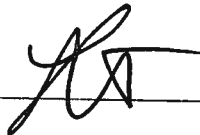


INVITATION FOR BIDS ("IFB")
PARKING CONCESSION CONTRACT FOR PARKING LOT OPERATION
AT
ALA WAI SMALL BOAT HARBOR
TMK (1) 2-3-037: 12 (por.)

IFB No. AWSBH-200901

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

APPROVED BY:



Laura H. Thielen
Chairperson, Board of Land and Natural Resources,
Department of Land and Natural Resources

November 25, 2009

TABLE OF CONTENTS

NOTICE TO BIDDERS	Page 2
NOTICE OF INTENTION TO BID FORM	Page 3
QUALIFICATIONS	Page 4
QUALIFICATION QUESTIONNAIRE	Page 5
TENTATIVE SCHEDULE	Page 10
BID PROPOSAL	Page 11
SPECIFICATIONS	Page 15
SURETY BID BOND	Page 27
PERFORMANCE BOND	Page 28
PERFORMANCE BOND (SURETY)	Page 32
EXHIBIT "A" - Ala Wai Small Boat Harbor General Parking Areas	Page 36
EXHIBIT "B" - Parking Concession Contract General Conditions	Page 37

NOTICE TO BIDDERS
INVITATION FOR BIDS
PARKING CONCESSION CONTRACT FOR PARKING LOT CONCESSION
AT THE ALA WAI SMALL BOAT HARBOR
IFB No. AWSBH-200901

The State of Hawaii, Department of Land and Natural Resources, is issuing an Invitation for Bids ("IFB") to qualified parties interested in a Parking Lot Concession of state-owned lands within the Ala Wai Small Boat Harbor situated at Kalia, Honolulu, Oahu, Hawaii, pursuant to **Chapter 102, Hawaii Revised Statutes**.

Before any prospective bidder shall be entitled to submit a bid, the prospective bidder must meet the minimum qualifications set forth in the IFB and shall submit a completed Qualification Questionnaire and give written notice of intent to bid on the Notice of Intention to Bid form by 4:00 P.M. on December 9, 2009, to the Division of Boating and Ocean Recreation of the Department of Land and Natural Resources, 333 Queen Street, Suite 300, Honolulu, Hawaii 96813.


Prior to permitting any interested party to bid, the Department of Land and Natural Resources shall satisfy itself of the prospective bidder's financial ability, experience, qualifications, and competence to carry out the terms and conditions of the concession contract that may be awarded.

SEALED BIDS are due on or before 4:00 P.M. on December 29, 2009, at the Division of Boating and Ocean Recreation of the Department of Land and Natural Resources, State of Hawaii, located at 333 Queen Street, Suite 300, Honolulu, Hawaii 96813.

A SEALED BID must be accompanied by a bid deposit required by and in conformance with section 102-6, Hawaii Revised Statutes.

SEALED BIDS timely and properly received will be publicly opened at 4:00 P.M. on December 29, 2009, at the Division of Boating and Ocean Recreation of the Department of Land and Natural Resources, State of Hawaii, located at 333 Queen Street, Suite 300, Honolulu, Hawaii 96813.

The IFB, including required forms for bidding, qualifications, specifications, and contract, may be obtained from the above-named office during the regular hours of 8:00 a.m. to 4:00 p.m. from Monday through Friday. Requests for the IFB may also be made to Kevin Yim at telephone no. (808) 587-1979 or fax no. (808) 587-1977.



Laura H. Thielen, Chairperson
Board of Land and Natural Resources,
Department of Land and Natural Resources

HONOLULU STAR BULLETIN

Publication Dates: November 28, 29, 30, 2009

DEPARTMENT OF LAND AND NATURAL RESOURCES, Posting Date: November 28, 2009

NOTICE OF INTENTION TO BID
FOR PARKING CONCESSION CONTRACT FOR PARKING LOT CONCESSION
AT THE ALA WAI SMALL BOAT HARBOR
IFB No. AWSBH-200901

DATE: _____

Division of Boating and Ocean Recreation
Department of Land and Natural Resources
333 Queen Street, Suite 300
Honolulu, Hawaii 96813
Fax: 808-587-1978

The undersigned intends to bid for the Parking Concession Contract, for operation of the Parking Lot Concession at the Ala Wai Small Boat Harbor.

Attached is the fully completed Qualification Questionnaire as required.

Respectfully submitted,

Name of Bidder

Authorized Signature

Printed Name and Capacity

QUALIFICATIONS

1. QUALIFICATION OF BIDDERS:

- 1.1. Prospective Bidders must be capable of carrying out the terms and conditions of the Contract, that may be awarded, for which bids are being called.
- 1.2. Each prospective Bidder must file a written Notice of Intention to Bid and the completed Qualification Questionnaire at the Division of Boating and Ocean Recreation of the Department of Land and Natural Resources, 333 Queen Street, Suite 300, Honolulu, Hawaii, 96813, no later than 4:00 P.M. (Hawaii Standard Time) on December 9, 2009.
- 1.3. The Qualification Questionnaire, properly executed and notarized, shall be reviewed by DOBOR to determine whether the prospective Bidder's experience, competence and financial standing meet the minimum qualifications set herein.
- 1.4. Bidder must have at least two (2) years of experience with the required type of parking operation and must have trained technicians available full time on the island of Oahu.
- 1.5. Bidder must demonstrate that its assigned project manager has at least two (2) years of experience in providing a parking system and management for a similar type of parking operation.
- 1.6. Bidder must have the financial ability to carry out the terms of the concession contract.
- 1.7. Upon execution of contract by Bidder, Bidder must be able to have equipment and signs prepared and installed within 30 days. Bidder should be fully operational within 30 days from contract execution.
- 1.8. If upon review of the Qualification Questionnaire, the prospective Bidder appears not fully qualified or able to carry out the terms and conditions of the Contract that may be awarded, DOBOR shall afford the prospective Bidder an opportunity to be heard.
- 1.9. Failure to complete the Qualification Questionnaire, or submit the Qualification Questionnaire and the written Notice of Intention to Bid within the prescribed time, is sufficient cause to disqualify a prospective Bidder from submitting an offer.
- 1.10. All information contained in the Qualification Questionnaire shall remain confidential, and Qualification Questionnaires of all Bidders shall be returned after having served their purpose.

QUALIFICATION QUESTIONNAIRE

2. QUALIFICATIONS:

Only qualified applicants, as determined by the Division of Boating and Ocean Recreation of the Department of Land and Natural Resources, pursuant to section 102-3, HRS, may bid on the concession. In order to be considered, the entire Qualification Questionnaire must be completed.

