Summary of Changes (v18.08)

1. Modify General Conditions section 2.13 PROTEST by renumbering existing subsection 2.13.4 to 2.13.5 and adding new subsection 2.13.4 regarding acceptable means to submit protests.

General Conditions
TECHNICAL GUIDE

TG 00700

1. COORDINATION ISSUES:

1.1 The information contained in and required by this section has serious contract implications. Ensure there are no errors in the final specification section. Note: There are no choices or edits to the contents of this section.

2. DESIGN ISSUES: (Not used)

3. DRAWING NOTES: (Not Used)

4. STANDARD DRAWINGS: (Not Used)

5. SPECIFICATION NOTES: (Not Used)

6. GUIDE SPECIFICATION: (Not Used)

6.1 SECTION 00700 - GENERAL CONDITIONS is attached. Use this section with all projects.

SPECIFIER'S NOTE: Blue colored texts are Notes to the Specifier and should be completely deleted from the final text. Where [red colored text in brackets] is shown in this specification section, insert wording, numbers, etc. as appropriate and delete brackets. Where <Red colored text in brackets> is shown, choice is indicated. Make the appropriate choice and delete the brackets. Maintain footer notation in italics with the current version used (e.g. TG 00700 v18.08~~2~~). Verify that section titles cross referenced in this Section correspond to this Project's specifications; Section titles may have changed.

Do not include the Project Name (etc.) line in the footer. Use the following format for the specification footer.

TG 00700 v18.08~~2~~ General Conditions
DAGS Job No. 00-00-0000 00700 - 1

End Footer Sample

SECTION 00700 - GENERAL CONDITIONS

PART 1 - GENERAL

1.01 GENERAL CONDITIONS

A. The publication by the Public Works Division, Department of Accounting and General Services, State of Hawaii, titled "INTERIM GENERAL CONDITIONS 1999 Edition," known as the "GENERAL CONDITIONS", forms part of the State of Hawaii Contract between the Contractor and the State of Hawaii. The GENERAL CONDITIONS are not physically included with these specifications, but are included by reference. Copies of the GENERAL CONDITIONS may be obtained from the Department of Accounting and General Services, Public Works Division, Oahu Office, State of Hawaii, fourth floor of the Kalanimoku Building, Room 422, 1151 Punchbowl Street, Honolulu, Hawaii or at the DAGS District Offices on Kauai, Maui and Hawaii.

B. The GENERAL CONDITIONS and SECTION 00800 - SPECIAL CONDITIONS shall govern the Work specified in all DIVISIONS and SECTIONS.

C. Wherever the term 'Interim General Conditions' appears in the Contract Documents, it shall be replaced with the term "GENERAL CONDITIONS."

1.02 REVISIONS TO THE GENERAL CONDITIONS - The following changes shall govern over the respective items in the published "INTERIM GENERAL CONDITIONS, 1999 Edition."

A. Under ARTICLE 1 - DEFINITIONS, replace existing sections (1.5, 1.9, 1.11, 1.12, 1.24, 1.37, 1.43, 1.44, 1.49 and 1.50 respectively) and add new sections (1.65 through 1.75 respectively):

"**1.5 ADVERTISEMENT** - A public announcement soliciting bids or offers.

1.9 BID - See Offer.

1.11 BIDDER - See Offeror.

1.12 BIDDING DOCUMENTS (or SOLICITATION DOCUMENTS) - The advertisement solicitation notice and instructions, Offer requirements, Offer forms, and the proposed contract documents including all addenda, and clarifications issued prior to receipt of the Offer.

1.24 CONTRACT TIME (or CONTRACT DURATION) - The number of calendar (or working) days provided for completion of the contract, inclusive of authorized time extensions. The number of days shall begin running on the effective date in the Notice to Proceed. If in lieu of providing a number of calendar (or working) days, the contract requires completion by a certain date, the work shall be completed by that date.

1.37 INSPECTOR - The person assigned by the Contracting Officer to inspect and monitor construction operations.

1.43 NOTICE TO CONTRACTORS - See Solicitation.

1.44 NOTICE TO PROCEED - A written notice from the Department to the Contractor establishing the applicable Contract Duration, Project Start Date, Jobsite Start Date, Jobsite Completion Date, and Contract Completion Date.

1.49 PROPOSAL (Bid) - See Offer (or Bid).

1.50 PROPOSAL FORM - See Offer Form (or Bid Form).

1.65 CONTRACTING OFFICER - See Engineer.

1.66 JOBSITE START DATE - The date when on-site construction may start.

1.67 JOBSITE COMPLETION DATE - The date when on-site construction must be completed.

1.68 OFFER (or BID) - The executed document submitted by an Offeror in response to a solicitation request, to perform the work required by the proposed contract documents, for the price quoted and within the time allotted.

1.69 OFFEROR (or BIDDER) - Any individual, partnership, firm, corporation, joint venture or other legal entity submitting directly or through a duly authorized representative or agent, an Offer for the work or construction contemplated.

1.70 OFFER FORM (or BID FORM) - The form prepared by the Department on which the Offeror submits the written offer or bid. By submitting an offer or bid, the Offeror adopts the language on the form as its own.

1.71 PROJECT CONTROL BUDGET -The amount of funds set aside for the construction of the Project.

1.72 PROJECT START DATE - The date established in the Notice to Proceed when the Contractor shall begin prosecution of the work and the start of contract time.

1.73 RESIDENT – A person who is physically present in the State of Hawaii at the time the person claims to have established the person's domicile in the State of Hawaii and shows the person's intent is to make Hawaii the person's primary residence.

1.74 SHORTAGE TRADE – A construction trade in which there is a shortage of Hawaii residents qualified to work in the trade as determined by the Department of Labor and Industrial Relations.

