

**STATE OF HAWAII**  
**CONTRACT FOR GOODS OR SERVICES**  
**BASED UPON**  
**COMPETITIVE SEALED BIDS**

This Contract, executed on the respective dates indicated below, is effective as of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_ Department of Hawaiian Home Lands \_\_\_\_\_,  
(Insert name of state department, agency, board or commission)  
State of Hawaii ("STATE"), by its \_\_\_\_\_ Chairman, Hawaiian Homes Commission \_\_\_\_\_,  
(Insert title of person signing for State)  
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")),  
whose address is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707  
\_\_\_\_\_ and \_\_\_\_\_  
("CONTRACTOR"), a \_\_\_\_\_  
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)  
under the laws of the State of \_\_\_\_\_, whose business address and federal  
and state taxpayer identification numbers are as follows: \_\_\_\_\_

**RECITALS**

A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services, or both.

B. The STATE has issued an invitation for competitive sealed bids, and has received and reviewed bids submitted in response to the invitation.

C. The solicitation for bids and the selection of the CONTRACTOR were made in accordance with section 103D-302, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 5, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").

D. The CONTRACTOR has been identified as the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation.

E. Pursuant to \_\_\_\_\_ HHCA of 1920, as amended \_\_\_\_\_, the STATE  
(Legal authority to enter into this Contract)  
is authorized to enter into this Contract.

F. Money is available to fund this Contract pursuant to:

(1) DHHL Trust Fund/Brownfields Revolving Loan Fund

(Identify state sources)

or (2) EPA Brownfields Grant

(Identify federal sources)

or both, in the following amounts: State \$ \_\_\_\_\_ TBD  
Federal \$ \_\_\_\_\_ 200,000.00

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the Invitation for Bids number IFB-11-HHL-002 ("IFB") and the CONTRACTOR'S accepted bid ("Bid"), both of which, even if not physically attached to this Contract, are made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Contract in a total amount not to exceed

TBD

DOLLARS

(\$ TBD ), including approved costs incurred and taxes, at the time and in the manner set forth in the IFB and CONTRACTOR'S Bid.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR ☒ is required to provide or ☐ is not required to provide: ☐ a performance bond, ☐ a payment bond, ☒ a performance and payment bond in the amount of TBD DOLLARS (\$ TBD ).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the IFB, including all attachments and addenda; and (3) the CONTRACTOR'S Bid.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of SIX HUNDRED FIFTY AND 00/100 DOLLARS (\$ 650.00 ) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

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

### STATE

(Signature)

Albert "Alapaki" Nahale-a

(Print Name)

Chairman, Hawaiian Homes Commission

(Print Title)

(Date)

### CONTRACTOR

(Name of Contractor)

(Signature)

(Print Name)

(Print Title)

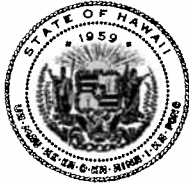
(Date)

CORPORATE SEAL  
(If available)

APPROVED AS TO FORM:

Deputy Attorney General

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



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

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

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

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

Doc. Description: Contract for Goods or Services Based

Upon Competitive Sealed Bids

(Notary Stamp or Seal)

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

NOTARY CERTIFICATION



## STATE OF HAWAII

# CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

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

On behalf of \_\_\_\_\_, CONTRACTOR, the undersigned does declare as follows:

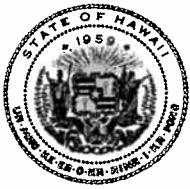
1. CONTRACTOR ☐ is ☐ is not a legislator ~~or an employee or a~~ business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented ~~or assisted personally in the~~ matter by an individual who has been an employee of the agency awarding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

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

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

### CONTRACTOR

By \_\_\_\_\_  
(Signature)  
Print Name \_\_\_\_\_  
Print Title \_\_\_\_\_  
Name of Contractor \_\_\_\_\_  
Date \_\_\_\_\_



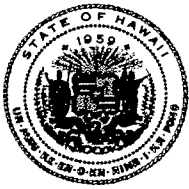
STATE OF HAWAII

**TIME OF PERFORMANCE**

Project: East Kapolei II, Former Pesticide Mixing and Loading Plant Site Remediation  
Location: Honouliuli, Ewa, Oahu, Hawaii  
Contractor: TBD

The CONTRACTOR shall complete all work as specified or indicated in the Contract Documents on or before TWO HUNDRED FORTY (240) Calendar Days from the date the Notice to Proceed is issued by the STATE to the CONTRACTOR, subject to extensions as may be granted, or unless this Agreement is sooner terminated as hereinafter provided.

This Contract shall expire on the date on which the later of the following occurs: (a) the State makes final payment to the CONTRACTOR in accordance with (1) paragraph 17(d) of the General Conditions and (2) no dispute between the parties hereto as to the Work or other obligations of the CONTRACTOR hereunder is outstanding or (b) the STATE issues a Final Acceptance letter to the CONTRACTOR.



## STATE OF HAWAII

# SPECIAL CONDITIONS

Project: East Kapolei II, Former Pesticide Mixing and Loading Plant Site Remediation  
Location: Honouliuli, Ewa, Oahu, Hawaii  
Contractor: TBD

### **SC-01: BASIS OF CONTRACT AWARD**

The Basis of Award shall be the lowest responsible and responsive bidder for the Total Sum Bid (Items 1 to 20, inclusive). The DHHL shall maintain the right to reject any and/or all bids or negotiate with the lowest responsible and responsive bidder if it is in the best interest of DHHL as determined by the Chairman.

### **SC-02: COMPLETION SCHEDULE AND LIQUIDATED DAMAGES**

The Contractor shall complete all work as specified or indicated in the Contract Documents on or before two hundred forty (240) calendar days after receiving written Notice to Proceed, subject to extensions, as may be granted.