Having been first duly sworn and deposed, the undersigned states that it has the minimum qualifications required under this IFB and that it is furnishing the attached information as proof of its qualifications. All Bidders shall submit this Qualification Questionnaire and all the required evidence. Bidders that do not submit a Qualification Questionnaire and the required documentation shall be disqualified from bidding. The NAMED BIDDER has submitted the Notice of Intention to Bid for Parking Concession Contract for Parking Lot Operation at Ala Wai Small Boat Harbor:

- 2.1. Name of Bidder: _____
- 2.2. Business Organization: Individual Partnership Corporation Other
- 2.3. Principal Office Address: _____
- 2.4. State General Excise Tax Number: _____
- 2.5. Federal Employer I.D. Number: _____
- 2.6. If a Corporation, please answer the following:
 Profit Non-Profit
- When incorporated and where: _____
- When authorized to do business in the State of Hawaii: _____
- Name of Officers:
- President: _____
- Vice President: _____
- Secretary: _____
- Treasurer: _____
- Others: _____

Principal Stockholders:

Name and Address

% of Stock

- (1) _____
- (2) _____
- (3) _____
- (4) _____

2.7. If a Partnership, please answer the following:

When and where organized: _____

General or Limited Partnership: _____

When registered in the State of Hawaii: _____

Partners:

Name and Address

Share

- (1) _____
- (2) _____
- (3) _____

2.8. If "other" type of entity, please describe: _____

Where and when organized: _____

List Members: _____

2.9. Provide a description and evidence of a minimum of two (2) years of experience in the ownership and/or operation of a parking lot operation, similar to that described in this solicitation ("IFB"), including the number of years of experience, business name, business address, and dates of operation.

2.10. Provide evidence of the Bidder's ability to procure parking equipment that will meet the minimum requirements of this IFB. Attach any information sheet showing but not limited to design and specifications and costs, and Bidder's financial means of procuring the equipment.

2.11. Has the applicant ever defaulted or been terminated on a State of Hawaii contract or defaulted on real property taxes? If yes, give details on a separate sheet.

Yes No

2.12. Has any Parking concession agreement, contract, or agreement for the operation of any parking lot or similar business owned and/or operated by the Bidder ever been cancelled? If yes, give details on a separate sheet.

Yes No

2.13. Has the Bidder ever been fined for any violation of City, County, Federal and/or State of Hawaii law during the previous two years? If yes, give details on a separate sheet.

Yes No

2.14. Provide satisfactory evidence to support the financial ability of the Bidder to operate and maintain a parking lot operation. Minimum requirements must include income and expense statements, Federal tax returns and balance sheets, from the past 2 years.

2.15. Provide at least two (2) references that the Division of Boating and Ocean Recreation may contact to confirm the Bidder's qualifications to operate a parking lot. Provide names, contact information, and the relationship or experience with each reference.

2.16. Bidder must obtain all insurance policies required in the specifications section of this IFB as a prerequisite of the issuance of the contract.

2.17. Attach copy of State and Federal tax clearance.

2.18. The Bidder hereby consents to and authorizes the Division of Boating and Ocean Recreation to confirm all or any of the foregoing information with any financial institution or any other source necessary.

2.19. Insurance Coverage:

Bidder's Business Address: _____

Telephone No.: _____

Contact Person: _____

Insurance coverage is carried by:

	<u>Carrier</u>	<u>Policy No.</u>	<u>Agent</u>	<u>Limits</u>
Commercial General Liability:	_____	_____	_____	_____
Automobile Liability:	_____	_____	_____	_____
Workers Compensation:	_____	_____	_____	_____

Temporary Disability _____

Prepaid Health Care: _____

Unemployment
Insurance: _____

Bidder _____
(Name of Company)

By _____

Title _____

Bidders may attach any other information they wish to further describe their qualifications.

ACKNOWLEDGMENT:

State of Hawaii)
) SS.
_____ County of _____)

On this _____ day of _____, 20____, before me appeared _____ and _____ to me personally known, who on oath deposed and said that (it is/they are/he is/she is) the _____ and _____, respectively, of _____, that (it has) (they have) (he has) (she has) executed the foregoing in (its) (their) (his) (her) authorized capacity (capacities) as such and that (it has) (they have) (he has) (she has) read the foregoing, know(s) the content thereof and that the same is true to the best of (its) (their) (his) (her) knowledge and belief.

Notary Public, State of Hawaii

Print name

My Commission Expires: _____

TENTATIVE SCHEDULE

The tentative schedule of related activities for this Invitation for Bids ("IFB") are as follows:

Publication	November 28, 29, 30, 2009
Notice of Intention to Bid And Qualification Questionnaire Due	December 9, 2009
Bid Proposal Due and Opening of Bids	December 29, 2009
Estimated start of Parking Concession Contract	February 1, 2010

BID PROPOSAL

**PARKING CONCESSION CONTRACT FOR
PARKING LOT OPERATION
AT THE ALA WAI SMALL BOAT HARBOR
TMK (1) 2-3-037: 12 (por.)
IFB No. AWSBH-200901**

The undersigned Bidder declares that it has carefully examined the attached specifications as well as the entire solicitation ("IFB") for a Parking Concession Contract for a parking lot operation and hereby makes application for the Parking Concession Contract as described herein.

The undersigned Bidder agrees that, if awarded the Parking Concession Contract, it will enter into a Parking Concession Contract with the Department of Land and Natural Resources, State of Hawaii ("DLNR") in accordance with the terms and conditions set forth in IFB No. AWSBH-200901 and this Bid Proposal.

In accordance with section 102-6, Hawaii Revised Statutes, all bids must be accompanied by a deposit of legal tender or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, payable at sight to "Laura H. Thielen, Chairperson," or by a surety bond. The bid deposit shall be in a sum not less than five percent (5%) of the amount bid; provided that when the amount bid exceeds \$50,000, the bid deposit shall be in a sum not less than \$2,500 plus two percent (2%) of the amount in excess of \$50,000. The amount bid is determined by multiplying the minimum monthly Parking Concession Contract payment offered x 12 (months).

The undersigned bidder submits:

- | | | |
|--|--|--|
| <input type="checkbox"/> Surety Bond | <input type="checkbox"/> Cashier's Check | <input type="checkbox"/> Other, as allowed under |
| <input type="checkbox"/> Certified Check | <input type="checkbox"/> Legal Tender | section 102-6, HRS |

in the amount of _____ Dollars (\$ _____) as required and made payable to "Laura H. Thielen, Chairperson."

- A. The Parking Concession Contract fee to be paid to the DLNR each month shall be the minimum monthly payment or the percentage of monthly gross receipts, whichever is greater. The percentage payment shall be the product of multiplying the Concessionaire's monthly gross receipts as defined in Section 4 of the Specifications hereof, by the percentage offered in the bid.
- B. Minimum Monthly Fee. The Concessionaire shall pay to DLNR in advance, without notice or demand, the minimum fee on a monthly basis, on or before the twenty-fifth (25th) day of the month preceding the month for which the fee is applicable and due. The first monthly payment shall be made upon execution of the contract.