1.75 SOLICITATION - An Invitation to Bid or Request for Proposals or any other document issued by the Department to solicit bids or offers to perform a contract. The solicitation may indicate the time and place to

receive the bids or offers and the location, nature and character of the work, construction or materials to be provided."

B. Under ARTICLE 2 – PROPOSAL REQUIREMENTS AND CONDITIONS, modify section 2.1 – QUALIFICATION OF BIDDERS, by deleting 2.1.1, through 2.1.2.8 and substitute the following 2.1.1 through 2.1.2:

"**2.1.1 Notice of Intention to Bid**

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

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

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

2.1.2 Compliance Certificate 103D-310(c), Hawaii Revised Statutes – The Contractors are required to provide proof of compliance in order to receive a contract of $25,000 or more. To meet this requirement, Bidders may apply and register at the "Hawaii Compliance Express" website: http://vendors.ehawaii.gov/hce/splash/welcome.html

C. Under ARTICLE 2 - PROPOSAL REQUIREMENTS AND CONDITIONS, modify section 2.6 - SUBSTITUTION OF MATERIALS AND EQUIPMENT BEFORE BID OPENING, by renaming section 2.6 SUBSTITUTION BEFORE CONTRACT AWARD and deleting subsections 2.6.1, through 2.6.6 and substitute the following three new subsections and related paragraphs 2.6.1 through 2.6.3:

"**2.6.1** For Substitutions after the Letter of Award is issued; refer to Section 6.3 SUBSTITUTION AFTER CONTRACT AWARD.

2.6.2 Unless specifically required otherwise in the contract documents, Offerors shall not submit products, materials, equipment, articles or systems for review or approval prior to submitting their Offers.

2.6.3 Offerors shall prepare their Offer forms based on the performance requirements of the materials, equipment, articles or systems noted on the drawings and specifications. If trade names, makes, catalog numbers or brand names are specified, Offerors shall infer that these items indicate the quality, style, appearance or performance of the material, equipment, article, or systems to be used in the project."

D. Under ARTICLE 2 – PROPOSAL REQUIREMENTS AND CONDITIONS, modify section 2.7 – PREPARATION OF PROPOSAL, by deleting subsection 2.7.3 and substituting the following 2.7.3:

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

E. Under ARTICLE 2 – PROPOSAL REQUIREMENTS AND CONDITIONS, modify section 2.13 – PROTEST, by deleting subsections 2.13.2 and 2.13.3 and substituting the following 2.13.2 & 2.13.3:

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

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

F. Under ARTICLE 2 – PROPOSAL REQUIREMENTS AND CONDITIONS, modify section 2.13 – PROTEST, by renumbering existing subsection 2.13.4 to 2.13.5 and adding new subsection 2.13.4:

"2.13.4 All protests must be received at the Department of Accounting and General Services, Public Works Division, Administrative Office (DAGS-PWD) in the Kalanimoku Buiilding at 1151 Punchbowl Street, Room 426, Honolulu, Hawaii 96813 by the appropriate deadline. Timely receipt shall be evidenced by the date and time registered by the DAGS-PWD time stamp clock.

If the bidder chooses to deliver its protest by the United States Postal Service (USPS), the documents should be sent to DAGS – Public Works Division, Administration, P.O. Box 119, Honolulu, HI 96810-0119. USPS does not deliver directly to DAGS-PWD and it must be processed through a mailroom. This may cause a delay in receipt by DAGS-PWD.

The Protestor bears sole responsibility for ensuring that the protest letter/documentation is delivered by the appropriate deadline."

G~~F~~. Under ARTICLE 3 – AWARD AND EXECUTION OF CONTRACT, modify section 3.3 CORRECTION OF BIDS AND WITHDRAWAL OF BIDS 3-122-31 HAR, by deleting subsection 3.3.1.2(b) and substituting the following 3.3.1.2(b):

"(b) Transposition errors;"

H~~G~~. Under ARTICLE 3 – AWARD AND EXECUTION OF CONTRACT, modify section 3.3 CORRECTION OF BIDS AND WITHDRAWAL OF BIDS §3-122-31 HAR, by deleting subsection 3.3.2 and substituting the following 3.3.2:

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

I~~H~~. Under ARTICLE 3 – AWARD AND EXECUTION OF CONTRACT, modify section 3.4 AWARD OF CONTRACT, by deleting subsection 3.4.4 and substituting the following 3.4.4:

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

J~~I~~. Under ARTICLE 3 – AWARD AND EXECUTION OF CONTRACT, modify section 3.7 REQUIREMENT OF PERFORMANCE AND PAYMENT BONDS by deleting subsections 3.7.1, 3.7.1.2, and 3.7.1.3 and substituting the following new subsections 3.7.1, 3.7.1.1, and 3.7.1.2:

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

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

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

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

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

K~~J~~. Under ARTICLE 3 – AWARD AND EXECUTION OF CONTRACT, modify section 3.7 REQUIREMENT OF PERFORMANCE AND PAYMENT BONDS by adding the following new subsection 3.7.3:

"3.7.3 For additional Performance and Payment Bond requirements due to changes in the contract amount after contract award, see section 4.2.4.2 Additional Performance and Payment Bond Increases."

L~~K~~. Under ARTICLE 3 – AWARD AND EXECUTION OF CONTRACT, add new Section 3.8 as follows:

"**3.8 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS** - Contractors are hereby notified of the applicability of Section 11-355 HRS, which states that campaign contributions are prohibited from specified State or County government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body."