In case of failure on the part of the Contractor to complete the work within the time specified, the Contractor shall pay to DHHL as liquidated damages, and not as a penalty, \$650.00 per calendar day for each day that the project, in its entirety, remains incomplete.

### **SC-03: SUBSTITUTION REQUESTS**

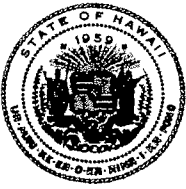
The written substitution requests must be received by the Land Development Division no later than 2:00 p.m. on Wednesday, February 9, 2011. The request may be hand carried or mailed to DHHL, Hale Kalanianaʻole, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707. Substitution requests by facsimile to (808) 620-9299 are not acceptable.

### **SC-04: PROCESS THROUGH CONSULTANT OF DHHL**

Any and all submittals, reports, requests, claims and notices under the contract shall be processed through Land Development Division Project Manager, at the address shown in SC-03.

### **SC-05: SURVEYING SERVICES**

The Construction Manager (CM) retained by the DHHL shall engage a Licensed Professional Land Surveyor (Hawaii) to perform all necessary construction stakeouts.



## STATE OF HAWAII

# SPECIAL CONDITIONS

The surveyor shall establish survey controls and benchmarks for construction stakeouts after the clearing and grubbing operation. These points shall be preserved and protected during construction by the Contractor. He shall not, at any time, disturb or remove anyone of these points without the permission of the CM. Any control point found disturbed or destroyed shall be replaced by the CM and the cost for such replacement shall be paid by the Contractor.

One construction stakeout shall be furnished the Contractor for the applicable phases of the work listed below. He shall be responsible for all stakes and markings made for his guidance in connection with construction and shall preserve them carefully without disturbance until permission for their removal has been given by the CM. All replacements and additional staking made by the CM shall be paid for by the Contractor.

1. One complete stakeout for excavation of off-site contaminated soil and replacement of said soil at location designated on the Plans.
2. One complete stakeout for placement of clean, imported fill material over locations as indicated on the Plans.

The Contractor shall give a minimum of one week advance notice when he is ready for any of the aforementioned stakeouts and shall have the ground where the offset is to be staked cleared of any debris or other obstructions before requesting the stakeouts. The CM will not be responsible for the delay of any stakeout if the information furnished by others guiding that stakeout is insufficient or erroneous.

During construction, if the Contractor shall discover any error in alignment or grade, he shall immediately provide written notification to the CM who will check and correct such errors.

The Surveyor will correct or replace deficient or inaccurate layout and construction work at no cost to the Contractor.

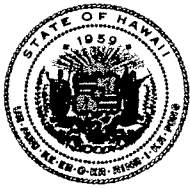
### **SC-06: ALLOWANCES AND FORCE ACCOUNT ITEMS**

The unused portion of allowances and force account items shall remain with DHHL upon completion of the project. The Contractor shall not make a claim in the event DHHL chooses to delete any of the allowances or force account items from the contract.

### **SC-07: PERMITS AND FEES**

Contractor shall apply and pay for all permits and inspection fees as required by all governmental agencies having jurisdiction over this project.

The Consultant has prepared the State Department of Health's NPDES Notice of Intent



## STATE OF HAWAII

# SPECIAL CONDITIONS

(NOI) for Form C, Storm Water Associated with Construction Activity and has submitted it to the State Department of Health for approval. The Contractor shall provide the additional pertinent information as required by the State Department of Health, Clean Water Branch.

### **SC-08: COORDINATION WITH OTHER PARTIES**

The Contractor shall coordinate his work with any and all of the appropriate agencies. The Contractor will be working in areas where other contractors and/or land users may be actively working and shall not interfere with or impede the work of the other contractors and/or land users. To minimize disruption to other businesses and operations, the Contractor shall notify the following persons at least two (2) working days prior to excavating within the existing access roads:

Aloun Farms - Mr. Alec Sou, General Manager, (808) 677-9516, [asou@alounfarms.com](mailto:asou@alounfarms.com)  
Salvation Army (and Kroc Community Center)

Maj. Phil Lum, Project Director (The Salvation Army), (808) 440-1869,  
[Phil.Lum@usw.salvationarmy.org](mailto:Phil.Lum@usw.salvationarmy.org)

Griffith Construction - Mr. Vas Podorean, Project Manager, (808) 358-2755,  
[vas@griffithconsultants.com](mailto:vas@griffithconsultants.com)

Delta Construction, East-West Road - Mr. Alfonso Legaspi, Project Manager, (808) 479-6371, [alegaspi@deltaconstcorp.com](mailto:alegaspi@deltaconstcorp.com)

Community Planning & Engineering - Mr. Lance Sukanuma, Project Manager, (808) 349-3536, [LSukanuma@cpe-hawaii.com](mailto:LSukanuma@cpe-hawaii.com)

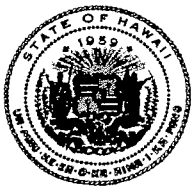
### **SC-09: CONTRACTOR'S LICENSING AND TRAINING**

It is each Contractor's sole responsibility to review the requirements of this project and determine the appropriate contractor's licenses that are required to complete the project. If the Contractor does not hold all of the licenses required to perform a particular item of work on this project with its own workers, the bidder must list subcontractors that hold the appropriate licenses in its proposal.

Because of the specialized nature of the project to deal with hazardous materials/contaminated soils, DHHL requires that all prospective bidders must be capable of performing construction activities with hazardous materials/contaminated soils, for which the bids are called for, using workforce members who meet the minimum experience requirements established by DHHL as indicated in the BIDDER'S QUALIFICATION section of these Contract Documents.