Person to contact if awarded contract: _____

Address of Bidder: _____

Telephone: _____

State of Hawaii General Excise Tax License Number: _____

Federal Employer Identification Number: _____

Type of Organization: _____ Individual; _____ Partnership; _____ Corporation ; _____ (specify type of entity)

State of incorporation or other legal establishment: _____

Is entity registered to do business in the State of Hawaii? _____ Yes _____ No

The undersigned swears that the foregoing information and attached supporting documentation are true and correct to the best of his/her/its knowledge and belief.

Dated this _____ day of _____, 20____, at _____

Respectfully submitted,

Name of Bidder

Authorized Signature

Print Name of Person Signing

Title

ACKNOWLEDGMENT:

State of Hawaii)
) SS.
_____ County of _____)

On this _____ day of _____, 20____, before me appeared _____ and _____ to me personally known, who on oath deposed and said that (it is/they are/he is/she is) the _____ and _____, respectively, of _____, that (it has) (they have) (he has) (she has) executed the foregoing in (its) (their) (his) (her) authorized capacity (capacities) as such and that (it has) (they have) (he has) (she has) read the foregoing, know(s) the content thereof and that the same is true to the best of (its) (their) (his) (her) knowledge and belief.

Notary Public, State of Hawaii

Print Name

My Commission Expires: _____

SPECIFICATIONS

1. DEFINITIONS AND INTERPRETATION:

- 1.1. "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the Department of Land and Natural Resources.
- 1.2. "Concessionaire" means the successful bidder entering into the Parking Concession Contract with the Department of Land and Natural Resources.
- 1.3. "DLNR" means the Department of Land and Natural Resources.
- 1.4. "DOBOR" means the Division of Boating and Ocean Recreation of DLNR.
- 1.5. "DOCARE" means the Division of Conservation and Resources Enforcement.
- 1.6. "Gross receipts" means all revenues collected under the Parking Concession Contract prior to the payment of any taxes or other expenses, changes, or assessments, and as described in Section 4.8.
- 1.7. "HAR" means Hawaii Administrative Rules.
- 1.8. "HRS" means Hawaii Revised Statutes.
- 1.9. "Pay Station" means the pay station equipment and compatible software.
- 1.10. "Parking Concession Contract" means the contract, instrument, or agreement which grants a person or entity the privilege of conducting and managing a parking lot operation at the Ala Wai Small Boat Harbor identified in Exhibit "A".
- 1.11. "Parking Concession area" means the areas within the Ala Wai Small Boat Harbor that are included within the Parking Concession Contract.
- 1.12. "Responsible bidder" means a qualified, responsive bidder.
- 1.13. "State" means the State of Hawaii.
- 1.14. "AWSBH" means Ala Wai Small Boat Harbor.
- 1.15. "IFB" and "Solicitation" are synonymous and refer to IFB No. AWSBH-200901.

2. SCOPE OF PARKING CONCESSION CONTRACT:

- 2.1. The term of the Parking Concession Contract shall be for a period of five (5) years commencing February 1, 2010, through January 31, 2015, with one option to extend the contract for a five (5) year term with the approval of the Chairperson. In addition to any provisions for early termination, DLNR may terminate the Parking Concession Contract without cause by providing sixty (60) days prior written notice to the Concessionaire with approval of the Chairperson.
- 2.2. DLNR reserves the right in its sole and absolute discretion to interrupt or cancel the Parking Concession Contract. The Concessionaire shall bear all expenses or losses in full.

- 2.3. Concessionaire shall keep on file a schedule of business hours and days open and a completed parking rate sheet of prices charged subject to approval by the Chairperson. Monthly reports shall be included with the rental payment, in a format as approved by DOBOR.
- 2.4. The parking area to be included under the Parking Concession Contract is shown on the exhibit in this solicitation ("IFB") labeled as EXHIBIT "A", which is to be operated 24 hours a day, 7 days a week. DOBOR reserves the right to relocate or reconfigure the parking concession area or portions thereof during the term of the Parking Concession Contract at DLNR's discretion; provided that such relocation shall not be unreasonable, and shall be subject to the approval of the Chairperson and the Board of Land and Natural Resources.
- 2.5. Concessionaire must provide parking lot operations and pay for all costs of maintenance, improvements, and utilities within the Parking Concession area. Any proposed improvements require the written approval of DOBOR.
- 2.6. DOBOR may reserve portions of the parking lot for special events with advance notice to the Concessionaire, or may utilize portions of the parking concession area for emergency purposes.
- 2.7. Concessionaire shall remove and deliver to DOBOR, at Concessionaires sole cost and expense, all existing manual coin feed meters and support poles presently located along the Harbor Drive of Holomoana Rd. and replace them with approved pay stations in locations pre-approved by DLNR's Chairperson.
- 2.8. Only properly registered vehicles shall be allowed on the parking premises. No parking of derelict vehicles or camping shall be permitted.
- 2.9. Within the parking concession area, permits are required, presently, for 313 vehicle parking stalls. The designated permit parking areas for harbor tenants with valid parking permits are located throughout the harbor. The approximate break down is as follows:

Front row:	17 stalls
G dock area	06 stalls
Station 4	54 stalls
Triangle lot	41 stalls
400/500 row	132 stalls
<u>600/700 row</u>	<u>63 stalls</u>
Total:	313 stalls

The selected Concessionaire shall be responsible for issuing all parking permits to harbor tenants for use in the designated permit parking areas or paid parking areas. DOBOR reserves the right to move, reconfigure, and reallocate permit parking as well as paid parking stalls.

The method of issuing parking permits and any rate changes specific to the Ala Wai Small Boat Harbor shall be in accordance with Hawaii Administrative Rules.

- 2.10 The parking stalls that are to be paid for as they are used consist of 300 open stalls as of the date of the Parking Concession Contract. DOBOR may reasonably decrease or increase this number during the term of the Parking Concession Contract.

The Concessionaire will install, at its expense, a minimum of EIGHT (8) Pay Stations throughout the harbor in locations approved by DOBOR. No gates or barriers will be installed in the harbor.

The Concessionaire must follow parking rates as approved under HAR chapter 13-233. All parking fees specific to the Ala Wai Small Boat Harbor are to be approved and set by the Chairperson.

The rate for open paid parking shall be ONE DOLLAR (\$1.00) per hour, with any rate increases approved by the Chairperson.

Vehicles parked in the paid parking areas will be required to pay the appropriate fees and there shall be no time limit as long as fees are paid on time and in the proper manner.

- 2.11. The designated 300 FREE PUBLIC PARKING STALLS are as follows: The helipad area, parking along the lagoon fence line, and much of the existing public parking (except permitted parking) on the 600 and 700 rows, and portions of Mole B. See Exhibit "A".

Designated FREE PUBLIC PARKING STALLS shall have a six-hour maximum time limit.

No overnight parking will be allowed in the free public parking areas. Closure times will be from 10:30 p.m. to 4:30 a.m. The Concessionaire shall enforce this closure; although the State may allow extensions of time for the open area, or portions of, for special events.