M~~L~~. Under ARTICLE 3 – AWARD AND EXECUTION OF CONTRACT, modify section 3.8 EXECUTION OF THE CONTRACT, by renumbering the section number to 3.9, related subsection numbers to 3.9.1, 3.9.2 , by deleting former subsection 3.8.1 and substituting the following new 3.9.1:

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

N~~M~~. Under ARTICLE 3 – AWARD AND EXECUTION OF CONTRACT, modify section 3.9 FAILURE TO EXECUTE THE CONTRACT, by renumbering the section number to 3.10, related subsection numbers to 3.10.1, 3.10.2, 3.10.3, by deleting former subsection 3.9.2 and substituting the following new 3.10.2:

"**3.10.2 After the Award** – If the Bidder to whom contract is awarded shall fail or neglect to furnish satisfactory security within ten (10) calendar days after such

award or within such further time as the Comptroller may allow, the State shall be entitled to recover from such Bidder its actual damages, including but not limited to the difference between the bid and the next lowest responsive bid, as well as personnel and administrative costs, consulting and legal fees and other expenses incurred in arranging a contract with the next low responsive bidder or calling for new bids. The State may apply all or part of the amount of the bid security to reduce damages. If upon determination by the State of the amount of its damages the bid security exceeds that amount, it shall release or return the excess to the person who provided same."

O~~N~~. Under ARTICLE 3 – AWARD AND EXECUTION OF CONTRACT, renumber Section 3.10 NOTICE TO PROCEED and related subsection numbers to 3.11, 3.11.1, 3.11.2, 3.11.3 and 3.11.4.

P~~O~~. Under ARTICLE 4 - SCOPE OF WORK, modify Section 4.2 CHANGES, by deleting subsection 4.2.4.2 and substituting the following new subsection 4.2.4.2:

"4.2.4.2 Performance and Payment Bond Increases. When the contract price is increased, performance and payment bonds shall each be increased in amounts equal to one hundred percent (100%) of the increase in contract price. The Contractor is responsible to increase the penal amounts of each of the existing bonds or to obtain additional bonds in order to secure additional protection for the Department.

(a) Upon request of the Contracting Officer, the Contractor shall provide evidence in the form of a Bond Rider (See attached form at the end of Section 00700 – General Conditions) from the surety documenting the additional performance and payment bond protections.

(b) If the Contractor fails to deliver the required additional performance and payment bonds, the Department shall have remedies provided under Section 7.27 Termination of Contract for Cause."

Q~~P~~. Under ARTICLE 4 - SCOPE OF WORK, modify Section 4.2 CHANGES, by deleting subsection 4.2.4.3 and substituting the following two new subsections:

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

4.2.4.4 If the Contractor signs or executes the change order, this constitutes an agreement on the part of the Contractor with the terms and conditions of the change order. A change order that is mutually agreed to and signed by the parties of the contract constitutes a contract modification."

R~~Q~~. Under ARTICLE 4 - SCOPE OF WORK, modify section 4.2 CHANGES, by adding the following three new subsections 4.2.5 through 4.2.7:

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

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

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

S~~R~~. Under ARTICLE 4 - SCOPE OF WORK, modify section 4.3 Duty of Contractor to Provide Proposal for Changes, by deleting subsection 4.3.4.

T~~S~~. Under ARTICLE 4 - SCOPE OF WORK, modify section 4.4 PRICE ADJUSTMENT, by deleting subsection 4.4.1 and substituting subsection 4.4.1 and adding a new subsection 4.4.2 and modify section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT, by deleting subsections 4.5.1, 4.5.2 and 4.5.3 and substituting subsections 4.5.1, 4.5.2 and 4.5.3 as follows:

"4.4 PRICE ADJUSTMENT HRS 103D-501

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

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

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

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

4.4.1.4 FORCE ACCOUNT METHOD. At the sole option of the Contracting Officer, by the costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as specified in Section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT and the force account

provision of Section 8.3 PAYMENT FOR ADDITIONAL WORK before commencement of the pertinent performance;

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

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

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

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

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

4.5 ALLOWANCES FOR OVERHEAD AND PROFIT HRS103D-501

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

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

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

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

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

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

U~~T~~. Under ARTICLE 5 - CONTROL OF THE WORK, modify section 5.4 SHOP DRAWINGS AND OTHER SUBMITTALS, by deleting subsection 5.4.14 and 5.4.15 and substitute the following new subsections:

"5.4.1.4 Descriptive Sheets and Other Submittals - When a submittal is required by the contract, the Contractor shall submit to the Contracting Officer eight (8) complete sets of descriptive sheets such as shop drawings, brochures, catalogs, illustrations, calculation, material safety data sheets (MSDS), certificates, reports, warranty, etc., which will completely describe the material, product, equipment, furniture or appliance to be used in the project as shown in the drawings and specifications and how it will be integrated into adjoining construction. When submittals are specified to be submitted under Web Based Construction Management System, the number of complete sets will be as specified or as directed by the Contracting Officer. Prior to the submittal, the Contractor shall review and check all submittal sheets for conformity to the contract requirements and indicate such conformity by marking or stamping and signing each sheet. Where descriptive sheets include materials, systems, options, accessories, etc. that do not apply to this contract, non-relevant items shall be crossed out so that all remaining information will be considered applicable to this contract. It is the responsibility of the Contractor to submit descriptive sheets for review and acceptance by the Contracting Officer as required at the earliest possible date after the date of award in order to meet the Contract Duration. Delays caused by the failure of the Contractor to submit descriptive sheets as required will not be considered as justification for contract time extension.

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

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

V~~U~~. Under ARTICLE 5 - CONTROL OF THE WORK, modify section 5.8 COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT, by deleting the subsection 5.8.1 and substitute the following new subsection 5.8.1:

"**5.8.1 Furnishing Drawings and Specifications** - DAGS will not furnish hard copies of contract plans and specifications to Contractors. Contractors who receive award for projects shall download the files of drawings and specifications from the DAGS website: http://www.hawaii.gov/pwd/pwd_db/construction_bids/view_db_previous, and make their own hard copies. Contractor shall have and maintain at least one hard copy of the Contract Drawings and Specifications on the work site, at all times."