Prospective bidders must complete the Bidder's Statement of Qualification form as stated in the BIDDER'S QUALIFICATION section. Prior to the opening of bids, DHHL shall evaluate bidders' work force qualifications and, from these evaluations, DHHL shall be the sole judge as to whether bidders are "qualified" or "disqualified".





## STATE OF HAWAII

# SPECIAL CONDITIONS

Bidders shall thoroughly reference and understand the provisions and instructions of this Special Provision, the Interim General Conditions, the NOTICE TO BIDDERS, and the BIDDER'S QUALIFICATION of these Contract Documents.

This Section shall amend Article 2: PROPOSAL REQUIREMENTS AND CONDITIONS, Subsections 2.1.1.7, 2.1.1.8 and 2.1.1.9 of the DHHL Interim General Conditions to read as follows:

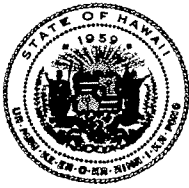
- “2.1.1.7 The Chairman, in accordance with Section 103D - 310, HRS, requires the prospective Bidder to submit answers to all questions and provide all information requested in the ‘Bidder’s Statement of Qualification,’ properly executed and notarized, setting forth a complete statement of the experience of such prospective Bidder and its organization in successfully performing construction activities with hazardous materials/contaminated soils at the time advertised for the opening of bids. All information contained in the ‘Bidder’s Statement of Qualification,’ shall be kept confidential.
- 2.1.1.8 If upon review of the ‘Bidder’s Statement of Qualification,’ the Bidder appears not fully qualified or able to perform the intended work, the Chairman shall after affording the Bidder an opportunity to be heard and if still of the opinion that the Bidder is not fully qualified to perform the work, reject the bid submitted by the Bidder at the time advertised for the opening of bids.
- 2.1.1.9 Failure to submit a fully completed and notarized ‘Bidder’s Statement of Qualification’ form by the time and date indicated in the Notice to Bidders will be sufficient cause for DHHL to disqualify a prospective Bidder.”

### **SC-10: WATER CHARGES AND REQUIREMENTS**

The Contractor shall be solely responsible for obtaining water to meet any requirements of the contract. Unless otherwise indicated or provided for, any work, costs, charges and fees necessary to obtain water for this contract shall not be paid for separately but shall be considered incidental to the various contract items; no separate or additional payment will be made therefore.

### **SC-11: SOIL AND DUST CONTROL**

To control the dust during construction, the Contractor shall have an adequate supply of water for dust control and if necessary, moisture conditioning of fill material at all times. The Contractor shall institute an erosion control program and dust control program to minimize soil erosion and wind erosion and airborne fugitive dust nuisance, respectively for the entire duration of this project.



**STATE OF HAWAII**  
**SPECIAL CONDITIONS**

**SC-12: INSURANCE COVERAGE**

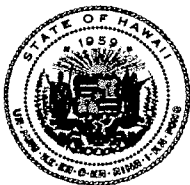
The Contractor shall obtain separate insurance coverage for this project that complies with the requirements set forth in the DHHL Interim General Conditions, Article 7, Section 7.3, as amended. Payment for all work required to comply with this item will not be paid for separately but shall be considered incidental to the various contract items.

INSURANCE REQUIREMENTS are as follows:

CONTRACTOR shall maintain insurance acceptable to the STATE in full force and effect throughout the term of this Contract. The policies of insurance maintained by CONTRACTOR shall provide the following minimum coverage:

<u>Coverage</u>	<u>Limit</u>
<b>General Liability Insurance</b> (occurrence form)	Bodily Injury and Property Damage (combined single limit): <u>\$1,000,000</u> per occurrence and <u>\$2,000,000</u> aggregate Personal Injury: <u>\$1,000,000</u> per occurrence and <u>\$2,000,000</u> aggregate.
<b>Automobile Insurance</b> (covering all owned, non-owned and hired automobiles)	Bodily Injury: <u>\$1,000,000</u> per person and <u>\$1,000,000</u> per occurrence. Property Damage: <u>\$1,000,000</u> per accident or combined single limit of <u>\$2,000,000</u> .
<b>Workers Compensation</b> (statutory limit is required by laws of the State of Hawaii)	Insurance to include Employer's Liability. Both such coverages shall apply to all employees of the CONTRACTOR and, in case any sub-Contractor fails to provide adequate similar protection for all his employees, to all employees of sub-Contractors.

- a. The State of Hawaii, Department of Hawaiian Home Lands, its elected and appointed officials, officers, employees, and agents, and the City & County of Honolulu shall be named as additional insured. CONTRACTOR agrees to provide to the DHHL, before the effective date of the Contract, certificate(s) of insurance necessary to evidence compliance with insurance provisions of this Contract. CONTRACTOR shall keep such insurance in effect and the certificate(s) on deposit with DHHL during the entire term of this Contract. Upon request by the STATE, CONTRACTOR shall furnish a copy of the policy or policies.
- b. Failure of CONTRACTOR to provide and keep in force such insurance shall be regarded as a material default under this Contract. The STATE shall be entitled to exercise any or all of the remedies provided in this Contract for default of CONTRACTOR.



## STATE OF HAWAII

### SPECIAL CONDITIONS

- c. The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability under this Contract or to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, CONTRACTOR shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Contract.
- d. The insurer shall notify DHHL in writing of any cancellation or change in provisions thirty (30) calendar days prior to the effective date of such cancellation or change.
- e. DHHL is a self insured State agency. CONTRACTOR's insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute with, insurance provided by CONTRACTOR.

#### **SC-13: COMPLIANCE WITH COPELAND "ANTI-KICKBACK" ACT**

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

#### **SC-14: ENERGY EFFICIENCY**

The Contractor shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163) for the State of Hawaii.