Designated boat trailer parking stalls located behind the harbor master's office will remain open to the public at no charge for up to 72 hours of continuous occupation by the same trailer. The Concessionaire shall only provide security in this area.

- 2.12 The Concessionaire shall observe all parking rules within the Harbor.

The Concessionaire shall work with DOBOR and DOCARE for the enforcement of vehicle parking rules and other applicable laws by DOBOR and DOCARE, including the towing and removal of vehicles.

- 2.13 The Concessionaire may be required to add additional personnel to address expected increases in parking demand and to may be required to administer parking control during special events. Examples of special events are as follows: Fourth of July, Thunder Birds, Molokai Canoe Race, Transpac, and other similar events.

- 2.14 The Concessionaire may be required to meet the following equipment requirements pertaining to pay stations described herein.

2.14.1. A minimum of eight (8) pay stations shall be conveniently installed throughout the harbor, with the locations approved by DOBOR.

2.14.2. Each pay station shall have clearly posted operating instructions for the public.

2.14.3. Each pay station must be able to accept credit cards, cash, and coins.

3. BIDDING PROCESS AND PARKING CONCESSION CONTRACT AWARD:

- 3.1. All bids shall be made on the bid form and shall be properly signed by the bidder. Bids not complying with the IFB shall be rejected, except as may be otherwise provided in these specifications.
- 3.2. The Parking Concession Contract shall be awarded to the responsible bidder submitting the highest and best bid as provided herein.

- 3.3. DLNR reserves the right to reject any or all bid(s) in the best interest of the public, as determined by the Chairperson.
- 3.4. DLNR reserves the right to waive or accept any defect in a bid if the Chairperson determines that such waiver or acceptance will be in the best interest of the public.
- 3.5. The bid must offer a minimum monthly concession fee of at least fifteen thousand dollars (\$15,000.00) and a percentage of monthly gross receipts of at least seventy percent (70%).
- 3.6. All bids received will be time-marked upon receipt and held at DLNR until the hour of bid opening. Bids that are mailed in must arrive at DLNR before the time of opening; bids received after the specified time of the opening will be returned unopened to the sender. At the time of opening, the Chairperson or the Chairperson's designee shall open all bids.
- 3.7. The Parking Concession Contract concession fee shall be the amount of the bid offered by the successful bidder. The concession fee to be paid to DLNR each month for the term of the contract shall be the minimum monthly payment or the gross percentage payment, whichever is greater. The award of the Parking Concession Contract shall be made to the responsible bidder with the highest minimum monthly fee. If there is a tie in the highest minimum monthly fee offered, the contract shall be awarded to the tied bidder offering the highest monthly percentage. If there is also a tie in the tied bidders' monthly percentage offered, DLNR may reject all bids or may award the contract to the tied bidder who is best qualified by experience and financial means, as determined by the Chairperson.
- 3.8. All potential bidders are cautioned to thoroughly investigate all aspects and risks involved with the operation of the parking lot being bid upon. All potential bidders are further cautioned to investigate availability and cost of liability insurance prior to submitting a bid.
- 3.9. Any Parking Concession Contract entered into as a result of this IFB shall be signed by a person authorized to sign and be duly notarized. Additionally, if the Bidder is a business entity, a corporate resolution or other proof acceptable to DLNR showing the authority of that individual to enter into contracts in behalf of the business entity shall be provided by the contractor with its executed Parking Concession Contract and performance bond.
- 3.10. All bidders are requested to review section 102-6, HRS, deposits of legal tender, etc., to accompany bid, and section 102-7, HRS, forfeiture of deposits, return thereof. Bids not accompanied by a proper bid deposit or bid bond will be rejected and the winning bidder who fails to enter into the contract, provide performance bonds, or provide certificates of insurance or other contract completion requirements, will forfeit the bid bond. NO EXCEPTIONS.

3A. SUBMISSION OF BIDS:

- 3A.1. Bids submitted on other than the official bid proposal or which modifies, adds, or deletes any term, consideration, or condition other than those contemplated by the bid documents shall be rejected. Bids showing graduated Parking Concession Contract fee payments shall also be rejected. Bids shall be time-marked and stored in a secure place until the time and date set for bid opening.
- 3A.2. Corrections of errors shall be properly initialed prior to submission.
- 3A.3. A bidder may not submit more than one bid. If a bidder submits more than one bid, all bids submitted by it shall be rejected. For the purposes herein, bidders

considered to be submitting more than one bid shall include but not be limited to the following:

- 3A.3.1. An individual submitting more than one bid whether in his/her own name or through an agent;
- 3A.3.2. An individual submitting a bid who also owns directly or indirectly more than a 25% interest in a legal entity which has also submitted a bid;
- 3A.3.3. A joint venture partnership or corporation submitting a bid where a person owning directly or indirectly more than a 25% interest in such joint venture partnership or corporation has also submitted a bid; or,
- 3A.3.4. A legal entity submitting a bid where a person owning directly or indirectly more than a 25% interest in such legal entity also owns more than a 25% interest in another legal entity which has submitted a bid.

3B. DISQUALIFICATION OF BIDDERS:

- 3B.1. Any one or more of the following causes will be considered sufficient for the disqualification of a bidder or the rejection of a bidder's offer:
 - 3B.1.1. Lack of adequate financial ability, ability to provide equipment, and/or sufficient experience to perform the work, as evaluated by DLNR based on the Qualification Questionnaire;
 - 3B.1.2. Evidence of collusion among bidders;
 - 3B.1.3. Being in arrears in the payment of taxes or other obligations owing the United States government, the State of Hawaii, or the county government, or having defaulted on a previous parking lot contract;
 - 3B.1.4. Receipt of more than one bid from an individual, firm, partnership, corporation, or other legal entity as prohibited in this solicitation;
 - 3B.1.5. Delivery of bids after the deadline specified for bid opening;
 - 3B.1.6. If the bid shows any erasures without initials, or additions to, modifications of, or deletions of, any term, consideration, or condition provided in any of the solicitation documents;
 - 3B.1.7. If the bid shows irregularities or defects of any kind;
 - 3B.1.8. If the bid is conditional or incomplete;
 - 3B.1.9. If any of the required forms are unsigned by the bidder;
 - 3B.1.10. If the bidder or surety fails to properly sign the surety bond submitted as bid guaranty;
 - 3B.1.11. If the bid guaranty is received separately from the bid and is not identifiable as guaranty for a specific offer or is received after the date and time set for the opening; or

3B.1.12. If the bidder fails to use the Surety Bid Bond form furnished by DLNR or identical wording contained in the said form when submitting a surety bond as bid guaranty.

