial Stability: Line of credit, available cash balances, or a combination thereof required of amount
	Financial Stability: Pending Litigation Sworn Statement, duly completed and notarized, dated not later than sixty (60) days before the Proposal submission date
	Exhibit B: Statement of Qualifications duly completed, initialized, signed, and with corporate seal, as applicable
	Exhibit C: List of Comparable Projects duly completed and initialized.

Initials	Document Description
	Exhibit D: Certifications: Non-Conflict of Interest Certification, Non-Conflict of Interest on Existing or Pending Contracts with Department of Water Supply, Limited Denial of Participation (LDP)/Suspension or Debarment Status Affidavit, Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Non-Collusive Affidavit, Anti-Lobbying Certification, and Contractor's Standards of Conduct Declaration, duly completed and notarized.
	Exhibit E: Authorization for Background and/or Financial Information; Entity Prior Performance Certification
	Exhibit F: HUD 4010
	Exhibit G: Litigation and Audit Finding History
	Exhibit H: Certification of Compliance for Employment of State Residents HRS Chapter 103B, as amended by Act 192, SLH 2011
	Exhibit I: Non-Gratuity Affidavit
	Exhibit J: Certification of Compliance with HRS 396-18, Safety and Health Program for Contractor Bidding on County Jobs in Excess of $100,000
	Exhibit K: Certification of Compliance for Final Payment
	Exhibit L: Section 3 Business Concern Certification
	Exhibit M: Standards of Conduct Declaration
	Exhibit N: State of Hawaii Procurement Circular No 2026-15

Proposer's Signature

Date

Proposer's Print Name

EXHIBIT A-2
TECHNICAL SOQ CHECKLIST
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant – Disaster Recovery
DWS CIP JOB NO. 20-01-A-DV

Submitted Proposals shall incorporate the following documents in the order provided. The forms included as part of the RFP must be completed and incorporated as part of the Proposal. Department of Water Supply reserves the right to reject any Proposal that does not fully satisfy these requirements. Proposer shall mark their initials in the space provided below to indicate compliance with the Checklist's requirements. **If applicable, the Proposer shall submit for First-Tier Subcontractors, those items indicated as applicable with a checkmark below**.

Company Submitting is:

☐ **Proposer**

☐ **First-Tier Subcontractor**

Initials	First-Tier Sub. Applicability	Document Description
		Company Cover Page
		One (1) electronic copy of the Proposal One (1) redacted copy of the Proposal (if applicable)
		Exhibit A-2: Technical Proposal Checklist
	X	**Exhibit B:** Statement of Qualifications duly completed, initialized, signed, and with corporate seal, as applicable
	X	**Profile:** Company profile establishing the experience, past performance, and qualifications of the firm If the entity responding to this Proposal was recently created, the profile shall set forth the experience, expertise, and qualifications of each of the members within the entity.
		Organizational Structure: An Organizational Chart suitable for the project depicting key roles and the names of key staff who would be responsible for the role showing the lines of responsibility and authority.
		Exhibit C: List of Comparable Projects duly completed and initialized.

Initials	First-Tier Sub. Applicability	Document Description
		Key Staff Resumes
		Proposed Plan of Action/Work Approach
		Preference of Section 3 Business Concern *(Optional)*
		Preference of M/W/V/BE *(Optional)*
		Other *(Optional)*
	X	First-Tier Subcontractor Information (if applicable)

Proposer's Signature

Date

Proposer's Printed Name

EXHIBIT B
STATEMENT OF QUALIFICATIONS
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant – Disaster Recovery
DWS CIP JOB NO. 20-01-A-DV

1. Proposer Statement:

1.1. The undersigned, having familiarized himself/herself/themselves with the local conditions affecting the cost of work, and with the specifications (including the RFQ and all documents attached thereto) and Addenda issued, if any, hereby proposes to furnish all labor, materials, equipment, and services for **Request for Proposals No. 2027-PROF-6: Launiupoko L1 Production Well.**

1.1.1. Delivery Schedule: Proposer must adhere to the schedule as established in the Scope of Services. **(Attachment 1)**

1.1.2. For the execution of the contract, the undersigned offers the Price Proposal in **Exhibit G** (Cost Form) to be submitted with RFP.

1.2. If the undersigned receives an award under this RFP, the undersigned agrees to execute and deliver a contract on the prescribed form and furnish the required insurance within **ten (10) days** of the requirement.

1.3. Attached hereto is an affidavit in proof that the undersigned has not entered into any collusion with any person in respect to this RFP or any other RFP for the contract for which this RFP is submitted.

1.4. The Proposer represents he/she/they **[☐ has/have] [☐ has/have not]** participated in a previous contract or subcontract subject to the Equal Opportunity Clause herein or the clause originally contained in Section 301 of Executive Order Number 10925 or the clause in Section 201 if Executive Order Number 11114; that he/she/they **[☐ has/have] [☐ has/have not]** filed all required compliance reports; and that representations indicating submission of required reports, signed by subcontractors, will be obtained prior to subcontract awards. The Proposer further represents that he will, if required, submit, and required subcontractors to submit a compliance report prior to the award of the contract or subcontract.

2. Proposer Identification:

2.1. Proposer Identification:

_____	_____	_____
(Legal Name)	*(Year of Establishment)*	*(Tax ID)*

_____
(UEI Number (SAM))

2.2. The following named person is hereby authorized to bind the Proposer in matters related to the Contract:

_____	_____
(Name)	*(Position)*

2.3. Physical Address: _____
(Address Line 1)

_____

(Address Line 2)

(City) *(State)* *(Zip Code)*

2.4. Mailing Address:

(Address Line 1)

(Address Line 2)

(City) *(State)* *(Zip Code)*

2.5. Contact Information:

(Telephone Number) *(Facsimile Number)* *(Email Address)*

2.6. The Proposer is a:

☐ Individual ☐ Partnership

☐ Corporation ☐ Other (Specify) _____

2.7. If a corporation, indicate all that apply:

☐ Publicly Held ☐ Privately Held ☐ Subsidiary

2.8. **Officers and Directors:** Detail the names, telephone numbers, and email addresses of the officers, directors, members, and any partners of the Proposer.