#### **SC-15: REVISIONS TO DHHL INTERIM GENERAL CONDITIONS (DATED AUGUST 16, 2005)**

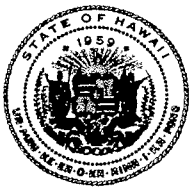
Throughout the DHHL Interim General Conditions, replace the address: "1099 Alakea Street, Suite 2000, Honolulu, Hawaii 96813" with "Hale Kalaniana'ole, 91-5420 Kapolei Parkway, Kapolei, Hawaii, 96707."

In addition, the following changes to the DHHL Interim General Conditions shall be in effect:

#### **ARTICLE 2: PROPOSAL REQUIREMENTS AND CONDITIONS**

In section 2.1.1.2, delete the second sentence, "*The words, 'INTENTION TO BID' must be clearly written or typed on the face of the envelope containing the written notice of intention to bid.*"

In section 2.6.1, delete the third sentence, "*The face of the envelope containing the request must be clearly marked 'SUBSTITUTION REQUEST'.*"



## STATE OF HAWAII

### SPECIAL CONDITIONS

Revise section 2.10 as follows:

DELIVERY OF PROPOSALS. The entire proposal shall be placed together with the bid security, in a sealed envelope ~~no smaller than 9 1/2" x 12" so marked as to indicate the identity of the project, the project number, the date of bid opening and the name and address of the Bidder and then~~ delivered as indicated in the Notice to Contractors. Bids which do not comply with this requirement may not be considered. Proposals will be received up to the time fixed in the public notice for opening of bids and must be in the hands of the official by the time indicated. ~~The words "SEALED BID" must be clearly written or typed on the face of the sealed envelope containing the proposal and bid security. The time designated by the time stamping device in DHHL shall be official.~~

Replace section 2.14, titled "PROTESTS," on page 18 in its entirety with the following:

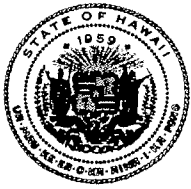
#### 2.14 PROTESTS

- 2.14.1 Protests shall be governed by Section 103D-701, Hawaii Revised Statutes, and amended hereafter, and its implementing rules set forth in Title 3, Chapter 126, Subchapter 1, of the Hawaii Administrative Rules, and as amended hereafter.
- 2.14.2 The Chairman is the Department's chief procurement officer to whom protests shall be addressed unless specified otherwise in the solicitation.

#### ARTICLE 3: AWARD AND EXECUTION OF CONTRACT

After Section 3.4.4 on page 21, insert the following new sections:

- 3.4.5 Responsibility of Offerors (§103D-310(c), HRS, and §3-122-112, HAR). Upon award of the contract under this solicitation, Offeror shall provide:
- (a) An original tax clearance certificate from the Department of Taxation and the Internal Revenue Service, current within six months of issuance date;
  - (b) A certificate of compliance for Chapter 383 - Unemployment Insurance, Chapter 386 - Workers Compensation; Chapter 392 - Temporary Disability Insurance and Chapter 393 - Prepaid Health Care, from the Department of Labor and Industrial Relations, current within six months of issuance date (**Form LIR #27**); and



## STATE OF HAWAII

### SPECIAL CONDITIONS

- (c) A certificate of good standing from the Business Registration Division of the Department of Commerce and Consumer Affairs, within six months of issuance date.

3.4.5.1 Tax Clearance. Refer to Section 2.1.2.

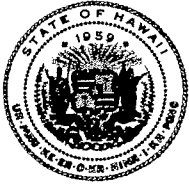
3.4.5.2 Unemployment Insurance (HRS Chapter 383), Workers' Compensation (HRS Chapter 386), Temporary Disability Insurance (HRS Chapter 392), and Prepaid Health Care (HRS Chapter 393). Successful Offeror shall be required to submit an approved certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the purchasing agency.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR Application for Certificate of Compliance with Section 3-122-112, HAR, Form LIR#27 which is available at [www.dlir.state.hi.us/LIR#27](http://www.dlir.state.hi.us/LIR#27), or at neighbor island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to the purchasing agency.

The application for the certificate is the responsibility of the Offeror, and must be submitted directly to the DLIR and not to the purchasing agency.

3.4.5.3 Certificate of Good Standing. Successful Offeror shall be required to submit one of the following as applicable:

- (a) Hawaii business. A business entity referred to as a "Hawaii business", is registered and incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, Offeror shall submit a Certificate of Good Standing issued by the Department of Commerce and Consumer Affairs (DCCA), Business Registration Division (BREG).
- (b) Sole Proprietorship. A Hawaii business that is a sole proprietorship, is not required to register with the BREG, and therefore not required to submit the certificate. An Offeror's status as sole proprietor or other business entity and its business street address indicated on the Offer Form page OF-1 will be used to confirm that the Offeror is a Hawaii business.
- (c) Compliant non-Hawaii business. A business entity referred to as a "compliant non-Hawaii business" is not incorporated or organized under the laws of the State of Hawaii, but is registered to do business in the State. As evidence of compliance, Offeror shall submit a Certificate of Good Standing.



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A Certificate of Good Standing may be obtained online at [www.BusinessRegistrations.com](http://www.BusinessRegistrations.com), or by phone at (808) 586-2727 (M-F 7:45 to 4:30 HST). The "Certificate of Good Standing" is valid for six months from date of issue and must be valid on the date it is received by the purchasing agency. Offerors are advised that there are costs associated with registering and obtaining a "Certificate of Good Standing" from the DCCA.

- 3.4.5.4 Hawaii Compliance Express. Instead of separately applying for the abovementioned paper certificates at the various state/federal agencies, Offerors may choose to use the Hawaii Compliance Express (HCE), which allows businesses to register on-line at:

<http://vendors.ehawaii.gov/hce/splash/welcome.html>.