W~~V~~. Under ARTICLE 5 - CONTROL OF THE WORK, modify section 5.12 SUBCONTRACTS, by deleting the subsection 5.12 and related paragraphs and substitute the following new subsection 5.12 and related paragraphs:

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

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

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

5.12.1.2 Becomes insolvent; or

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

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

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

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

5.12.2 Notice of Replacing Subcontractor - The Contractor shall provide a written notice to the Contracting Officer when it replaces a subcontractor, including in the notice, the reasons for replacement. The Contractor agrees to defend, hold harmless, and indemnify the State against all claims, liabilities, or

damages whatsoever, including attorney's fees, arising out of or related to the replacement of a subcontractor.

5.12.3 Adding Subcontractors - The Contractor may enter into a subcontract with a subcontractor that is not listed in the offer form only after this contract becomes enforceable.

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

X~~W~~. Under ARTICLE 6 - CONTROL OF MATERIALS AND EQUIPMENT, Modify Section 6.3 SUBSTITUTION OF MATERIALS AND EQUIPMENT AFTER BID OPENINGS, by renaming section 6.3 SUBSTITUTION AFTER CONTRACT AWARD and by deleting subsections 6.3.1 through 6.3.3 and related paragraphs, and substitute the following two new subsections 6.3.1 and 6.3.2 and related paragraphs:

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

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

6.3.2 Substitution After Contract Award - Subject to the Contracting Officer's determination; material, equipment, article or system with a variant feature(s) may be allowed as a substitution, provided it is in the State's best interest. The State may deny a substitution; and if a substitution is denied, the contractor is not entitled to any additional compensation or time extension.

6.3.2.1 The Contractor shall include with the submittal, a notification that identifies all deviations or variances from the contract documents. The notice shall be in a written form separate from the submittal. The variances shall be clearly shown on the shop drawing, descriptive sheet, and material sample or color sample; and the Contractor shall certify that the substitution has no other variant features. Failures to identify the variances are grounds to reject

the related work or materials, notwithstanding that the Contracting Officer accepted the submittal. If the variances are not acceptable to the Contracting Officer, the contractor will be required to furnish the item as specified on the contract documents at no additional cost or time.

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

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

Y~~X~~. Under Article 7 - PROSECUTION AND PROGRESS, modify section 7.2 SCHEDULE OF PRICES by deleting paragraph 7.2.4.1 and substitute the following paragraph 7.2.4.1:

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

Z~~Y~~. Under Article 7 - PROSECUTION AND PROGRESS, add the following paragraph 7.2.4A:

"**7.2.4A Subcontracts.** Upon award of a contract and prior to starting any construction work, the Contractor shall submit to the Contracting Officer a list of all subcontractors and the actual subcontracted dollar amount for each of its subcontractors regardless of the amount of the subcontract. See section 7.39 – Employment of State Residents Requirements."

AA~~Z~~. Under ARTICLE 7 – PROSECUTION AND PROGRESS, modify section 7.2.5 PROOF OF INSURANCE COVERAGE, by deleting subsection 7.2.5 and substitute the following:

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

BB~~AA~~. Under ARTICLE 7 – PROSECUTION AND PROGRESS, modify section 7.3 INSURANCE REQUIREMENTS, by deleting subsection 7.3.3 and substitute the following new subsection 7.3.3:

"7.3.3 Certificate(s) of Insurance acceptable to the State shall be filed with the Contracting Officer prior to commencement of the work. Certificates shall identify if the insurance company is a "captive" insurance company or a "Non-Admitted" carrier to the State of Hawaii. The best's rating must be stated for the "Non-Admitted" carrier. Certificates shall contain a provision that coverages being certified will not be cancelled or materially changed without giving the Contracting Officer at least thirty (30) days prior written notice. Should any policy be canceled before final acceptance of the work by the State, and the Contractor fails to immediately procure replacement insurance as specified, the State, in addition to all other remedies it may have for such breach, reserves the right to procure such insurance and deduct the cost thereof from any money due to the Contractor."

CC~~BB~~. Under ARTICLE 7 – PROSECUTION AND PROGRESS, modify section 7.3 INSURANCE REQUIREMENTS, by deleting subsection 7.3.7.2 and substitute the following new subsection 7.3.7.2:

"7.3.7.2 General Liability - The Contractor shall obtain General Liability insurance with a limit of not less than $2,000,000 per occurrence and in the Aggregates. The insurance policy shall contain the following clauses: 1) "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."; and 2) "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contributed with, insurance provided by this policy." The required limit of insurance may be provided by a single policy or with a combination of primary and excess polices. Refer to SPECIAL CONDITIONS for any additional requirements."

DD~~CC~~. Under ARTICLE 7 – PROSECUTION AND PROGRESS, modify section 7.3 INSURANCE REQUIREMENTS, by deleting subsection 7.3.7.3 and substitute the following new subsection 7.3.7.3:

"7.3.7.3 Auto Liability - The Contractor shall obtain Auto Liability Insurance covering all owned, non-owned and hired autos with a Combined single Limit of not less than $1,000,000 per occurrence. The insurance policy shall contain the following clauses: 1) "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."; and 2) "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contributed with, insurance provided by this policy." The required limit of insurance may be provided by a single policy or with a combination of primary and excess polices. Refer to SPECIAL CONDITIONS for any additional requirements."