Name	**Telephone**	**Email**	**Officer**	**Director**	**Member**	**Partner**
			☐	☐	☐	☐
			☐	☐	☐	☐
			☐	☐	☐	☐
			☐	☐	☐	☐
			☐	☐	☐	☐
			☐	☐	☐	☐
			☐	☐	☐	☐
			☐	☐	☐	☐
			☐	☐	☐	☐

2.9. **Team Members and/or First Tier Subcontractors.** Detail the names, telephone numbers, and email addresses of the Team Members, First Tier Subcontractor, and any partners of the Proposer.

Name	Telephone	Email	Team Member	First Tier Subcontractor	Other
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐

3. Capacity to Provide Services:

3.1. **Profile:** Attach to this Statement of Qualifications the Proposer's company profile establishing experience, past performance and qualifications of the firm to render Progressive Design-Build Construction Services. See Tab _____

3.2. **Organizational Chart:** Attach to this Statement of Qualifications the Organizational Chart for the Services. (Not Applicable to Team Member and First-Tier Subcontractors) See Tab _____

3.3. Has the Proposer been involved in any criminal, civil, or administrative suits, actions, investigations, litigations, sanctions and/or administrative complaints or proceedings that were commenced, pending, settled, threatened, resolved, or concluded during the five (5) year period prior to the date of the Proposal Due Date?

☐ No ☐ Yes (See Attachment _____)

If the answer to this question is "yes", state **for each such suit, action, investigation or proceeding** the **(a)** date of the suit, action, investigation or proceeding (or time period involved); **(b)** the specific nature of the suit, action, investigation or proceeding; **(c)** the amount of funds involved, if any; **(d)** the names of the parties; **(e)** the names and complete addresses of the courts and law enforcement agencies involved; **(f)** the title and file number of the suit, action, investigation or proceeding; **(g)** the disposition or current status; and **(h)** any sentence, fine or other penalty imposed **on additional sheets attached to this Statement of Qualifications**. **Also include an opinion from an attorney discussing whether the Proposer's work will be impacted by the litigation**.

[Remainder of Page Left Blank Intentionally]

3.4. **Experience and Capacity of the Team** (*Include additional sheets of this table if necessary*)

ID	Client Name	Work Description	Contract Amount	Project Duration (In Months)	Status	Completion Date	No. of Employees Assigned to Project & to Concurrently Provide Services to Department of Water Supply	Deliverables of the Project
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

4. Qualifications and Experience of proposed Key Staff (Not Applicable to Team Member and First-Tier Subcontractors)

4.1. **Key Staff Members for the Engagement:** Provide the following information for all Key Staff Members for the Project.

Position	Resource Name	Education	Years of Experience in the Profession	Percentage of time assigned to this project	Located in Island Y/N	Résumé & Certifications
						(See résumé in Tab _____)
						(See résumé in Tab _____)
						(See résumé in Tab _____)
						(See résumé in Tab _____)
						(See résumé in Tab _____)
						(See résumé in Tab _____)

4.2. **Other Staff Members for the Engagement:** Provide the following information for all Other Staff Members for the Project.

Position	Resource Name	Education	Years of Experience in the Profession	Percentage of time assigned to this project	Located in Island Y/N	Résumé & Certifications
						(See résumé in Tab _____)
						(See résumé in Tab _____)
						(See résumé in Tab _____)
						(See résumé in Tab _____)
						(See résumé in Tab _____)
						(See résumé in Tab _____)

4.3. **Workload Statement.** Provide an overview of how Department of Water Supply workload will be accommodated and what level of priority it will be given.

[Remainder of Page Left Blank Intentionally]

5. Acknowledgement of Addenda

5.1. The Proposer hereby acknowledges the receipt of the following Addenda:

Addendum No.	Date Issued	Addendum No.	Date Issued

6. Under Oath Certification:

The undersigned represents, warrants, and certifies on behalf of the Proposer that:

a) The information contained in the Proposal is true and complete,
b) The Proposal has been duly and properly authorized for submission by the Proposer, and
c) In its preparation and development of the Proposal, the Proposer has not, directly or indirectly, solicited or received any advice, assistance, or information concerning the Proposal from any representative of the Department of Water Supply, or its agents or contractors, which was not equally available to other Proposer, and which might contribute to an actual or potential competitive advantage for the Proposer.

In witness thereof, the Proposer has executed this Statement of Qualifications this _____ day of _____, 20_____.

If Entity is an individual:

_____
(Signature of Individual)

_____
(Printed Name of Individual)

_____
(Address Line 1)

_____
(Address Line 2)

_____ _____ _____
(City) *(State)* *(Zip Code)*

If Entity is a sole partnership or operates under a trade name:

_____
(Printed Name of Firm)

By: _____
(Authorized Representative's Signature)

_____
(Printed Name of Authorized Representative)

_____
(Address Line 1)

_____
(Address Line 2)

_____ _____ _____
(City) *(State)* *(Zip Code)*

If Entity is a partnership:

_____
(Printed Name of Partnership)

By: _____
(Signature of General Partner)

_____
(Printed Name of General Partner)

_____
(Address Line 1)

_____
(Address Line 2)

_____ _____ _____
(City) *(State)* *(Zip Code)*

[Remainder of Page Left Blank Intentionally]

If Entity is a corporation:

_____
(Printed Name of Corporation)

_____
(Corporate Address Line 1)

_____
(Corporate Address Line 2)

_____ _____ _____
(City) *(State)* *(Zip Code)*

By: _____
(Signature of Officer)

_____
(Printed Name of Officer)

_____
(Title of Officer)

Attest: _____
(Secretary)

[CORPORATE SEAL]

_____
(Jurisdiction of Incorporation)

EXHIBIT C
LIST OF COMPARABLE PROJECTS
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant – Disaster Recovery
DWS CIP JOB NO. 20-01-A-DV

1. Proposer Data:

1.1. Proposer's Identification:

_____	_____	_____
(Proposer's Legal Name)	*(Year of Establishment)*	*(Tax ID)*

[Remainder of the Page Left Blank Intentionally]

[Proceed to Next Page for the Comparable Project Table]

2. List of Comparable Projects:

Comparable Projects: The Proposer must demonstrate they have successfully completed at least **three (3)** comparable projects within the past **ten (10) years**, where the Proposer had provided services similar in scope to the herein required.