The HCE provides the vendor with a "Certificate of Vendor Compliance" with current status as of the issuance date, accepted for both contracting purposes and final payment. Vendors that elect to use the HCE services are required to pay an annual fee of \$12.00.

#### ARTICLE 4: SCOPE OF WORK

##### 4.5 - ALLOWANCES FOR OVERHEAD AND PROFIT (3-125-13-HAR)

- In both Sections 4.5.1.1 and Section 4.5.1.2, replace: "fifteen percent (15%)" with **[twenty percent (20 %)]**
- In Section 4.5.1.3, replace: "seven percent (7%)" with **[ten percent (10 %)]**

#### ARTICLE 5: CONTROL OF WORK

##### 5.2 – AUTHORITY OF THE PROJECT MANAGER

Under Section 5.2, Authority of the Project Manager, add the following sentence at the end of the paragraph:

"The Administrator of the Land Development Division of the Department, or his designee, shall also have authority to act on behalf of the Department on all matters regarding the contract that are not reserved for the Chairman."

##### 5.5 - SHOP DRAWINGS AND OTHER SUBMITTALS



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In the second and fourth sentences of Section 5.5.1(c), replace “licensed professional Manager” with “licensed professional Engineer.”

### 5.6 – COORDINATION OF CONTRACT DOCUMENTS

After Section 5.6.4.1, insert the following new section:

5.6.4.2: In the event of a conflict between Form AG-008 (4/15/09) (the “General Conditions”) and the DHHL Interim General Conditions (August 16, 2005), the requirements of the “DHHL Interim General Conditions (August 16, 2005)” will apply to the extent provided by and as allowed under law.

### 5.9.3 – MANAGERING WORK

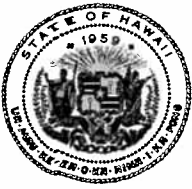
- Replace the word: “Managering” in this section title with “Engineering.”
- In the first, second, and fourth sentences of this section, replace the words “Managering” with “engineering.”
- In Section 5.9.3.4 – Replace the phrase “Civil Manager” with “Civil Engineer.”

### 5.12 – VALUE MANAGERING INCENTIVE

- Replace the word: “Managering” in this section title with “Engineering.”
- In Sections 5.12.1 and 5.12.2, replace the word “Managering” with “Engineering.”
- In Section 5.12.4, replace the word “Manager” in this section title with “Engineer” and replace the phrase “professional architect or Manager” with “professional architect or engineer.”

### 5.13 – SUBCONTRACTS

In Section 5.13.6 SUBCONTRACTING, add the following at the end: “For the purposes of this section, the Contractor’s work is defined as: direct cost labor for contractor’s forces; direct cost materials installed by the contractor’s direct cost labor force; direct cost equipment, either owned or leased, used by the contractor’s direct cost labor force; and field overhead cost to include: field supervision, field office trailer (if any), field office equipment and supplies, etc.”



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### ARTICLE 7: PROSECUTION AND PROGRESS

Modify the following subsection on page 45 under:

#### 7.2 - COMMENCEMENT REQUIREMENTS

After Section 7.2.1 on page 45, add the following new section:

7.2.1.1 Identification of the surveyor who shall be licensed in the State of Hawaii and will work for it throughout the course of the project per DHHL Interim General Condition 5.9.3.4.

#### 7.3 - INSURANCE REQUIREMENTS

Delete the limits of liability insurance specified in items 7.3.7.2. and insert the following section:

“General Liability and Automobile Insurance. CONTRACTOR shall maintain, at its own expense, the minimum insurance coverage specified below throughout the term of this Contact.

- a. General Liability insurance providing coverage of no less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence and TWO MILLION DOLLARS (\$2,000,000.00) in the aggregate.
- b. Automobile insurance providing coverage of no less than ONE MILLION DOLLARS (\$1,000,000.00) per accident.”

#### 7.4 – PERMITS AND LICENSES

Revise the first sentence of section 7.4.1 as follows: “The Department or its representative may process Federal (e.g. Corps of ~~Managers~~ Engineers), State and county permit applications.”

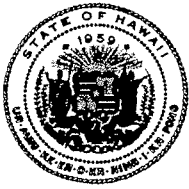
Revise the second sentence of section 7.26.1 as follows: “In addition, the Department will be damaged by the inability to obtain full use of the completed work and by increased ~~Managing engineering~~, inspection, superintendence, and administrative services in connection with the work.

### ARTICLE 8: MEASUREMENT AND PAYMENT

Modify the following subsections:

#### 8.1 - MEASUREMENT OF QUANTITIES





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- Under Section 8.1.2 on page 74, delete the following phrase: "except where slope exceeds ten percent (10%)."

#### 8.4 - PROGRESS AND/OR PARTIAL PAYMENTS

- After Section 8.4.5 on page 79, insert the following new section:

8.4.6 Final Payment Requirements (§3-122-112, HAR). Contractor will submit the following with its invoice for final payment on the contract:

- (a) An original tax clearance certificate, not over two months old.
- (b) An original "Certification of Compliance for Final Payment" (SPO Form-22).

#### 8.6 - RETAINAGE

- In Section 8.6.1. delete the second and third sentences and replace with the following new sentences:

"After fifty percent (50%) of the work is completed and progress is satisfactory, no additional sum will be withheld. If progress is not satisfactory, the Department may continue to withhold retainage sums not exceeding five percent (5%) of the amount due the Contractor."

- After Section 8.6.1, add the following new sections:

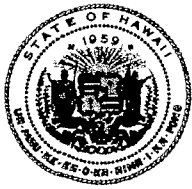
8.6.1.1. Contractor may withhold from amounts due its subcontractors, only the same percentage of retainage as that of the Contractor, and only if its subcontractors have provided valid performance and payments bonds or other bond or collateral acceptable to the Contractor.