3C. BID DEPOSIT, G.E.T, AND EFFECTIVE PERIOD OF BID OFFER:

- 3C.1. Bid Deposit Accompanying Bid. In accordance with section 102-6, HRS, all bids must be accompanied by a deposit of legal tender or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, payable at sight or unconditionally assigned to "Laura Thielen, Chairperson," or by the surety bond attached. The bid deposit shall be in a sum not less than five percent (5%) of the amount bid; provided that when the amount bid exceeds \$50,000, the bid deposit shall be in a sum not less than \$2,500 plus two percent (2%) of the amount in excess of \$50,000. The five percent is determined by multiplying the minimum monthly Parking Concession Contract fee bid x 12 (months) x 5%.
- 3C.2. Work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS, and vendors are advised that they are liable for the Hawaii General Excise Tax (GET). If, however, a bidder is a person exempt from paying the GET and, therefore, not liable for the taxes on this solicitation, bidder shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.
- 3C.3. The contract award, if any, will be made within thirty (30) calendar days after the bid opening date. The bid offer shall be effective up to sixty (60) days after the bid opening date, during which time the parking concession contract shall be executed.

4. PARKING CONCESSION CONTRACT FEES AND PAYMENTS:

- 4.1. The Parking Concession Contract fee shall be the bid terms offered by the successful bidder. **The monthly payment to be paid to DLNR shall be the minimum monthly payment or the percentage of monthly gross receipts, whichever is greater.**
- 4.2. The minimum monthly fee as set forth in the successful bidder's offer shall be not less than FIFTEEN THOUSAND DOLLARS (\$15,000). The Concessionaire shall pay to DLNR in advance, without notice or demand, the minimum monthly fee on a monthly basis, on or before the twenty-fifth day of the month preceding the month for which the fee is applicable and due. The first monthly payment shall be made upon execution of the Parking Concession Contract.
- 4.3. The monthly percentage fee as set forth in the successful bidder's offer shall not be less than SEVENTY PERCENT (70%) of all gross receipts collected for the month and is to be the product of multiplying the Concessionaire's total gross receipts for the month by the percentage offered in the Concessionaire's bid. The Concessionaire shall pay to DLNR, within twenty-five (25) calendar days after the close of each month, the percentage fee in excess of the minimum monthly fee for the prior month.

- 4.4. The Concessionaire agrees to pay all taxes assessed against the operation of the Parking Concession Contract herein granted.
- 4.5. The Concessionaire shall pay before they become delinquent any and all taxes of the Parking Concession Contract as required by the tax laws, rules and regulations of the State of Hawaii, the City and County of Honolulu, and the federal government, and all other charges incurred or assessed against the operation of the Parking Concession Contract.
- 4.6. Payment: All payments due DLNR shall be made payable to the Division of Boating and Ocean Recreation, Department of Land and Natural Resources, at 333 Queen Street, Suite 300, Honolulu, Hawaii, 96813, in a form acceptable to the Division. Failure to pay any part of the concession contract fee when due shall constitute a breach of the Parking Concession Contract and shall be grounds for termination by DLNR.
- 4.7. Within fifteen (15) working days after the end of each month, the Concessionaire shall submit a detailed report of gross receipts showing the dates which generated the receipts, the gross receipts for each day, the number of parking tickets dispensed each day, the number of paid parking tickets, and permits issued by the Concessionaire and such other information as may be required by DOBOR to reconcile cash collected by Concessionaire with the number of cars using the lot. All forms and reports must be approved by DOBOR, and the Concessionaire shall, upon request, be required to submit supplemental form reports or other data should the DOBOR deem it necessary to reconcile and audit gross receipts. If the Concessionaire shall understate the amount of its gross receipts, for any month, whether knowingly, mistakenly, or otherwise, by five percent (5%) or more of the true amount thereof, the Parking Concession Contract will be considered to be breached and may be terminated by DLNR.
- 4.8. Gross receipts shall be all gross proceeds, sales, enforcement income or any income whatsoever earned by the Concessionaire resulting from the operation of the parking lot, prior to the payment of any taxes, charges, assessments, expenses, or any other offset other than a valid proper refund to the customer.
- 4.9. The Concessionaire will be charged an interest penalty at the rate of one percent (1%) simple interest per month or fraction thereof for any overdue payment of the concession contract fee.
- 4.10. Concessionaire is responsible for all equipment maintenance and repairs, security of equipment, and Concessionaire's personnel.

5. OPERATING CONDITIONS:

- 5.1. Concessionaire shall provide at its own expense, all equipment, furniture, software, and supplies necessary for the proper operation of the parking lot. A minimum of eight (8) pay stations shall be conveniently installed throughout the harbor, with their locations approved by DOBOR.

- 5.2. Concessionaire shall keep and maintain all equipment in good repair.
- 5.3. All signs posted must conform to applicable State and County sign requirements.
- 5.4. Parking rates and hours of operation signs must be plainly displayed.
- 5.5. The Parking Lot stall inventory is made up of: open pay stalls, harbor permit stalls, and free ocean recreation stalls (the free ocean recreation stalls are closed between the hours of 10:30 P.M. and 4:30 A.M.). See general location within EXHIBIT "A". With the approval of the Chairperson, DOBOR shall reserve the right to reconfigure or adjust the amount and type of parking stalls during the term of the contract for the safe and efficient operation of the Harbor.

6. NOTICES TO PARTIES:

Wherever required, notices to DLNR shall be sufficient if sent by certified mail, postage prepaid, addressed to the DOBOR Administrator; and notices to Concessionaire shall likewise be sufficient if sent by certified mail, postage prepaid, to Concessionaire at its address provided on its bid.

7. MISCELLANEOUS PARKING CONCESSION CONTRACT TERMS:

- 7.1. Concessionaire is deemed to be an Independent Contractor and not the agent, employee, partner or joint venture of DLNR. Services performed under the Parking Concession Contract shall not constitute nor be construed as employment with DLNR. Furthermore, Concessionaire intentionally, voluntarily, and knowingly assumes the sole and entire liability (if any such liability is determined to exist) to its employees and agents or other persons for all loss, damage, or injury, including death, caused by Concessionaire or Concessionaire's employees or agents in the course of their employment.
- 7.2. The Parking Concession Contract shall not be varied in its terms or conditions except by an instrument in writing executed subsequently hereto by both parties.
- 7.3. In the event any term, covenant or condition of the Parking Concession Contract is held to be invalid by any court of competent jurisdiction, the invalidity shall not affect any other term, covenant or condition of the Parking Concession Contract; provided, that the invalidity does not materially prejudice the rights and obligations of either DLNR or Concessionaire contained in the valid terms, covenants or conditions of the Parking Concession Contract.
- 7.4. Concessionaire shall observe, perform and comply with all laws, codes, ordinances, rules and regulations of the United States, the State of Hawaii, the County jurisdiction, or any department or agency thereof.
- 7.5. In case of any doubt as to the interpretation of the terms of the contract or the solicitation, the interpretation given and made by DLNR shall govern and control.
- 7.6. Any contract arising out of this contract process is subject to the approval of the Department of the Attorney General as to form.
- 7.7. Concessionaire shall pay all costs and reasonable attorneys' fees, which may be incurred or paid by DOBOR in enforcing the covenants and provisions of the Parking Concession Contract, including the cost of collection of delinquent fees, taxes and other charges.