ID	Client Name	Description of the services provided, include any similar services to the herein required	Contract Term (In Months)	Contract Amount and Project Dollar Value	Contact Person	Contact Person Address, Phone Number and Email address
1						
2						
3						

2. List of Comparable Projects:

Comparable Projects: The Proposer must demonstrate they have successfully completed at least **three (3)** comparable projects within the past **ten (10) years**, where the Proposer had provided services similar in scope to the herein required.

ID	Client Name	Description of the services provided, include any similar services to the herein required	Contract Term (In Months)	Contract Amount and Project Dollar Value	Contact Person	Contact Person Address, Phone Number and Email address
4						
5						

EXHIBIT D
CERTIFICATIONS
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant – Disaster Recovery
DWS CIP JOB NO. 20-01-A-DV

NON-CONFLICT OF INTEREST CERTIFICATION

I, _ _____, of legal age, of marital status (married/single), and a resident of _____, have been designated as the authorized representative of _____ ("the Offeror") for the procurement process referenced in the title of this document ("Procurement Process"). In such regard, I hereby certify that:

1. No public official or employee of the Procuring Entity possesses any financial interest with any Offeror participating in this Procurement Process, and that likewise, has had no direct or indirect financial interest with these for the past four (4) years.

2. No public official or employee of the Procuring Entity has solicited or accepted, directly or indirectly, by means of any person or entity with interest in this Procurement Process, including the Offeror, any goods of any value -including, gifts, gratuities, contributions, services, donations, loans, and/or any other item of monetary value- for themselves and/or for any member of their immediate family, and/or relatives, and/or for any person, as a form of compensation for performing the duties and responsibilities of their position in connection with this Procurement Process.

3. No public official or employee of the Procuring Entity has solicited or accepted, directly or indirectly, by means of any person or entity with interest in this Procurement Process, including the Offeror, any goods of any value -including, gifts, gratuities, contributions, services, donations, loans, and/or any other item of monetary value- for themselves and/or for any member of their immediate family, and/or relatives, and/or for any person, in exchange for their actions being an influence in the end result of this Procurement Process.

4. I do not have a kindred relationship with public official or employee of the Procuring Entity that participates or influences -or has the capacity to do so- in the institutional decisions of the Procuring Entity.

I, as the Proposer's Authorized Representative, also certify that I accept and acknowledge my obligation to inform any change or modification to this statement during the entirety of the contracting process and the term of the contract, regarding any potential or actual conflict of interest.

Proposer's Initials: _____

NON-CONFLICT OF INTEREST CERTIFICATION
ON EXISTING OR PENDING CONTRACTS

I, _____, of legal age, of marital status (married/single), and a resident of _____, have been designated as the authorized representative of _____ ("the Offeror") for the procurement process referenced in the title of this document ("Procurement Process"). In such regard, I hereby certify that:

1. There are no relevant facts or circumstances that could give rise to an organizational or personal conflict of interest for the Proposer or its staff with respect to the Procurement Process. Nonetheless, the Proposer recognizes that situations may arise that may appear to be, or are, conflicts -or potential conflicts- of interest. The term "potential conflict" means reasonably foreseeable conflict of interest.

2. The Proposer will disclose within five (5) business days of notice to the procuring entity any relevant information of an apparent, potential, or actual conflict of interest that may appear to exist regardless of their opinion that such information would not impair their objectivity.

3. As per 2 C.F.R. § 200.318(c)(1), a conflict of interest would arise when "the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract". Therefore, I understand that conflicts of interests may arise in, but not limited to, the following situations:

   a) Personal Financial Interests
      - Investments: If a contractor, subcontractor, employee, or consultant has a financial stake in a company that is affected by their professional decisions.
      - Gifts and Hospitality: Accepting gifts, hospitality, or other benefits from a party that is involved in a decision-making process can create a conflict of interest.

   b) Professional Relationships
      - Nepotism: Hiring or promoting family members or close friends, or awarding contracts to businesses owned by relatives, can lead to conflicts of interest.
      - Outside Employment: Holding a secondary job or consultancy position that could influence or appear to influence one's decisions in their primary role can create conflicts.

   c) Organizational Conflicts
      - Dual Roles: When an individual serves on the boards of multiple organizations that have competing interests, they may face conflicting duties.
      - Shared Resources: Conflicts can arise when resources, such as time, staff, or data, are shared between organizations with potentially conflicting goals.

d) Decision-Making and Procurement
- Procurement Processes: If a person involved in the procurement process has a personal connection with a supplier or contractor, they may be biased in their decision-making, impacting the fairness of the process.

e) Non-Financial Interests
- Personal Relationships: Conflicts can arise if a person's personal relationships affect their impartiality in professional matters, such as judging the work or performance of a colleague they have a personal relationship with.

4. In the case in which the Proposer discloses to the procuring entity an apparent, potential, or actual conflict of interest, the procuring entity will take the appropriate measures to address the disclosure by taking the following actions, which include but are not limited to, eliminating, mitigating or neutralizing the apparent, potential or actual conflict, when appropriate, through such means as ensuring a balance of views, disclosure with the appropriate disclaimers, or by restricting or modifying the work to be performed to avoid or reduce the apparent, potential, or actual conflict.