8.6.1.2. Contractor or Subcontractor may negotiate with, and retain from its respective subcontractors, a different retainage percentage which cannot exceed ten percent (10%).

- Insert at the beginning of Section 8.6.3 on page 80: "Subject to approval by the Chairman, and at the Chairman's sole discretion."

#### SC-16: FINAL INSPECTION

Throughout the construction period, the work may be subject to periodic inspection by the Department, designated Construction Inspector, the City and County of Honolulu, and



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other applicable government agencies. Once work has been satisfactorily completed, the County, accompanied by the Department and Construction Inspector, will make the final inspection of the work to determine whether all work has been done in complete compliance with the requirements of the plans and these specifications.

The Contractor shall therefore schedule the final inspection with the Department of Planning and Permitting of the City and County of Honolulu and notify the Department's Project Manager one week prior to said inspection.

Neither the scheduling nor the conduct of the aforementioned final inspection shall be deemed a waiver of the Department's right to subsequently require Contractor to complete all unfinished or defective work to the satisfaction of the Department.

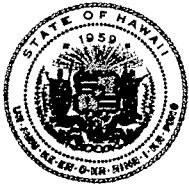
#### **SC-17: STANDARD SPECIFICATIONS AND STANDARD DETAILS**

The "STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, SEPTEMBER 1986," of the Departments of Public Works, County of Kauai, City and County of Honolulu, County of Maui, and County of Hawaii, of the State of Hawaii, and the "STANDARD DETAILS FOR PUBLIC WORKS CONSTRUCTION, SEPTEMBER 1984," of the Departments of Public Works, County of Kauai, City and County of Honolulu, County of Maui, and County of Hawaii, of the State of Hawaii, and all subsequent amendments and additions, are by reference incorporated herein and made a part of these specifications. The term "DPW Standard Specifications" used hereinafter refers to "STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, SEPTEMBER 1986," and the term "DPW Standard Details" used hereinafter refers to "STANDARD DETAILS FOR PUBLIC WORKS CONSTRUCTION, SEPTEMBER 1984." Copies of the DPW Standard Specifications and DPW Standard Details may be purchased at the Division of Purchasing during regular business hours of the City.

The work embraced herein shall be done in accordance with the DPW Standard Specifications and DPW Standard Details, insofar as they may apply.

#### **SC-18: STATE STANDARD SPECIFICATIONS**

The "HAWAII STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION" Department of Transportation, State of Hawaii, 2005, as amended, and hereinafter referred to as the "State Standard Specifications" is by reference incorporated herein and made a part of these contract documents. The work embraced herein shall be done in accordance with the State Standard Specifications, in so far as they may apply. The DHHL General Provisions shall have precedence over Division 100, General Provisions of the State Standard Specifications.



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**SC-19: EXISTING GROUND ELEVATIONS**

The existing ground elevations as shown on the plans shall be presumed as being correct prior to the grading work.

**SC-20: ENGINEERING WORK**

The DHHL may engage the consultants for limited construction observations to supplement the inspections performed by the State and respective Counties. The Consultant's authority shall be as described in General Conditions 5.4.

**SC-21: PROJECT SIGN**

A project sign is not required for this project.

**SC-22: FIELD OFFICE**

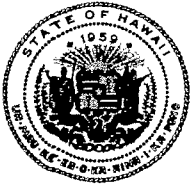
A field office for exclusive use of the DHHL personnel or their construction consultant is not required. Contractor may provide a field office at their own expense.

**SP-23: CONSTRUCTION YARD AND RIGHT-OF-ENTRY**

An area to be used for staging of equipment and materials will be made available to the Contractor. Actual location and access requirements will be determined by the Construction Manager. The Contractor shall be responsible for the overall cleanliness and condition of the staging area and shall restore the area to its existing condition at the completion of the project.

**SC-24: GEOTECHNICAL ENGINEER**

The services of a geotechnical engineering firm will be retained by DHHL. The geotechnical engineer shall be present to observe site grading and other work concerning excavation, placing and compacting soil materials, and to take field density tests. The Contractor shall notify the Construction Manager whenever the geotechnical engineering firm's presence is needed at the site. Also, the geotechnical engineer shall perform laboratory testing of all imported soils or on-site soils to determine its acceptability for its intended use as select material or general fill material. The geotechnical engineer shall compile the daily observations, test data, test results and recommendations into a weekly submittal to the Construction Manager. The geotechnical engineer shall ensure that the geotechnical work complies with the soils report, specifications and drawings. If deviations from soil conditions and recommendations presented in the soils report occur, the Contractor shall notify the Engineer and geotechnical engineer and stop work in the area until the geotechnical engineer issues a course of action.



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**SC-25: SOILS INVESTIGATION AND REPORT**

A subsurface soil investigation was conducted of the project area and findings are presented in the report entitled "Soils Investigatin, Asphalt Pavement Cover, Former East Kapolei Pesticide Mixing and Loading Facility, Kapolei, Oahu, Hawaii," dated June 15, 2010, prepared by Hirata and Associates, Inc. including any amendments. The soils report is available in the bid package.

Contract specifications shall govern over the soils report on contradictory requirements.

**SC-26: MEASUREMENT OF QUANTITIES**

All quantities expressed in the proposal are computed and will be paid based on the horizontal plane. The quantities are for bidding purposes only and not intended to represent actual quantity installed.

**SC-27: FIRE PREVENTION PLAN**

The site is dry and subject to fires. As such, the Contractor shall prepare a Comprehensive Fire Prevention Plan, submit a copy to the Construction Manager, inform all workers, including subcontractor personnel assigned, post the regulations on the walls of the field office or home office, and enforce the plan.