EE~~DD~~. Under ARTICLE 7 – PROSECUTION AND PROGRESS, modify section 7.3 INSURANCE REQUIREMENTS, by deleting subsection 7.3.7.4 and substitute the following new subsection 7.3.7.4:

"7.3.7.4 Property Insurance (Builders Risk)

(a) New Building(s) - The Contractor shall obtain Property Insurance covering building(s) being constructed under this Contract. The limit shall be equal to the completed value of the building(s) and shall insure against all-loss excluding earthquakes and floods. The coverage shall be provided by a company authorized to write insurance in the State of Hawaii as an insurer. The insurance policy shall contain the following clauses: 1) "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."; and 2) "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contributed with, insurance provided by this policy." If the project falls within the State University System, The University of Hawaii shall also be named as an insured. Refer to SPECIAL CONDITIONS for any additional requirements.

(b) Building Renovation and / or Installation Contract - The Contractor shall obtain Property Insurance with a limit equal to the completed value of the work or property being installed and shall insure against all-loss excluding earthquakes and floods. The coverage shall be provided by a company authorized to write insurance in the State of Hawaii as an insurer. The insurance policy shall contain the following clauses: 1) "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."; and 2) "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contributed with, insurance provided by this policy." If the project falls within the State University System, The University of Hawaii shall also be named as an insured. Refer to SPECIAL CONDITIONS for any additional requirements.

(c) The Contractor is not required to obtain property insurance for contracts limited to site development."

FF~~EE~~. Under ARTICLE 7 - PROSECUTION AND PROGRESS, modify section 7.7 PREVAILING WAGES, by deleting subsection 7.7.4.

GG~~FF~~. Under Article 7 – PROSECUTION AND PROGRESS, add the following section 7.9A – APPRENTICESHIP AGREEMENT CERTIFICATION

"7.9A APPRENTICESHIP AGREEMENT CERTIFICATION (HRS §103-55.6)

7.9A.1 For the duration of a contract awarded and executed utilizing the apprenticeship agreement preference the Contractor shall certify, for each month that work is being conducted on the project, that it continues to be a participant in the relevant registered apprenticeship program for each trade it employs.

7.9A.2 Monthly certification shall be made by completing the *Monthly Report of Contractor's Participation - Form 2* made available by the State Department of Labor and Industrial Relations, the original to be signed by the respective apprenticeship program sponsors authorized official, and submitted by the Contractor to the Engineer with its monthly payment requests. The *Monthly Report of Contractor's Participation - Form 2* available on the DLIR website at:

http://labor.hawaii.gov/wdd/files/2012/12/Form-2-Monthly-Report-of-Contractors-Participation.pdf.

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

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

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

7.9A.3.3 Proceedings to debar or suspend pursuant to HRS §103D-702.

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

HH~~GG~~. Under ARTICLE 7 - PROSECUTION AND PROGRESS, modify section 7.10 OVERTIME AND NIGHT WORK, by deleting subsection 7.10.2 and substitute the following:

"**7.10.2** Contractor shall notify the Contracting Officer two working days prior to doing overtime and night work, to insure proper inspection will be available. The notification shall address the specific work to be done. A notification is not required when overtime work and night work are included as normal working hours in the contract and in the contractor's construction schedule."

II~~HH~~. Under ARTICLE 7 - PROSECUTION AND PROGRESS, modify section 7.11 - OVERTIME AND NIGHT PAYMENT FOR STATE INSPECTION SERVICES, by adding new subsection 7.11.1 and renumbering the existing subsections 7.11.1, 7.11.1.1, 7.11.1.2, 7.11.1.3 and 7.11.2 to read 7.11.2, 7.11.2.1, 7.11.2.2, 7.11.2.3 and 7.11.3 respectively. Change subsection reference number (7.11.1) in subsection 7.11.3 - Payment for Inspection Services to read 7.11.2:

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

JJII. Under ARTICLE 7 - PROSECUTION AND PROGRESS, modify section 7.25 - DISPUTES AND CLAIMS, by deleting subsection 7.25.10 and paragraph 7.25.10.1 and substitute the following:

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

7.25.10.1 If the contractor delivers a written request for a final decision concerning the controversy, the Comptroller shall issue a final decision within 90 days after receipt of such a request; provided that if the Comptroller does not issue a written decision within 90 days, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received. Both parties to this contract agree that the period of up to 30 days to appeal the Contracting Officer's decision to the Comptroller shall not be included in the 90 day period to issue a final decision."

KKJJ. Under ARTICLE 7 - PROSECUTION AND PROGRESS, modify section 7.25 - DISPUTES AND CLAIMS, by deleting subsection 7.25.13 Waiver of Attorney's Fees.

LLKK. Under ARTICLE 7 - PROSECUTION AND PROGRESS, modify section 7.31 - SUBSTANTIAL COMPLETION, AND FINAL INSPECTION, by deleting paragraph 7.31.2.1 and substitute the following:

"7.31.2.1 The Contracting Officer shall confirm the list of deficiencies noted by the contractor's punchlist(s) and will notify the contractor of any other deficiencies that must be corrected."

MMLL. Under ARTICLE 7 - PROSECUTION AND PROGRESS, modify section 7.32 - PROJECT ACCEPTANCE DATE, by adding new paragraph 7.32.4.1 as follows:

"7.32.4.1 Punchlist corrective work shall be completed prior to Contract Completion Date, or extension thereof."

NNMM. Under ARTICLE 7 - PROSECUTION AND PROGRESS, modify section 7.32 - PROJECT ACCEPTANCE DATE, by deleting subsection 7.32.7 and substitute the following:

"**7.32.7** If the contractor fails to correct the deficiencies within the time established in paragraph 7.32.4.1, the Contracting Officer shall assess liquidated damages as required by section 7.26 - FAILURE TO COMPLETE THE WORK ON TIME."