5. If an apparent, potential, or actual conflict of interest is discovered by the Proposer after the procurement process concludes, it will make a full disclosure in writing to the contracting officer within five (5) business days of notice. This disclosure shall include a description of actions that the Proposer has taken or proposes to take to avoid, mitigate, or neutralize the apparent, potential, or actual conflict of interest.

6. The Proposer has no present or currently planned interests (financial, contractual, organizational, or otherwise) relating to the contract or task order that may result from this Procurement Process that would create any apparent, actual, or potential conflict of interest (including conflicts of interest for immediate family members: spouses, parents, children) that would impinge on its ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive advantage.

7. The Proposer has exercised, and will continue to exercise, due diligence in avoiding, identifying, removing or mitigating any apparent, potential or actual conflicts of interests to the procuring entity's satisfaction.

LIMITED DENIAL OF PARTICIPATION (LDP)/SUSPENSION OR DEBARMENT STATUS AFFIDAVIT

By signing this Certification, the Offeror certifies that the firm, business or person submitting the proposal has not been LDP, suspended, debarred or otherwise lawfully precluded from participating in any public procurement activity with any Federal, State or local government. Signing this Certification without disclosing all pertinent information about a debarment or suspension shall result in rejection of the proposal or cancellation of a contract. The Department of Water Supply also may exercise any other remedy available by law.

Proposer's Initials: _____

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

The Offeror certifies, by submission of this Certification, that:

(1) Neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;

(2) It will provide immediate written notice to whom this Certification is submitted if at any time the Offeror learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances;

(3) It shall not knowingly enter any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated;

(4) It will include the clause titled Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions;

(5) The certifications herein are a material representation of fact upon which reliance was placed when this transaction was entered into; and

(6) Where the Offeror is unable to certify to any of the statements in this certification, such Offeror shall attach an explanation to this Certification.

NON-COLLUSIVE AFFIDAVIT (NON-COLLUSION CERTIFICATION)

The Offeror certifies that in relation to the procurement process referenced in the title of this document:

1. The prices in the offer have been arrived at independently without directly or indirectly mediating any type of consultation, communication or agreement with any other competitor relating to i) prices, ii) intention to submit an offer, or iii) the methods or factors used to calculate the proceed offered;
2. Prices in the offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening or contract award unless otherwise required by law;
3. No attempt has been made or will be made by the offeror to induce any other competitor to/not to submit an offer for the purpose of restricting competition.

The signatory below (select one):

☐ Is the person in the offeror's organization responsible for determining the prices being offered and has not participated and will not participate in any action contrary to paragraphs (1) through (3) above.

☐ Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated and will not participate in any action contrary to paragraphs (1) through (3) above.

Name[1]	Position[2]	Name	Position

As authorized agent, the Signatory does certify that the principals named above have not participated, and will not participate, in any action contrary to paragraphs (1) through (3) above.

As an agent, the Signatory has not personally participated, and will not participate, in any action contrary to paragraphs (1) through (3) above.

CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

On behalf of _____**[Proposer]**, hereinafter referred to as the "Proposer", the undersigned does declare as follows:

1. Proposer ☐ **is**[3] ☐ **is not** a County of Council Member or an Employee or a business in which a County Council Member or an Employee has a substantial interest.

   For the purposes of this declaration:

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

   "Employee" means any nominated, appointed, or elected officer or employee of County, including members of boards, commissions, and committees, and employees under contract to the County, but excluding members of the County Council **("County Council Members")**.

2. Proposer has not been represented or assisted personally in the matter by an individual who has been an Employee of the County department awarding this Contract within the preceding year and who participated while so employed in the matter with which the Contract is directly concerned.

3. Proposer has not been assisted or represented by a County Council Member or Employee for a fee or other compensation to obtain this Contract and will not be assisted or represented

[3] If the Proposer indicates County of Council Member or an Employee or a business in which a County Council Member or an Employee has substantial interest and if the Contract involves goods or services in excess of $500, the Contract may not be awarded unless the Contract is made after competitive bidding.

by a County Council Member or Employee for a fee or other compensation in the performance of this Contract, if the County Council Member or Employee has been involved in the development or award of the Contract.

4. Proposer has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past **twelve (12) months**, has been an Employee, or in the case of the County Council, a County Council Member, and participated while an Employee or a County Council Member on matters related to this Contract.

5. Proposer understands that the Contract to which this document is attached is voidable on behalf of the County if this Contract was entered into in violation of any provision of Article 10 of the Revised Charter of the County of Maui ("Code of Ethics"), including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the County.

ANTI-LOBBYING CERTIFICATION

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

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352 (as amended by the Lobbying Act of 1995).

Any person who fails to file the required certification shall be subject to a civil penalty for not less than $10,000 and not more than $100,000 for each such failure.

The Offeror _____, certifies or affirms the truthfulness and accuracy each statement of its certification and disclosure, if any. In addition, the Offeror understands and agrees that the provisions of 31 U.S.C. A 3801 et seq., apply to this certification and disclosure, if any.