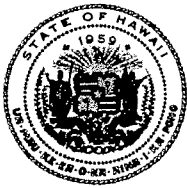
Special care must be taken in the vicinity of the Abutilon Contingency Reserve Area (CRA), as these plants have been designated endangered species by the Federal government and any damage to them is subject to harsh penalties.

**SC-28: ARCHAEOLOGICAL SITES**

The Contractor should be aware that archaeological sites may be encountered during the construction of this project. If the Contractor encounters a potential archaeological site during construction, he shall immediately cease all operations in the area and contact the Construction Manager.

**SC-29: INADVERTENT DISCOVERY OF HUMAN BURIALS**

Although not expected, in the event human burials are inadvertently discovered, the Contractor shall immediately stop work in the vicinity of the burial and contact the following parties and agencies immediately: State Historic Preservation Division, the Construction Manager, the Consultant, the Office of Hawaiian Affairs.



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DHHL shall provide the Contractor with a Supplemental Agreement for additional time added to the Contractor's performance schedule for the mitigation of any inadvertent discovery of human remains.

### SC-30: INSPECTION OF WORK

All work shall be inspected and approved by the applicable agencies of the City and County of Honolulu. The work may also be inspected by the State Department of Health, and/or the Environmental Protection Agency. The contractor shall make arrangements directly with the appropriate agencies to arrange for inspection of work and obtain the necessary approvals, prior to the completion date outlined in these specifications.

### SC-31: RECORD DRAWINGS

Field Posted As-Built Drawings, the intent of which is to record the actual in-place construction so that any future renovations or tie-ins can be anticipated accurately, shall be prepared and submitted by the Contractor. To accomplish this, the following procedure shall be followed by the Contractor:

1. A full-size set of field posted as-built drawings shall be neatly maintained at the job site. All changes made by addenda, change orders, or field adjustments to alignments, elevations and dimensions stipulated on the drawings and authorizations by the Engineer shall be clearly and accurately recorded by the Contractor on this set of field posted as-built drawings.
2. Changes shall be recorded immediately after they are constructed in place to assure they are not forgotten. Record the changes using erasable colored pencil and refer to the authorizing document (RFI, Shop Drawing, Field Modification) or Change Order. The following color codes shall be used to document these changes on the drawings:

Additions	-	RED
Deletions	-	GREEN
Comments	-	BLUE
Dimensions	-	GRAPHITE*

\* Legibly mark to record actual depths, horizontal and vertical location of utilities and structures relative to permanent surface improvements.

The field posted as-built drawings shall be made available to the Construction Manager and Engineer during normal working hours at the Contractor's field office so that its clarity and accuracy can be monitored.



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A monthly log of all the record changes shall be submitted with each progress payment request. The Contractor shall not be entitled to any progress payment until he has provided a completed log which accurately reflects the work that was done. The log shall identify each revision by drawing number and a description of the revision. The Contractor and Construction Manager shall schedule a day each month to meet and review the log and drawings together.

3. The words “FIELD POSTED AS-BUILT” shall be labeled on the title sheet and certified by the Contractor as to accuracy and completeness as shown below:

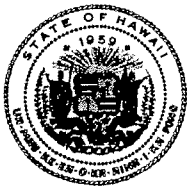
#### FIELD POSTED AS-BUILT

Certified By: \_\_\_\_\_ Date: \_\_\_\_\_  
Contractor (Include name and company)

4. The words “FIELD POSTED AS-BUILT” shall be labeled on all sheets in the margin space to the right of the sheet number written from the bottom upward.
5. The Index to Drawings shall be revised with the label “FIELD POSTED AS-BUILT” for each sheet. The index shall conclude with the following note: “A COMPLETE SET CONTAINS \_\_\_\_ SHEETS” with the total number of sheets comprising the set to be placed in the blank.
6. Any “FIELD POSTED AS-BUILT” drawing which the Construction Manager or Engineer determines does not accurately record the deviation, or is not legible, will be rejected and returned to the Contractor for corrections. Drawings that are ripped or has excessive eraser marks from changes shall be replaced with a clean set of drawings.
7. Submit the set of approved “FIELD POSTED AS-BUILT” drawings to the Engineer no later than five (5) calendar days prior to the date of final inspection.
8. “RECORD DRAWINGS” will be prepared by the design consultant using the “FIELD POSTED AS-BUILT.” Both sets of drawings will be sent to the Contractor for review and approval. The Contractor will have one (1) week to review and approve the drawings. After the Contractor is satisfied the Record Drawings are correct, the Contractor shall certify changes by signing the tracings.

#### **SC-32: STATE GENERAL EXCISE TAX**

This project is exempt from the State of Hawaii General Excise Tax. The Contractor’s bid shall not include the General Excise Tax for any work. Contractor shall submit Form G-37 for itself and all subcontractors to DHHL through the CM for processing and



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certification.

#### **SC-33: CONTINGENT ITEMS**

The quantity shown in the Proposal for contingent items is approximate only and for the purpose of obtaining a unit price bid. The quantity may vary depending on the field conditions. Payment for contingent items shall be made by multiplying the number of units authorized by the Construction Manager of such contingent item incorporated in the work by the unit price for such item as set forth in the Proposal. Adjustments by change order shall be made to the contract amount accordingly.

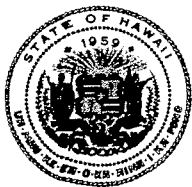
#### **SC-34: CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS**

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

#### **SC-35: ACCEPTANCE**

The term "acceptance" as used in the Contract Documents means that the work of improvement is acceptable to Owner and shall occur when each and all of the following events have been accomplished:

1. All labor has been performed and all materials supplied and incorporated into the work of improvement as provided in the Contract Documents in a good and workmanlike manner.
2. The project and the job site are in a "clean" condition completely free of all trash, rubbish, debris, dirt, smudges, etc., and all of Contractor's and subcontractors' tools and equipment, as well as any leftover materials and inventory, have been removed from the project and the job site.
3. All persons, firms and corporations, including all laborers, materialmen, suppliers and subcontractors who have furnished equipment, supplied materials or performed work for or in connection with the construction, including, but not limited to, all persons who could file a claim of lien, have been paid in full and have submitted their final statements with a waiver in form and substance acceptance to the Owner (Final Contractor's, Subcontractor's, and/or Materialmen's Voucher Release and Waiver of Lien) in its sole discretion of all rights to mechanic's lien, stop notice or recourse against the surety on the bond, if any.