8. INSURANCE AND INDEMNITY REQUIREMENTS:

- 8.1. Concessionaire shall procure and maintain in full force and effect throughout the term of the Parking Concession Contract, a policy or policies of comprehensive general liability insurance, or its equivalent, carrying a minimum amount of coverage of One Million Dollars (\$1,000,000.00) per person and One Million Dollars (\$1,000,000.00) for property damage, with a company or companies authorized to do business in the State of Hawaii and holding an industry rating acceptable to DLNR. Such insurance shall be procured to cover all claims arising out of the operations, premises, products and completed operations of Concessionaire. The State of Hawaii shall be named as an additional insured on all policies, and a certificate or certificates of insurance shall be filed with DOBOR prior to entering into the Parking Concession Contract and shall be updated as needed and resubmitted to DOBOR when any changes are made or upon DLNR's request. Any subcontractor used by Concessionaire shall be named as an additional insured on the Concessionaire's insurance policy/policies. All expenses connected with the procuring of such insurance shall be borne by Concessionaire.
- 8.2. Concessionaire shall indemnify, defend, save and hold harmless the State of Hawaii and all of its officers, agents, and employees, from and against all costs, expenses, damages, and attorney's fees resulting from any and all claims, demands, suits, actions, or proceedings for violation of law, property damage, or personal injury, including death, arising out of, resulting from, or in connection with the operation of the Parking Concession by Concessionaire.

9. BUSINESS RECORDS:

- 9.1. Concessionaire shall be responsible for establishing and maintaining strict internal accounting controls, policies, procedures, and preparing and maintaining true, accurate and complete books and records to support and verify all sales and gross receipts. These accounting controls, policies, procedures and records shall be subject to DOBOR review and approval.
- 9.2. Concessionaire shall maintain the books and records that relate to the Parking Concession Contract and any cost or pricing data for five (5) years from the date of final payment under the Parking Concession Contract.
- 9.3. There must be a log of daily cash sales available for inspection when requested by DOBOR. DOBOR has the right to review and examine all financial records of the Concessionaire.

10. PROHIBITED USES:

- 10.1. Under no circumstances will Concessionaire, its own employees, or its patrons be allowed to reside or camp in the designated area(s), in any way, whether outside or aboard any vehicle.
- 10.2. Under no circumstances will Concessionaire, its own employees, or its patrons use the designated area(s) for purposes other than a parking lot operation.
- 10.3. Concessionaire shall not alter, modify or change the designated Parking Concession Contract area(s) or any improvements located thereon without first obtaining prior written approval from the Chairperson.
- 10.4. Concessionaire shall not permit disorderly persons to remain or loiter about the premises.
- 10.5. Concessionaire shall not, without the written consent of DLNR, sublet, assign, hypothecate or mortgage this Parking Concession Contract or any rights thereunder; any consent given by DOBOR shall not operate as a waiver of this condition for future subletting, assignment, hypothecating or mortgaging.

11. LOSS OR DAMAGE TO PROPERTY:

Concessionaire assumes the risk of any loss or damage to its equipment and other property on the premises. DLNR shall not be responsible or liable for any loss of, or damage to, the Concessionaire's property on the premises.

12. DOBOR AND DLNR RESERVED PARKING STALLS:

Concessionaire shall reserve twelve (12) stalls directly around the Harbor Masters office twenty-four (24) hours a day, seven (7) days a week, for DLNR's use.

13. COVENANT AGAINST DISCRIMINATION:

Concessionaire shall comply with all applicable Federal and State of Hawaii laws prohibiting discrimination in rendering the services required under this Parking Concession Contract and in employment practices. Any unlawful discriminatory practices by Concessionaire shall be deemed a breach of the Parking Concession Contract and may be cause for termination of the Parking Concession Contract.

14. INSPECTIONS:

14.1. DOBOR reserves the right to enter the Parking Concession Contract area at all reasonable times, for the purpose of inspecting the area; observing the performance by Concessionaire of its obligations under the Parking Concession Contract; to serve, post, or keep posted, notices required by any statute, rule, or regulation of the Federal, State, or county government; or for valid government business, including safety, emergencies, and law enforcement.

14.2. No abatement of concession payments shall be claimed by or allowed to Concessionaire by reason of the exercise by DOBOR of any or all of the rights contained in Section 14.1; provided, that nothing contained in Section 14.1 shall be construed to permit DOBOR to exercise any right to access or entry in a manner that will unreasonably interfere with or hinder the use, occupancy, or enjoyment of the premises by Concessionaire.

15. UNSAFE, UNSANITARY OR UNSATISFACTORY CONDITIONS:

In the event an inspection by DOBOR reveals that the area designated for Concessionaire's use is not in a safe, sanitary and otherwise satisfactory operating condition, Concessionaire, upon being so informed by written notice from DOBOR to correct the condition, shall promptly proceed to correct the condition to the satisfaction of DOBOR. If within ten (10) calendar days following the date of the notice, or within additional time as DOBOR may allow, Concessionaire has not substantially complied with the provisions of such notice, DOBOR shall then have the right to remedy the condition at the expense of Concessionaire, and Concessionaire shall promptly reimburse DOBOR for any and all costs incurred thereof.

16. FAILURE TO EXECUTE PARKING CONCESSION CONTRACT:

If the bidder to whom a Parking Concession Contract is awarded fails or neglects to enter into the Parking Concession Contract and to furnish satisfactory security as required by chapter 102, HRS, within ten days after award or within such further time as DLNR may allow, the amount of bidder's bid guaranty shall be deposited into the DOBOR special fund as a realization of the State. DOBOR may then award the Parking Concession Contract to the next highest bidder.

17. CONTACT INFORMATION AND QUESTIONS:

For this solicitation, DLNR's contact person is Kevin Yim at the Division of Boating and Ocean Recreation, DLNR. Address: 333 Queen Street, Suite 300, Honolulu, Hawaii, 96813. Ph: (808) 587-1979. Fax: (808) 587-1977. All questions regarding the substance of this solicitation must be submitted in writing. Any response will be provided to all bidders in writing.

18. REQUIRED REVIEW:

- 18.1. Bidder is responsible for becoming knowledgeable of all bid and Parking Concession Contract requirements and documents and making all necessary investigations and examinations of the Parking Concession area. Bidder accepts the Parking Concession area in "as is" condition. Bidder shall be responsible for becoming familiar with the physical location and condition, the characteristics of the premises, and the excluded areas, and shall judge for itself all of the circumstances affecting its offer. Failure to do so will not be grounds for any claim that the bidder did not understand the circumstances, and will not act to relieve any condition of the Parking Concession Contract or solicitation documents. The submission of a bid shall be considered conclusive evidence that the Bidder has made such investigations and examinations.
- 18.2. Should a bidder find discrepancies or ambiguities in or omissions from the bidding documents, or be in doubt as to their meaning, the bidder shall submit a written request for interpretation or correction to DLNR in a timely manner. Any interpretation or correction of the bidding documents will be made only by written addendum to all bidders receiving a set of bid documents. The State will not be responsible for any oral statements or representations.