SF-LLL Instructions

Instructions for Completion of SF-LLL Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action. (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 4040-013. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (4040-013), Washington, DC 20503

Proposer's Initials: _____

DISCLOSURE OF LOBBYING ACTIVITIES
Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action	**2. Status of Federal Action**	**3. Report Type**
☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	☐ a. initial filing ☐ b. material change

4. Name and Address of Reporting Entity:

☐ Prime ☐ Subawardee (Tier, if known: _____)

Name: _____

Street 1: _____ Street 2: _____

City: _____ State: _____ Zip: _____

Congressional District, if known: _____

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Name: _____

Street 1: _____ Street 2: _____

City: _____ State: _____ Zip: _____

Congressional District, if known: _____

6. Federal Department/Agency:	**7. Federal Program Name/Description:**
	CFDA Number, if known:

8. Federal Action Number, if known:	**9. Award Amount, if known:**
	$

10. (a) Name and Address of Lobbying Registrant:

Name: _____

Street 1: _____ Street 2: _____

City: _____ State: _____ Zip: _____

(b) Individual Performing Services (Including address of different from No. 10a):

Name: _____

Street 1: _____ Street 2: _____

City: _____ State: _____ Zip: _____

Proposer's Initials: _____

11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	*Signature* *Printed Name* *Title* *Telephone No.* *Date*
Federal Use Only:	**Authorized for Local Reproduction** **Standard Form – LLL (Rev. 7-97)**

DISCLOSURE OF LOBBYING ACTIVITIES
Continuation Sheet

Reporting Entity: _____ **Page** _____ **of** _____

Authorized for Local Reproduction
Standard Form – LLL-A

Proposer's Initials: _____

_____
(Name of Offeror)

By: _____
(Signature)

_____
(Printed Name of Signatory)

_____
(Title)

Subscribed and sworn to before me
this _____ day of _____,
20 _____.

_____
Notary Public, _____ Judicial
Circuit, State of Hawaii
My commission expires: _____

Proposer's Initials: _____

EXHIBIT E
AUTHORIZATION FOR BACKGROUND AND/OR FINANCIAL INFORMATION
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant – Disaster Recovery
DWS CIP JOB NO. 20-01-A-DV

By signing this Authorization, the Proposer authorizes the **Department of Water Supply** to seek any background and/or financial information it deems necessary to evaluate the Proposer's capacity financial in connection with the Request for Qualifications (**RFQ**), as the case might be, under the Community Development Block Grant-Disaster Recovery Program (**CDBG-DR**).

ENTITY PRIOR PERFORMANCE CERTIFICATION

1. Has the Proposer been notified with a "Letter of Concern", which refers to any written communication from a Government entity notifying the Proposer, wariness or caution about the Proposer's performance under a contract to provide services.

☐ Yes ☐ No ☐ Other (Specify): _____

If yes, provide a copy of every "Letter of Concern" received from and as a contractor of a Government entity.

2. Has the Proposer been found in default of contract terms with any contracting entity?

☐ Yes ☐ No

If yes, indicate below if a Performance Bond or other means was used to resolve the default issue:

☐ Yes ☐ No ☐ Other (Specify): _____

Name of Surety Company: _____

Telephone of Surety Company: _____

Contact Person of Surety Company: _____

Provide an explanation regarding the circumstances that created the need for the contracting entity to invoke the terms of the Performance Bond, or other means, to include the current status of the matter (Include additional sheets if necessary).

Proposer's Initials: _____

Proposer Name

Signature of Authorized Representative

Date

Printed Name of Authorized Representative

EXHIBIT F -HUD Form 4010
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant -Disaster Recovery
2027-PROF-6

A. APPLICABILITY

The Project or Program to which the construction work covered by this Contract pertains is being assisted by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

1. Minimum wages and fringe benefits

i. All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in 29 CFR 5.5(d) and (e), the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(v) of these contract clauses; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided,* That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under 29 CFR 5.5(a)(1)(iii)) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii. Frequently recurring classifications

A. In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to 29 CFR 5.5(a)(1)(iii), provided that:

1. The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

2. The classification is used in the area by the construction industry; and

3. The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

B. The Administrator will establish wage rates for such classifications in accordance with 29 CFR 5.5(a)(1)(iii)(A)(3). Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

iii. Conformance

A. The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be

classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is used in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

B. The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

C. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

D. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

E. The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under 29 CFR 5.5 (a)(1)(iii)(C) and (D). The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to 29 CFR 5.5 (a)(1)(iii)(C) or (D) must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

iv. Fringe benefits not expressed as an hourly rate

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

v. Unfunded plans

If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided,* That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in 29 CFR 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

vi. Interest In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding

i. Withholding requirements

The U. S. Department of Housing and Urban Development may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in 29 CFR 5.5(a) for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in 29 CFR 5.5(a)(3)(iv), HUD may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

ii. Priority to withheld funds

The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or (b)(3)(i), or both, over claims to those funds by:

- **A.** A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- **B.** A contracting agency for its reprocurement costs;
- **C.** A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- **D.** A contractor's assignee(s);
- **E.** A contractor's successor(s); or
- **F.** A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

3. Records and certified payrolls

i. Basic record requirements

- **A. Length of record retention.** All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.
- **B. Information required** Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.
- **C. Additional records relating to fringe benefits***.* Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(v) that the wages of any laborer or mechanic include the amount of any

costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

D. Additional records relating to apprenticeship Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

ii. Certified payroll requirements

A. Frequency and method of submission The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to HUD if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to HUD. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system

B. Information required The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i)(B), except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.*, the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf* or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).

C. Statement of Compliance Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

1. That the certified payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information and basic records are being maintained under 29 CFR 5.5 (a)(3)(i), and such information and records are correct and complete;

2. That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly

from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and

3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

D. Use of Optional Form WH-347 The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by 29 CFR 5.5(a)(3)(ii)(C).

E. Signature The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

F. Falsification The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

G. Length of certified payroll retention The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

iii. Contracts, subcontracts, and related documents The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

iv Required disclosures and access

A. Required record disclosures and access to workers The contractor or subcontractor must make the records required under 29 CFR 5.5(a)(3)(i)–(iii), and any other documents that HUD or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by 29 CFR 5.1, available for inspection, copying, or transcription by authorized representatives of HUD or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

B. Sanctions for non-compliance with records and worker access requirements If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to 29 CFR 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

C. Required information disclosures Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to HUD if the agency is a party to

the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to HUD, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity

i. Apprentices

A. Rate of pay Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

B. Fringe benefits Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

C. Apprenticeship ratio The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to 29 CFR 5.5(a)(4)(i)(D). Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in 29 CFR 5.5(a)(4)(i)(A), must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

D. Reciprocity of ratios and wage rates Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

ii Equal employment opportunity The use of apprentices and journeyworkers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

5 Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6 Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (11), along with the applicable wage determination(s) and such other clauses or contract modifications as the U.S. Department of Housing and
Urban Development may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

7 Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8 Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9 Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

i. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).

ii. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).

iii. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

11 Anti-retaliation It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- **i.** Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, or 29 CFR parts 1, 3, or 5;
- **ii.** Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, or 29 CFR parts 1, 3, or 5;
- **iii.** Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, or 29 CFR parts 1, 3, or 5; or
- **iv.** Informing any other person about their rights under the DBA, Related Acts, or 29 CFR parts 1, 3, or 5.