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4. Contractor submits to the Department an affidavit that such waiver of lien rights or releases includes all of the labor and materials for which any lien could be filed.
5. All work requiring inspection by any governmental authority has been duly inspected and written approval by such authority is received by the Construction Manager.
6. All requisite certificates of occupancy and other governmental approvals, letters of acceptance, licenses and permits have been issued and received by the Construction Manager.
7. The Department has received one complete set of "as-built" drawings and Contractor's certification.
8. The Department and/or Construction Manager have certified the completion of the project is in accordance with the plans and specifications.

#### **SC-36: PLANS AND SPECIFICATIONS TO BE FURNISHED BY THE OWNER**

Owner shall furnish six (6) sets of approved plans and one (1) set of specifications to the Contractor upon award of contract. Additional sets of approved plans and specifications may be purchased by the Contractor at the cost for printing the plans and specifications. Upon Contractor's request, approved plans and specification originals will be sent to Contractor's choice of The Blue Print Company or HonBlue for printing and billed to the Contractor's account.

#### **SC-37: INTERCHANGEABLE TERMS**

The following terms are one and the same:

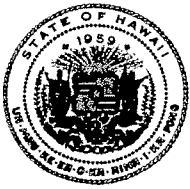
- a. "Contract" and "Agreement".
- b. "Department of Hawaiian Home Lands", "DHHL", and "STATE".
- c. "CONTRACTOR" and "CONSULTANT"

#### **SC-38: COMPLIANCE WITH ACT 68, SLH 2010, EMPLOYMENT OF STATE RESIDENTS ON CONSTRUCTION PROCUREMENT CONTRACTS**

The Contractor shall comply with the requirements of Act 68, SLH 2010, Employment of State Residents on Construction Procurement Contracts, as follows:

1. Definitions for terms used in Act 68, SLH 2010:
  - a. "Contract" means contracts for construction under 103D, HRS.
  - b. "Contractor" has the same meaning as in section 103D-104, HRS, provided that "contractor" includes a Subcontractor where applicable.





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- c. “Construction” has the same meaning as in section 103D-104, HRS.
- d. “Procurement Officer” has the same meaning as in section 103D-104, HRS.
- e. “Resident” means a person who is physically present in the State of Hawaii at the time the person claims to have established the person’s domicile in the State of Hawaii and shows the person’s intent is to make Hawaii the person’s primary residence.
- f. “Shortage trade” means a construction trade in which there is a shortage of Hawaii residents qualified to work in the trade as determined by the Department of Labor and Industrial Relations.

2. Employment of State Residents Requirements – Act 68, SLH 2010:

- a. A Contractor awarded any contract shall ensure that Hawaii residents compose not less than eighty per cent of the workforce employed to perform the contract on the project. The eighty percent requirement shall be determined by dividing the total number of hours worked on the contract by Hawaii residents, by the total number of hours worked by all employees of the contractor in the performance of the contract. The hours worked by any Subcontractor of the Contractor shall count towards the calculation for this section. The hours worked by employees within shortage trades, as determined by the Department of Labor and Industrial Relations (DLIR), shall not be included in the calculation for this section.
- b. Prior to starting any construction work, the Contractor shall submit the subcontract dollar amount for each of its Subcontractors.
- c. The requirements of this section shall apply to any subcontract of \$50,000 or more in connection with the Contractor, that is, such Subcontractors must also ensure that Hawaii residents compose of not less than eighty percent of the Subcontractor’s workforce used to perform the subcontract.
- d. The Contractor and Subcontractor whose subcontract is \$50,000 or more shall comply with the requirements of Act 68 for the entire duration of the contract.
  - 1. Certification of compliance shall be made on a monthly basis. If no progress payments are made for any month, the Contractor, and any Subcontractor as applicable, shall still be required to submit the certification on a monthly basis.
  - 2. The certification of compliance shall be made under oath by an officer of the company by completing a Certification of Compliance for



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Employment of State Residents form and executing the Certificate before a licensed notary public.

3. In addition to the monthly certification as indicated above, the Contractor and Subcontractors shall maintain records such as certified payrolls for laborers and mechanics who performed work at the site and time sheets for all other employees who performed work on the project. These records shall include the names, addresses and number of hours worked on the project by all employees of the Contractor and Subcontractor who performed work on the project to validate compliance with Act 68. The Contractor and Subcontractors shall retain these records and provide access to the State for a minimum period of four (4) years after the final payment, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the four (4) year period, the Contractor and Subcontractors shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the four (4) year period, whichever occurs later. Furthermore, it shall be the Contractor's responsibility to enforce compliance with this provision by any Subcontractor.

e. A Contractor who fails to comply with this section shall be subject to any of the following sanctions:

1. Temporary suspension of work on the project until the Contractor or its Subcontractor complies with Act 68;

2. Withholding of payment on the contract until the Contractor or its Subcontractor complies with Act 68;

3. Permanent termination of the Contractor or Subcontractor from any further work on the project;

4. Recovery by the State, as applicable, of any moneys expended on the contract or subcontract as applicable; or

5. Proceedings for debarment or suspension of the Contractor or Subcontractor under Hawaii Revised Statutes §103D-702.

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