OO~~NN~~. Under ARTICLE 7 - PROSECUTION AND PROGRESS, add new section 7.39 as follows:

"**7.39 EMPLOYMENT OF STATE RESIDENTS REQUIREMENTS HRS 103B**

7.39.1 A Contractor awarded a contract shall ensure that Hawaii residents comprise not less than 80% of the workforce employed to perform the contract. The 80% requirement shall be determined by dividing the total number of hours worked on the contract by Hawaii residents, by the total number of hours worked on the contract by all employees of the contractor in the performance of the contract. The hours worked by any subcontractor of the Contractor shall count towards the calculation for purposes of this section. The hours worked by employees within shortage trades, as determined by the Department of Labor and Industrial Relations (DLIR), shall not be included in the calculation for this section.

7.39.2 The requirements of this section shall apply to any subcontract of $50,000 or more in connection with the Contractor, that is, such subcontractors must also ensure that Hawaii residents comprise not less than 80% of the subcontractor's workforce used to perform the subcontract. See also, section 7.2 - Commencement Requirements.

7.39.3 The Contractor, and any subcontractor whose subcontract is $50,000 or more, shall comply with the requirements of this section.

7.39.3.1 Certification of compliance shall be made in writing under oath by an officer of the Contractor and applicable subcontractors and submitted with the final payment request.

7.39.3.2 The certification of compliance shall be made under oath by an officer of the company by completing a Certification of Compliance for Employment of State Residents form and executing the Certificate before a licensed notary public. See attached form at the end of Section 00700 – General Conditions.

7.39.3.3 In addition to the certification of compliance as indicated above, the Contractor and any subcontractors shall maintain records such as certified payrolls for laborers and mechanics who performed work at the site and timesheets for all other employees who performed work on the project. These records shall include the names, addresses and number of hours worked on the project by all employees of the Contractor and subcontractors who performed work on the project to validate compliance with this section. The Contractor and Subcontractors shall maintain, retain, and provide access to these records in accordance with Section 7.38 – RECORDS MAINTENANCE, RETENTION AND ACCESS, except that these provisions shall apply to all contracts, regardless of the value of the contract.

7.39.4 A Contractor or applicable subcontractor who fails to comply with this section shall be subject to any of the following sanctions:

7.39.4.1 With respect to the General Contractor, withholding of payment on the contract until the Contractor or its subcontractor complies with this section; or

7.39.4.2 Proceedings for debarment or suspension of the Contractor or subcontractor under Hawaii Revised Statues §103D-702.

7.39.5 Conflict with Federal Law - This section shall not apply if the application of this section is in conflict with any federal law, or if the application of this section will disqualify the State from receiving Federal funds or aid. See Section 00800 - Special Conditions to determine if this section does not apply."

PP~~OO~~. Under ARTICLE 8 – MEASUREMENT AND PAYMENT, Section 8.3 PAYMENT FOR ADDITIONAL WORK, modify clause 8.3.4.5(h) by changing the replacement value from 'five hundred dollars ($500)' to read "$1,000."

QQ~~PP~~. Under ARTICLE 8 - MEASUREMENT AND PAYMENT, Modify section 8.3 PAYMENT FOR ADDITIONAL WORK, by deleting subsection 8.3.1 and substitute the following new subsections and paragraph:

"**8.3.1 Payment for Changed Conditions** - A contract modification or change order complying with section 4.4 PRICE ADJUSTMENT and section 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT shall be issued for all changes that are directed under Section 4.2 CHANGES. No payment for any change including work performed under the force account provisions will be made until a change order is issued or contract modification is executed.

8.3.1.1 At the completion of the force account work or at an intermediate interval approved by the Contracting Officer, the contractor shall submit its force account cost proposal, including; approved daily force account records with any attached invoices or receipt, to the Department for processing a contract modification or change order."

RR~~QQ~~. Under Article 8 - MEASUREMENT AND PAYMENT, modify section 8.4 PROGRESS AND/OR PARTIAL PAYMENTS, by deleting section and related SUBSECTIONS 8.4.1 thru 8.4.4.4 and substitute the following new section 8.4 and related subsections 8.4.1 thru 8.4.4.4:

"8.4 PROGRESS PAYMENTS

8.4.1 Progress Payments - The Contractor will be allowed progress payments on a monthly basis upon preparing the Monthly Payment Application forms and submitting them to the Contracting Officer. The monthly payment shall be based on the items of work satisfactorily completed and the value thereof at unit prices and/or lump sum prices set forth in the contract as determined by the Contracting Officer and will be subject to compliance with Section 7.9 PAYROLLS AND PAYROLL RECORDS.

8.4.2 In the event the Contractor or any Subcontractor fails to submit certified copies of payrolls in accordance with the requirements of Section 7.9 PAYROLLS AND PAYROLL RECORDS, the Contracting Officer may

retain the amount due for items of work for which payroll affidavits have not been submitted on a timely basis notwithstanding satisfactory completion of the work until such records have been duly submitted. The Contractor shall not be due any interest payment for any amount thus withheld.

8.4.3 Payment for Materials - The Contractor will also be allowed payments of the manufacturer's, supplier's, distributor's or fabricator's invoice cost of accepted materials to be incorporated in the work on the following conditions:

8.4.3.1 The materials are delivered and properly stored at the site of Work; or

8.4.3.2 For special items of materials accepted by the Contracting Officer, the materials are delivered to the Contractor or subcontractor(s) and properly stored in an acceptable location within a reasonable distance to the site of Work.

8.4.4 Payments shall be made only if the Contracting Officer finds that:

8.4.4.1 The Contractor has submitted bills of sale for the materials or otherwise demonstrates clear title to such materials.