B. Contract Work Hours and Safety Standards Act (CWHSSA)

The Agency Head must cause or require the contracting officer to insert the following clauses set forth in 29 CFR 5.5(b)(1), (2), (3), (4), and (5) in full, or (for contracts covered by the Federal Acquisition Regulation) by reference, in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses must

be inserted in addition to the clauses required by 29 CFR 5.5(a) or 4.6. As used in this paragraph, the terms "laborers and mechanics" include watchpersons and guards.

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in 29 CFR 5.5(b)(1) the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in 29 CFR 5.5(b)(1), in the sum of $31 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 CFR 5.5(b)(1).
3. **Withholding for unpaid wages and liquidated damages**

i. **Withholding process** The U.S Department of Housing and Urban Development or the recipient of Federal assistance may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in 29 CFR 5.5(b) on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

ii **Priority to withheld funds** The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or (b)(3)(i), or both, over claims to those funds by:

- **A.** A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- **B.** A contracting agency for its reprocurement costs;
- **C.** A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- **D.** A contractor's assignee(s);
- **E.** A contractor's successor(s); or
- **F.** A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

4. ***Subcontracts***. The contractor or subcontractor must insert in any subcontracts the clauses set forth in 29 CFR 5.5(b)(1) through (5) and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 CFR 5.5(b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss,

due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5 Anti-retaliation It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- **i.** Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in 29 CFR part 5;
- **ii.** Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or 29 CFR part 5;
- **iii.** Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or 29 CFR part 5; or
- **iv.** Informing any other person about their rights under CWHSSA or 29 CFR part 5.

C. CWHSSA required records clause In addition to the clauses contained in 29 CFR 5.5(b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by 29 CFR 5.1, the Agency Head must cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of 3 years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made and actual wages paid. Further, the Agency Head must cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview workers during working hours on the job.

D. Incorporation of contract clauses and wage determinations by reference Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and contractors and subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.

E. Incorporation by operation of law The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by 29 CFR 5.1 to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

F. HEALTH AND SAFETY

The provisions of this paragraph (F) are applicable where the amount of the prime contract exceeds **$100,000**.

1. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety, as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
2. The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96), 40 U.S.C. § 3701 et seq.
3. The contractor shall include the provisions of this paragraph in every subcontract, so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

Proposer's Initials: _____

Exhibit G
Litigation and Audit Finding History
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant – Disaster Recovery
DWS CIP JOB NO. 20-01-A-DV

Name of Proposer:

Using this form, Proposer must disclose any actual or alleged breaches of contract, which have been asserted or claimed against it. In addition, Proposer must disclose any civil or criminal litigation or investigation pending at any point during the last three years to which Proposer is/was a party or in which Proposer has been judged guilty or liable. The Proposer must also disclose any findings, concerns, or investigations identified through the Office of Inspector General, or other Federal, State, or local government auditor. For each instance of litigation or investigation, Proposer shall list: basic case information (e.g., cause number/case number, venue information, names of parties, name of investigating entity); a description of claims alleged by or against Proposer or its parent, subsidiary, or other affiliate; for each resolved case, a description of the disposition of Proposer's involvement (e.g., settled, dismissed, judgment entered, etc.).

- Failure to comply with the terms of this provision may disqualify any Proposer. Solicitation Responses may be rejected based upon Proposer's prior history with any other party that demonstrates, without limitation, unsatisfactory performance, adversarial or contentious demeanor, or significant failure(s) to meet contractual obligations.
- If Proposer has no litigation history, as described above, it must so indicate in the appropriate section of the Solicitation Response.

Make as many copies as needed to provide a 3-year history of requested information.

Type of Incident (Alleged Negligence, Breach of Contract, Finding, Concern, Investigation, or Non-Compliance)	
Incident Date and Date Filed	
Plaintiff (Company, person, entity – acted against your company or state if your company initiated the action)	
Case Number	
Court (Name of State and County)	
Project (Address and Name)	
Allegation (Stated reason your company was accused of negligence, breach of contract, funding, concern, investigation, or non-compliance of governmental regulation, or the allegations your company made)	
Final Outcomes (who prevailed and how)	

Exhibit H
CERTIFICATION OF COMPLIANCE FOR EMPLOYMENT OF STATE RESIDENTS
HRS CHAPTER 103B, AS AMENDED BY ACT 192, SLH 2011
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant – Disaster Recovery
DWS CIP JOB NO. 20-01-A-DV

As required by Hawai'i Revised Statutes Chapter 103B, as amended by Act 192, Session Laws of Hawaii 2011-Employment of State Residents on Construction Procurement Contracts, I hereby certify under oath, that I am an officer of (Name of Contractor or Subcontractor Company) _____ _____and for the Project Contract indicated above, (Name of Contractor or Subcontractor Company) _____was in compliance with **HRS 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 Contractor)