19. REQUIREMENT OF PARKING CONCESSION CONTRACT PERFORMANCE BOND:

- 19.1. At the time of Parking Concession Contract execution, the successful bidder shall file a good and sufficient surety bond on the form provided in this solicitation (either Performance Bond or Performance Bond (Surety)) conditioned on the full and faithful performance of the Parking Concession Contract, as required by HRS section 102-11, which bond shall be in an amount equivalent to two (2) months of the bidder's minimum monthly Parking Concession Contract fee. Such bond shall by its terms inure to the benefit of the State of Hawaii.
- 19.2. Pursuant to section 102-11 and section 102-12, HRS, if the surety or sureties on any bond is other than a surety company authorized to do business under the laws of the State of Hawaii, there shall be not more than four (4) such sureties who shall severally justify in such amounts as, taken together, will aggregate the full amount of the bond, and severally deposit with the Chairperson certified checks, certificates of deposit, or share certificates (unconditionally assigned or on demand on or after such period set by the Chairperson), or bonds, stocks or other negotiable securities, or execute and deliver to the Chairperson a deed of trust of real property, all of such character as shall be satisfactory to the Chairperson, and each surety shall furnish such security to the full cash value of one hundred percent (100%) of the amount for which he shall have justified.

20. PARKING CONCESSION CONTRACT EXECUTION:

- 20.1. The Parking Concession Contract, when executed, becomes a formal contract with the successful bidder. The Parking Concession Contract shall be executed by Concessionaire and returned to DLNR along with proper insurance documentation, bond, first month's minimum payment, and all other required documents, within ten (10) days after the award of the contract or within such time as the Chairperson may allow. Concessionaire will be given a notice to proceed.

- 20.2 Other documents required to be submitted to DLNR along with the Parking Concession Contract executed by Concessionaire are (a) a tax clearance certificate issued by the State Department of Taxation and the Internal Revenue Service, which must have an original green certified copy stamp and be valid when it is submitted to DLNR; (b) a certificate of compliance issued by the State Department of Labor and Industrial Relations for unemployment insurance, workers' compensation, temporary disability insurance, and prepaid health care, which must be valid when it is submitted to DLNR; and (c) a certificate of good standing from the State Department of Commerce and Consumer Affairs ("DCCA") (which that is valid when it is submitted to DLNR), unless the Concessionaire is a sole proprietor who has not registered a business name with DCCA and therefore need not provide this certificate.
- 20.3. In the alternative, instead of the certificates required by section 20.2., Concessionaire may submit to DLNR a "Certificate of Vendor Compliance" obtained through Hawaii Compliance Express at the State Procurement Office, Department of Accounting and General Services.
- 20.4 DLNR is not liable for any work, contract, costs, expenses, loss of profits or any damages whatsoever incurred by Concessionaire prior to the official commencement date of the Parking Concession Contract.

SURETY BID BOND

Bond No. _____

KNOW TO ALL BY THESE PRESENTS:

That we, _____,
(Full name or legal title of Offeror)
as Offeror, hereinafter called Principal, and _____,
(Name of bonding company)
as Surety, hereinafter called Surety, a corporation authorized to transact business as a Surety in the State of Hawaii, are held and firmly bound unto Department of Land and Natural Resources, State of Hawaii
as Owner, hereinafter called Owner, in the penal sum of _____

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

WHEREAS:

The Principal has submitted an offer for: Invitation for Bids ("IFB") Parking Concession Contract for Parking Lot Operation at Ala Wai Small Boat Harbor, TMK (1)2-3-037:12(por.), IFB No. AWSBII-200901.

NOW, THEREFORE:

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

Signed this _____ day of _____, _____.

(Seal)

Name of Principal (Bidder)

Signature

Title

(Seal)

Name of Surety

Signature

Title

PERFORMANCE BOND

KNOW TO ALL BY THESE PRESENTS:

That we, _____,
(full legal name and street address of Contractor)

as Contractor, hereinafter called Contractor, is held and firmly bound unto the Department of Land and Natural Resources, State of Hawaii, its successors and assigns, as Obligee, hereinafter called Obligee, in the amount of:

_____ DOLLARS

(\$ _____), lawful money of the United States of America, for the payment of which to the said Obligee, well and truly to be made, Contractor binds itself, its heirs, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

Legal tender;

Share Certificate unconditionally assigned to or made payable at sight to

Description _____
_____;

Certificate of Deposit, No. _____, dated _____, issued by

_____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to:

_____;

Cashier's Check No. _____, dated _____, issued by

_____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to

_____;

Teller's Check No. _____, dated _____, issued by

_____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the
National Credit Union Administration, payable at sight or unconditionally assigned to:
_____;

Treasurer's Check No. _____, dated _____, issued by
_____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the
National Credit Union Administration, payable at sight or unconditionally assigned to:
_____;

Official Check No. _____, dated _____, issued by
_____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the
National Credit Union Administration, payable at sight or unconditionally assigned to:
_____;

Certified Check No. _____, dated _____, accepted by a bank, savings
institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit
Union Administration, payable at sight or unconditionally assigned to _____;

WHEREAS:

The Contractor has by written contract dated _____ entered into a Parking Concession
Contract with Obligee for the following Project: Parking Concession Contract for Parking Lot Operation at Ala
Wai Small Boat Harbor, TMK (1)2-3-037:12(por.), IFB No. AWSBH-200901, hereinafter called Parking
Concession Contract, which Parking Concession Contract is incorporated herein by reference and made a part
hereof.

NOW, THEREFORE,

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the
Parking Concession Contract in accordance with, in all respects, the stipulations, agreements, covenants and
conditions of the Parking Concession Contract as it now exists or may be modified according to its terms, and
shall deliver the Project to the Obligee, or to its successors or assigns, fully completed as in the Parking
Concession Contract specified and free from all liens and claims and without further cost, expense or charge to
the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature
and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing

out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Parking Concession Contract by the Contractor or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Parking Concession Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Parking Concession Contract or in this bond in accordance with the terms thereof.

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

Signed this _____ day of _____, _____.

(Seal)

Name of Contractor

* _____
Signature

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

ACKNOWLEDGMENT:

State of Hawaii)
) SS.
 _____ County of _____)

On this _____ day of _____, 2009, before me appeared _____ and _____ to me personally known, who on oath deposed and said that (it is/they are/he is/she is) the _____ and _____, respectively, of _____, that (it has) (they have) (he has) (she has) executed the foregoing in (its) (their) (his) (her) authorized capacity (capacities) as such and that (it has) (they have) (he has) (she has) read the foregoing, know(s) the content thereof and that the same is true to the best of (its) (their) (his) (her) knowledge and belief.