8.4.4.2 The materials are insured for their full replacement value to the benefit of the Department against theft, fire, damages incurred in transportation to the site, and other hazards.

8.4.4.3 The materials are not subject to deterioration.

8.4.4.4 In case of materials stored off the project site, the materials are not commingled with other materials not to be incorporated into the project."

SS~~RR~~. Under ARTICLE 8 - MEASUREMENT AND PAYMENT, Modify section 8.5 PROMPT PAYMENT, by deleting section 8.5 and related subsections 8.5.1 thru 8.5.6 and substitute the following new section 8.5 and related subsections 8.5.1 thru 8.5.9:

"8.5.1 Any money paid to a Contractor for work performed by a subcontractor shall be disbursed to such subcontractor within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the Contracting Officer has withheld payment.

8.5.2 Upon final payment to the Contractor, full payment to all subcontractors shall be made within ten (10) days after receipt of the money, provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

8.5.3 All sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be

paid by the contracting officer to the contractor and subsequently, upon receipt from the contracting officer, by the contractor to the subcontractor within the applicable time periods specified in subsection 8.5.2 and section 103-10 HRS:

8.5.3.1 Where a subcontractor has provided evidence to the contractor of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in subsection (8.5.5) of this section, and:

8.5.3.1.a Has provided to the contractor an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 8.6 RETAINAGE; or

8.5.3.1.b The following has occurred:

8.5.3.1.b.1 A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to contractor and the surety, as provided for in section 103D-324 HRS; and

8.5.3.1.b.2 The subcontractor has provided to the contractor:

8.5.3.1.b.2.1 An acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the contractor;

8.5.3.1.b.2.2 Any other bond acceptable to the contractor; or

8.5.3.1.b.2.3 Any other form of mutually acceptable collateral.

8.5.4 If the contracting officer or the contractor fails to pay in accordance with this section, a penalty of one and one-half per cent per month shall be imposed upon the outstanding amounts due that were not timely paid by the responsible party. The penalty may be withheld from future payment due to the contractor, if the contractor was the responsible party. If a contractor has violated subsection 8.5.2 three or more times within two years of the first violation, the contractor shall be referred by the contracting officer to the contractor license board for action under section 444-17(14) HRS.

8.5.5 Final Payment Request. A properly documented final payment request from a subcontractor, as required by subsection 8.5.3, shall include:

8.5.5.1 Substantiation of the amounts requested;

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

8.5.5.2.a The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

8.5.5.2.b The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the

certification, in accordance with their subcontract agreements and the requirements of this section; and

8.5.5.2.c The payment request does not include any amounts that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and

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

8.5.6 The contracting officer shall return any final payment request that is defective to the contractor within seven days after receipt, with a statement identifying the defect.

8.5.7 A payment request made by a contractor to the Contracting 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 8.5.3 unless the payment request includes:

8.5.7.1 Substantiation of the amounts requested; and

8.5.7.2 A certification by the contractor, to the best of the contractor's knowledge and belief, that:

8.5.7.2.a The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

8.5.7.2.b The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the contract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

8.5.7.2.c The payment request does not include any amounts that the contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

8.5.8 This section shall not be construed to impair the right of a contractor or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under subsection 8.5.3 of this section; provided that any such payments withheld shall be withheld by the contracting officer."

TT~~SS~~. Under ARTICLE 8 - MEASUREMENT AND PAYMENT, modify section 8.6 RETAINAGE, by deleting section 8.6 and related subsections 8.6.1 thru 8.6.3 and substituting the following new section 8.6 and related subsections:

"8.6 RETAINAGE - The Department will retain a portion of the amount due under the contract to the contractor, to ensure the proper performance of the contract.

8.6.1 The sum withheld by the Department from the contractor shall not exceed five per cent of the total amount due the contractor and that after fifty per cent of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the contracting officer may continue to withhold as retainage, sums not exceeding five per cent of the amount due the contractor

8.6.2 The retainage shall not include sums deducted as liquidated damages from moneys due or that may become due the contractor under the contract.

8.6.3 General Obligation Bonds - The contractor may withdraw retainage monies in whole or in part by providing a general obligation bond of the State or its political subdivisions suitable to the Department. The contractor shall endorse over to the Department and deposit with the Department any general obligation bond suitable to the Department, but in no case with a face value less than the value established by law, of the amount to be withdrawn. The Department may sell the bond and use the proceeds in the same way as it may use monies directly retained from progress payments or the final payment.

8.6.4 Any retainage provided for in this section or requested to be withheld by the contractor shall be held by the contracting officer.

8.6.5 A dispute between a contractor and subcontractor of any tier shall not constitute a dispute to which the State or any county is a party, and there is no right of action against the State or any county. The State and a county may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

8.6.6 The retention amount withheld by the contractor from its subcontractor shall be not more than the same percentage of retainage as that of the contractor (also applies to subcontractors who subcontract work to other subcontractors) where a subcontractor has provided evidence to the contractor of:

8.6.6.1 A valid performance and a payment bond for the project that is acceptable to the contractor and executed by a surety company authorized to do business in this State;

8.6.6.2 Any other bond acceptable to the contractor; or

8.6.6.3 Any other form of collateral acceptable to the contractor.

8.6.7 A written notice of any withholding shall be issued to a subcontractor, with a copy to the procurement officer, specifying the following:

8.6.7.1 The amount to be withheld;

8.6.7.2 The specific causes for the withholding under the terms of the subcontract; and

8.6.7.3 The remedial actions to be taken by the subcontractor to receive payment of the amounts withheld.

8.6.8 The provisions of this section shall not be construed to require payment to subcontractors of retainage released to a contractor pursuant to an agreement entered into with the contracting officer meeting the requirements of subsection 8.6.3."