_____
(Signature)

_____
(Print Name)

_____
(Print Title)

Subscribed and sworn to me before this _____ day of 20_____

Doc. Date:_____of Pages_____ 1st Circuit

Notary Name: _____

Doc. Description: _____

Notary Public, 1st Circuit, State of Hawai'i
My commission expires: _____

_____
Notary Signature Date
NOTARY CERTIFICATION

Exhibit I
Non-Gratuity Affidavit
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant – Disaster Recovery
DWS CIP JOB NO. 20-01-A-DV

Name of Project: _____

Project No. _____

Contract No. _____

County of MAUI

STATE OF HAWAII)
:SS.
COUNTY OF MAUI)

The undersigned hereby certifies that he/she is the

_____ of

(Title)

_____

(Name of Organization, partnership or corporation)

that in connection with the aforesaid project, he/she or its officers, representatives, agents, subcontractor or employee has (have) not given or made any agreement to give to any officer or employee of the County who exercises any function or responsibility in connection with the Project, his/her relatives or agents, any gift of money or any other gifts; or gratuity in any form whatsoever; has (have) not loaned any money or anything of value to any such officer or employee, his/her relatives or agents; has (have) not rented or purchased any equipment, or any form thereof, or supplies of any nature whatsoever from any such officer or employee, his/her relatives or agents.

_____

(Signature)

Subscribed and sworn to before me

this _____ day of _____ ,

20 _____ .

_____

Notary Public, _____ Judicial

Circuit, State of Hawaii

My commission expires: _____

Exhibit J
Certification of Compliance with HRS 396-18, Safety and Health Programs
For Contractor Bidding on County Jobs in Excess of $100,000.00
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant – Disaster Recovery
DWS CIP JOB NO. 20-01-A-DV

This is to certify that the undersigned will comply with the requirements of Section 396-18, Hawaii Revised Statutes, as amended, in the following manner:

A. A written safety and health plan for the job will be available and implemented by the notice to proceed dates of the project.
B. The written safety and health plan shall include:
    (1) A safety and health policy statement reflecting management commitment;
    (2) A description of the safety and health responsibilities of all levels of management and supervisors on the job and a statement of accountability appropriate to each;
    (3) The details of:
        a) The mechanism for employee involvement in job hazard analysis;
        b) Hazard identification, including periodic inspections and hazard correction and control;
        c) Accident and "near-miss" investigations; and
        d) Evaluations of employee training programs;
    (4) A plan to encourage employees to report hazards to management as soon as possible and to require management to address these hazards promptly; and
    (5) A certification by a senior corporate or company manager that the plan is true and correct.
C. Failure to submit the required certification may be grounds for disqualification of the bid.
D. Failure to have available on site or failure to implement the written safety and health plan by the project's notice to proceed date shall be considered willful noncompliance and be sufficient grounds to disqualify the award and terminate the contract.

Contractor's Name _____ Date _____

Authorized Representative Signature _____

Print Name _____

Title _____

Exhibit K
CERTIFICATION OF COMPLIANCE FOR FINAL PAYMENT
(Reference §3-122-112, HAR)
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant – Disaster Recovery
DWS CIP JOB NO. 20-01-A-DV

Reference: _____ _____

(Contract Number) **(IFB/RFP Number)**

(Proposer's Name) _____ affirms it is in compliance with all laws, as applicable, governing doing business in the State of Hawai'i to include the following:

1. Chapter 383, HRS, Hawai'i Employment Security Law – Unemployment Insurance;
2. Chapter 386, HRS, Worker's Compensation Law;
3. Chapter 392, HRS, Temporary Disability Insurance;
4. Chapter 393, HRS, Prepaid Health Care Act; and
5. maintains a "Certificate of Good Standing" from the Department of Commerce and Consumer Affairs, Business Registration Division.

Moreover, **(Proposer's Name)** _____ acknowledges that making a false statement shall cause its suspension and may cause its debarment from future awards of contracts.

_____ _____
Authorized Representative Signature Date

_____
Print Name

_____
Title

EXHIBIT L - Section 3 Business Concern Certification
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant -Disaster Recovery
2027-PROF-6

SECTION 3
BUSINESS CONCERN CERTIFICATION FORM

To self-certify as a Section 3 Business Concern your company/firm, per 24 CFR 75, must meet one of the criteria identified in the Section 3 business category column in the table below, documented within the last six-month period. You must also provide appropriate supporting documentation (see the additional required data column), as well as the completed Business Concern Certification Income Eligibility Guidelines.

Section 3 Business Category	Additional Required Data	Your Election
It is at least 51% owned by low- or very low-income persons; or	**REQUIRED **** Proof of ownership showing all owners and their percentages; and a completed Section 3 Self-Certification form for all low- and very low-income owners. Attach completed Business Concern Owner Certification Income Eligibility Guidelines.	
Over 75% of the **LABOR HOURS** performed for the business over previous **3-MONTH** period are performed by Section 3 workers; or	**REQUIRED **** Provide the last 90 days full payrolls for the entire company, make a list of the names of the Section 3 workers; and provide (i) a completed Section 3 Self-Certification form, or (ii) a completed Employer Certification form, for all Section 3 and/or Targeted Section 3 workers claimed.	
It is a business at least 51% owned and controlled by current residents of public housing or Section 8- assisted housing.	**REQUIRED **** (i) Proof of business ownership showing all owners and their percentages; and (ii) proof of owners' residency in public housing or Section 8-assisted housing.	

I affirm that the above statements are true, complete, and correct to the best of my knowledge and belief. I understand that businesses who misrepresent themselves as Section 3 Business Concerns and report false information may have their contracts terminated as default and be barred from ongoing and future considerations and contracting opportunities. I hereby certify, under penalty of law, that the provided information is correct to best of my knowledge.

Signature:	Date Signed:
Print Name:	Title:
Company Name:	Address:
Phone #:	Email:

EXHIBIT M - Standards of Conduct Declaration
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant -Disaster Recovery
2027-PROF-6

CONTRACT NO. C[Contract No.]