Notary Public, State of Hawaii

Print Name

My Commission Expires: _____

PERFORMANCE BOND (SURETY)

KNOW TO ALL BY THESE PRESENTS:

That _____,
(full legal name and street address of Contractor)

as Contractor, hereinafter called Principal, and _____

(name and street address of bonding company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a surety in the State of Hawaii, are held and firmly bound unto the Department of Land and Natural Resources, State of Hawaii, its successors and assigns, hereinafter called Obligee, in the amount of _____
_____ DOLLARS (\$ _____), to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has entered into a Parking Concession Contract with Obligee on _____, for the following project: Parking Concession Contract for Parking Lot Operation at Ala Wai Small Boat Harbor, TMK (1)2-3-037:12(por.), IFB No. AWSBH-200901, hereinafter called Parking Concession Contract, which 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 Parking Concession Contract in strict accordance with the terms of the Parking Concession Contract as said Parking Concession 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 Parking Concession 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 Parking Concession Contract.

In the event of Default by the Principal, of the obligations under the Parking Concession 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 Parking

Concession 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 _____, _____.

(Seal)

Name of Principal (Contractor)

*

Signature

Title

(Seal)

Name of Surety

*

Signature

Title

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

ACKNOWLEDGMENT:

State of Hawaii)
) SS.
 _____ County of _____)

On this _____ day of _____, 2009, before me appeared _____ and _____ to me personally known, who on oath deposed and said that (it is/they are/he is/she is) the _____ and _____, respectively, of _____, that (it has) (they have) (he has) (she has) executed the foregoing in (its) (their) (his) (her) authorized capacity (capacities) as such and that (it has) (they have) (he has) (she has) read the foregoing, know(s) the content thereof and that the same is true to the best of (its) (their) (his) (her) knowledge and belief.

Notary Public, State of Hawaii

Print Name

My Commission Expires: _____

ACKNOWLEDGMENT:

State of Hawaii)
) SS.
____ County of _____)

On this _____ day of _____, 2009, before me appeared _____ and _____ to me personally known, who on oath deposed and said that (it is/they are/he is/she is) the _____ and _____, respectively, of _____, that (it has) (they have) (he has) (she has) executed the foregoing in (its) (their) (his) (her) authorized capacity (capacities) as such and that (it has) (they have) (he has) (she has) read the foregoing, know(s) the content thereof and that the same is true to the best of (its) (their) (his) (her) knowledge and belief.

Notary Public, State of Hawaii

Print Name

My Commission Expires: _____

ALA WAI SBH PARKING

FRONT ROW

"D" DOCK

"C" DOCK

"B" DOCK

"G" DOCK

"F" DOCK

400 ROW

500 ROW

600 ROW

700 ROW

800 ROW

100 ROW

- Meters
- Permits/Paid
- Free Public

EXHIBIT "B"

**PARKING CONCESSION CONTRACT FOR PARKING LOT OPERATION
AT ALA WAI SMALL BOAT HARBOR**

**TMK (1)2-3-037:12(por.)
IFB No. AWSBH-200901**

THIS CONTRACT IS MADE AND ENTERED INTO as of _____, 2009, by and between the STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, hereinafter called the "STATE," through the BOARD OF LAND AND NATURAL RESOURCES, DEPARTMENT OF LAND AND NATURAL RESOURCES, and _____, hereinafter called the "CONCESSIONAIRE," for the operation of a parking lot concession by the CONCESSIONAIRE at the Ala Wai Small Boat Harbor for a period of five (5) years commencing on February 1, 2010 and ending on January 31, 2015, with one option to extend the contract for another five (5) years with the approval of the Chairperson of the Board of Land and Natural Resources in writing.

The written Bid Proposal submitted by CONCESSIONAIRE for IFB No. AWSBH-200901 was accepted by the STATE as the highest and best bid by a responsible bidder submitted pursuant to a call for offers made on November 28, 2009, in accordance with chapter 102, Hawaii Revised Statutes.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties agree as follows:

A. Scope of Work. The CONCESSIONAIRE agrees to perform the work in strict accordance with the terms and conditions of this Contract, which includes all provisions and representations set forth in the Notice to Bidders, Notice of Intention to Bid, Qualifications, Qualification Questionnaire submitted by Concessionaire, Bid Proposal submitted by Concessionaire, Specifications, Exhibits, and any other part of Invitation for Bids ("IFB") Parking Concession Contract for Parking Lot Operation at Ala Wai Small Boat Harbor, TMK (1)2-3-037:12(por.), IFB No. AWSBH-200901, issued by the State of Hawaii, Department of Land and Natural Resources, and also includes the General Conditions attached to this Contract, all of which are incorporated by reference herein. If there is a conflict between a General Condition attached hereto, and any

term, condition, or provision of IFB No. AWSBH-200901 or any other term, condition, or provision of this Contract, the term, condition, or provision of IFB No. AWSBH-200901 or this Contract shall prevail.

B. Compensation. As compensation to the STATE for the right of the CONCESSIONAIRE to operate a parking lot concession in accordance with the Scope of Work described in paragraph A hereinabove, at the Ala Wai Small Boat Harbor, the CONCESSIONAIRE agrees to pay the State of Hawaii, Department of Land and Natural Resources, Division of Boating and Ocean Recreation, during the term of this contract,

_____ DOLLARS (\$ _____) each and every month, or a percentage fee of _____ percent (_____ %) of the CONCESSIONAIRE's gross receipts from the parking lot concession each and every month, whichever is greater, in accordance with the Bid Proposal submitted by CONCESSIONAIRE and all other terms, conditions, and provisions of this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract, effective the day and year first above written.

Approved by the Board of
Land and Natural Resources
at its meeting held on:

STATE OF HAWAII

APPROVED AS TO FORM:

Deputy Attorney General

By: _____
Laura H. Thielen, Chairperson
Board of Land and Natural Resources
Department of Land and Natural Resources

CONCESSIONAIRE*

_____ (name)

By: _____

Its: _____

By: _____

Its: _____

*Evidence of the authority of the CONCESSIONAIRE's representative to sign this contract for the CONCESSIONAIRE must be attached.

ACKNOWLEDGMENT:

State of Hawaii)
) SS.
_____ County of _____)

On this _____ day of _____, 2009, before me appeared _____ and _____ to me personally known, who, on oath deposed and said that (it is/they are/he is/she is) the _____ and _____, respectively, of _____, that such person(s) executed the forgoing instrument as the free act and deed of such person (s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii

Print Name

My Commission Expires: _____

GENERAL CONDITIONS

Table of Contents

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

GENERAL CONDITIONS

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

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.
3. Personnel Requirements.
- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
 - b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.
6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.
- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
 - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
 - b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

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

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

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

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

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

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

14. Termination for Convenience.

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

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

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

d. Compensation.

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

supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

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

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

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

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

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

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

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

31. Records Retention.

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

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

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

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

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

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or
 - (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or

- (2) Immediately terminate this Contract.

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

e. Records Retention.

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