UU~~TT~~. Under Article 8 – MEASUREMENT AND PAYMENT, modify section 8.7 WARRANTY OF CLEAR TITLE, by deleting section and substitute the following new section 8.7:

"8.7 WARRANTY OF CLEAR TITLE - The Contractor warrants and guarantees that all work and materials covered by progress payments made thereon shall be free and clear of all liens, claims, security interests or encumbrances, and shall become the sole property of the Department. This provision shall not, however, be construed as an acceptance of the work nor shall it be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Department to require the fulfillment of all the items of the contract."

VV~~UU~~. Under Article 8 – MEASUREMENT AND PAYMENT, modify section 8.8 – FINAL PAYMENT, by deleting subsection 8.8.1 and substitute the following new subsection 8.8.1:

8.8.1 Upon final settlement, the final payment amount, less all previous payments and less any sums that may have been deducted in accordance with the provisions of the contract, will be paid to the contractor, provided the contractor has submitted the following documents with the request for final payment: a) a current "Certificate of Vendor Compliance" issued by the Hawaii Compliance Express (HCE); and b) an originally notarized Certificate of Compliance for Employment of State Residents signed under oath by an officer of the Contractor and applicable subcontractors pursuant to chapter 103B HRS. The Certificate of Vendor Compliance is used to certify the Contractor's compliance with: a) Section 103D-328, HRS (for all contracts $25,000 or more) which requires a current tax clearance certificate issued by the Hawaii State Department of Taxation and the Internal Revenue Service; b) Chapters 383, 386, 392, and 393, HRS; and c) Subsection 103D-310(c), HRS. The State reserves the right to verify that compliance is current prior to the issuance of final payment. Contractors are advised that non-compliance status will result in final payment being withheld until compliance is attained.

WW~~VV~~. Under Article 8 – MEASUREMENT AND PAYMENT, modify section 8.9 – CLAIMS ARISING OUT OF PAYMENT FOR REQUIRED WORK, by deleting section and substitute the following new section 8.9:

"8.9 CLAIMS ARISING OUT OF PAYMENT FOR REQUIRED WORK - If the Contractor disputes any determination made by the Contracting Officer regarding the amount of work satisfactorily completed, or the value thereof, or the manner in which payment therefore is made or calculated, it shall notify the Contracting Officer in writing of the specific facts supporting the Contractor's position. Such notice shall be delivered to the Contracting Officer no later than thirty (30) days after the Contractor has been tendered payment for the subject work, or, if no payment has been tendered, not later than fifty (50) days after it has submitted the Monthly

Payment Application required under Section 8.4 PROGRESS PAYMENTS herein to the Contracting Officer for the work that is the subject of the dispute. The delivery of the written notice cannot be waived and shall be a condition precedent to the filing of the claim. No claim for additional compensation for extra work or change work shall be allowed under this provision, unless the notice requirements of Article 4 SCOPE OF WORK have been followed. Acceptance of partial payment of a Monthly Payment Application amount shall not be deemed a waiver of the right to make a claim described herein provided the notice provisions are followed. The existence of or filing of a payment claim herein shall not relieve the Contractor of its duty to continue with the performance of the contract in full compliance with the directions of the Contracting Officer. Any notice of claim disputing the final payment made pursuant to Section 8.8 FINAL PAYMENT must be submitted in writing not later than thirty (30) days after final payment that is identified as such has been tendered to the Contractor."

XX~~WW~~. Add the attached Bond Rider form to the Appendix.

YY~~XX~~. Add the attached Certification of Compliance for Employment of State Residents form to the Appendix.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

BOND RIDER

This Rider is to be attached to and forms a part of Performance Bond No._____

and Labor and Material Payment Bond No. _____ (hereinafter collectively referred to

as "Bonds) issued by _____, (hereinafter referred to as "Surety"),
(Name of Bonding Company)
as Surety, on the _____ day of _____, _____.

WHEREAS _____,
(Full Legal Name and Street Address of Contractor)
as Contractor (hereinafter referred to as Principal) has signed a Contract with the State of Hawaii (hereinafter

referred to as Obligee) on _____, for the following project:

_____

_____

_____
hereinafter called Contract.

NOW THEREFORE, the undersigned hereby agree that the amounts for each of the attached Bonds shall be changed
FROM: _____ (000,000,000.00)

TO: _____ (000,000,000,00).
Except as herein modified, the Bonds shall remain in full force and effect.

Signed this _____ day of _____, _____.

(Seal) _____
Name of Principal (Contractor)

* _____
Signature

_____
Title

(Seal) _____
Name of Surety

* _____
Signature

_____
Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

ATTACHMENT 1

Attachment 2

CERTIFICATION OF COMPLIANCE
FOR
EMPLOYMENT OF STATE RESIDENTS
HRS 103B

Project Title: _____

Agency Project No: _____

Contract No.: _____

As required by Hawaii Revised Statutes 103B – Employment of State Residents on Construction Procurement Contracts, I hereby certify under oath, that I am an officer of _____ and for the Project Contract indicated
(Name of Contractor or Subcontractor Company)
above, _____ was in compliance with
(Name of Contractor or Subcontractor Company)
HRS 103B by employing a workforce of which not less than eighty percent are Hawaii 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 a **Subcontractor** to this contract.

CORPORATE SEAL

_____
(Name of Company)

_____
(Signature)

_____
(Print Name)

_____
(Print Title)

Subscribed and sworn to me before this
_____ day of _____, 2010.

_____
Notary Public, 1st Circuit, State of Hawaii
My commission expires: _____

Doc. Date:_____# of Pages___1st Circuit
Notary Name: _____
Doc. Description: _____
_____
_____

_____
Notary Signature Date
NOTARY CERTIFICATION

END OF SECTION