CONTRACTOR'S
STANDARDS OF CONDUCT DECLARATION

On behalf of [CONTRACTOR NAME], hereinafter referred to as the "Contractor", the undersigned does declare as follows:

1. Contractor □ **is** □ **is not** a County of Council Member or an Employee or a business in which a County Council Member or an Employee has substantial interest.

For the purposes of this declaration:

> "Substantial interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty percent (50%).
>
> "Employee" means any nominated, appointed, or elected officer or employee of County, including members of boards, commissions, and committees, and employees under contract to the County, but excluding members of the County Council ("County Council Members").

2. Contractor has not been represented or assisted personally in the matter by an individual who has been an Employee of the County department awarding this Contract within the preceding year and who participated while so employed in the matter with which the Contract is directly concerned.

3. Contractor has not been assisted or represented by a County Council Member or Employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a County Council Member or Employee for a fee or other compensation in the performance of this Contract, if the County Council Member or Employee has been involved in the development or award of the Contract.

4. Contractor has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an Employee, or in the case of the County Council, a County Council Member, and participated while an Employee or a County Council Member on matters related to this Contract.

SAMPLE

*Reminder to agency: If the "is" block is checked and if the Contract involves goods or services in excess of $500, the Contract may not be awarded unless the Contract is made after competitive bidding.

Contractor understands that the Contract to which this document is attached is voidable on behalf of the County if this Contract was entered into in violation of any provision of Article 10 of the Revised Charter of the County of Maui ("Code of Ethics"), including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the County.

CONTRACTOR:

[CONTRACTOR NAME]

By_____
(Signature)

_____
(Print Name)

Its_____
(Title)

Date_____

SAMPLE

EXHIBIT N - PC2026-15 Summarized Updates to Procurement Code
Request for Qualifications
Launiupoko L1 Production Well
Community Development Block Grant -Disaster Recovery
2027-PROF-6

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

BONNIE KAHAKUI
ADMINISTRATOR

DAYNA OMIYA
ASSISTANT ADMINISTRATOR

STATE OF HAWAIʻI | KA MOKUʻĀINA O HAWAIʻI
STATE PROCUREMENT OFFICE
P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
email: state.procurement.office@hawaii.gov
http://spo.hawaii.gov

June 29, 2026

PROCUREMENT CIRCULAR NO. 2026-15

TO: Office of the Governor, Chief Operating Officer
Office of the Lieutenant Governor, Chief of Staff
Executive Department Heads
Hawaii State Public Library System, State Librarian

Chief Procurement Officers: (CPOs)
Department of Education, Superintendent
University of Hawaii, Chief Financial Officer
Office of Hawaiian Affairs, Chairperson of the Board
Hawaii Health Systems Corporation, Chief Executive Officer
Judiciary, Administrative Director of the Courts
Senate, President
House of Representatives, Speaker
School Facilities Authority, Executive Director

Counties of Hawaii, Kauai, and Maui, and City & County of Honolulu
Executive Branch, Finance Director
Legislative Branch, City/County Council Chair
Board/Departments of Water Supply, Manager/Chief Engineer
Honolulu Authority for Rapid Transportation, Executive Director

CC: Administrative Services Offices

FROM: Bonnie Kahakui, Administrator

SUBJECT: Summarized Update to Procurement Code HRS Chapter 103D
ACT 087, SLH 2026 (SB2075 SD1 HD2 CD1)

Senate Bill No. 2075, SD1, HD2, CD1, was signed into law as ACT 087 by the Governor on June 4, 2026, with the effective date of July 1, 2026. ACT 087, SLH 2026, amended the following HRS 103D sections:

- HRS §103D-302, Competitive sealed bidding, by adding a section on Hawaii bidder preferences for evaluation purposes only. This requires purchasing agencies to apply a five per cent flat rate local preference in evaluating bids or proposals from qualified Hawaiʻi bidders or offerors who submit a timely preference certification. This also establishes criteria

for a bid or proposal to qualify for a local preference and requirements for the qualification and certification of Hawai‘i bidders and offerors and consequences for failure to maintain qualification.

The ACT specifies the application of the Hawaii bidder preference to Competitive Sealed Bidding under HRS §103D-302.

- HRS §103D-303, Competitive sealed proposals, by adding a section on Hawaii offeror preferences for evaluation purposes only. This requires purchasing agencies to apply a five per cent flat rate local preference in evaluating bids or proposals from qualified Hawai‘i bidders or offerors who submit a timely preference certification. This also establishes criteria for a bid or proposal to qualify for a local preference and requirements for the qualification and certification of Hawai‘i bidders and offerors and consequences for failure to maintain qualification.

  The ACT specifies the application of the Hawaii bidder preference to Competitive Sealed Proposals under HRS §103D-303.

- HRS §103D-702, by adding that knowingly making a false or misleading statement or certification for the purpose of obtaining or retaining a preference under section 103D-302(j) or 103D-303(j) is a reason for debarment or suspension of a vendor.

- HRS §103D-1001, by adding four definitions: “Hawaii bidder,” “Hawaii bidder preference certification,” “Hawaii offeror,” and “Hawaii offeror preference certification.

As specified in ACT 087, SLH 2026, Section 6, the Procurement Policy Board will adopt rules regarding these preferences. Additional guidance to Executive Branch departments will be forthcoming.

It is advised that departments be completely familiarized with the entire amendments made to the subject sections of HRS 103D. A complete listing of all current Procurement Circulars is available at https://spo.hawaii.gov/, under the *References* menu, click on *Procurement Circulars*.

Questions concerning this Procurement Circular may be directed to Stacey Kauleinamoku-Murakami at (808) 586-0571 or email stacey.l.kauleinamoku@hawaii.gov, or you may contact me at (808) 587-4701 or email bonnie.a.kahakui@hawaii.gov.

Mahalo.