BENJAMIN J. CAYETANO
GOVERNOR

RAYMOND H. SATO
COMPTROLLER

MARY PATRICIA WATERHOUSE
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

November 3, 1999

Mr. Michael A. Pietsch
Title Guaranty of Hawaii
235 Queen Street
Honolulu, Hawaii 96813

Facsimile: (808) 532-3160

Dear Mr. Pietsch:

Re: RFP ICS-FY-99-052, PART 2 CORRECTION

The letter faxed to you, dated November 1, 1999, requesting Best and Final Offer is incorrect regarding the number of images estimated in the ten year inventory. All other information contained in the original Best and Final Offer request is correct and must be followed.

Please provide your charges based on an estimated ten year inventory of 24,000,000 images.

Should you have any questions, contact Ms. Barbara Tom, Planning and Project Management Officer, at (808) 586-1920.

Sincerely,

Lester M. Nakamura, Administrator
Information and Communication
Services Division

400124

G:\PPMO_Bids\RFPPROD\Ics99-52\Best and Final Fix Part2.doc

BENJAMIN J. CAYETANO
GOVERNOR

RAYMOND H. SATO
COMPTROLLER

MARY PATRICIA WATERHOUSE
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
PO BOX 119
HONOLULU, HAWAII 96810-0119

November 1, 1999

Mr. Michael A. Pietsch
TITLE GUARANTY OF HAWAII
235 Queen Street
Honolulu, Hawaii 96813

Facsimile: (808) 532-3160

Dear Mr. Pietsch:

Re: RFP ICS-FY-99-052, PART 2

Please submit a Best and Final Offer to the Information and Communication Services Division, attention Barbara Tom by 10:00 a. m. on November 15, 1999, based on the following additional required information of the original RFP. In your best and final, indicate your agreement or elaborate on how you plan to achieve the results desired.

The successful bidder for Part 2 will be required to work with the vendor of Part 1 to integrate the back images into the new BCIS. These images shall be single access images and must be made available through the vendor of Part 1.

1. Please provide your charges based on an estimated ten year inventory of 4,000,000 images and cost, if any, to rescan images found to be unacceptable based on a mutually agreed minimum quality standard.

2. During your oral presentation, reference was made to immediate access. Please provide specifics as to how this will be accomplished and what is included with this access and any cost associated with its implementation.

3. It is the desire of the Bureau of Conveyances to provide public and internet access to digitized images. As such, access proposed through a lease program cannot be restricted and limited in its use. Proposed alternatives to the purchase of your images must not include any conditions that limit access by the Bureau of Conveyances or its public and internet users.

4. Your proposal included a lease with an option to purchase at a price mutually agreed upon. Please provide a schedule based on a lease to own without additional cost?

Should you have any questions, contact Barbara Tom, Planning and Project Management Officer, at (808) 586-1920.

Sincerely,

Lester M. Nakamura, Administrator
Information and communication
Services Division

400126

G:\PPMO_Bids\RFPPROD\ics99-52\Best and Final.doc

2.3 SIGNIFICANT DATES

The delivery and work schedule set out herein represents the State's best estimate of the schedule that will be followed. If a component of this schedule. such as Proposals Due date is delayed, the rest of the schedule may be shifted by the same number of days. The approximate schedule is as follows: All time is shown as Hawaiian Standard Time (HST)

Advertisement of RFP and Proposal Pick-up	April 5, 1999
Optional Site Visit	April 6 to May 18, 1999
Deadline for Written Inquiries; 10:00 a.m.	April 19, 1999
Deadline for Request to Utilize Another Methodology	April 19, 1999
Deadline for Letter of Intent; 10:00 a.m.	April 21, 1999
Response to Offerors' Written Inquiries	May 5, 1999
Deadline for a Additional Written Inquiries	May 7, 1999
Response to Offerors' Additional Written Inquiries	May 12, 1999
Deadline for a Next Additional Written Inquiries	May 14, 1999
Response to Offerors' Additional Written Inquiries	May 19, 1999
Proposal Due; 10:00 a.m.	May 28, 1999
Compliance Review for Proposals	June 1, to June 9, 1999
Notices of Compliance Qualification or Disqualification Mailed	June 10, 1999
Selection of Priority Listed Offerors	August 6, 1999
Discussions (if any) with Priority Listed Offerors	August 16, 1999 to October 8, 1999
Best and Final Offer Due; 10:00 a.m.	November 15, 1999
Contractor Selection	November 26, 1999
Notice of Award	December 1, 1999
Notice to Proceed/Estimated Date of Contract Issuance	December 13, 1999
Estimated Start Date	December 15, 1999
Work Plan Presentation for PART 1	December 27, 1999
Work Plan Presentation for PART 2	December 27, 1999
Final Work Plan Submission for PART 1	January 10, 2000
Final Work Plan Submission for PART 2	January 10, 2000

Estimated Initial Contract Period for Part1	December 15, 1999 to June 30, 2000
Estimated Completion Date: Part 1 and 2 all Phases	June 30, 2001
Estimated Completion; Post Implementation Support	June 30, 2004

400128

Attachment 3

COMPENSTION AND PAYMENT SCHEDULE

CONTRACT FOR RFP NO. ICS-FY-99-052 – PART 2

SERVICES TO DEVELOP AND IMPLEMENT A REPLACEMENT LAND COURT AND REGULAR AUTOMATED TRACKING SYSTEM FOR THE STATE OF HAWAII

The Compensation and Payment Schedule for this contract is as defined in RFP No. ICS-FY-99-52 and the proposal of the Contractor submitted and awarded for completion of work for Part 2 to Title Guaranty of Hawaii Inc.

The Best and Final Offer Request letter amends Special Provisions in the RFP and is included in this contract by reference.

Attachment 4

SPECIAL CONDITIONS

CONTRACT FOR RFP NO. ICS-FY-99-052 – PART 2

SERVICES TO DEVELOP AND IMPLEMENT A REPLACEMENT
LAND COURT AND REGULAR AUTOMATED TRACKING SYSTEM
FOR THE STATE OF HAWAII

The Special Conditions for this contract is titled Appendix B Special Provisions in the RFP and are attached for information as overrides to General Conditions (also attached.

The Best and Final Offer Request letter to Title Guaranty of Hawaii, Inc. for Part 2 amends Special Provisions in the RFP and is included in this contract by reference and is attached.

SPECIAL PROVISIONS

The Special Provisions is included in this appendix as a separate document.

SCOPE OF WORK

This RFP solicits offers to provide services to develop and implement a replacement Land Court and Regular Automated Tracking system for the Bureau of Conveyances (BOC's) multiple existing systems. The new system will meet all process, function, data, security, and other technical requirements of the BOC, and offerors shall propose a packaged solution for effective automation of the BOC as well as services required to modify, test, convert, and implement a replacement system for the BOC

It is the responsibility of the Contractor to deliver all the products and services detailed in this RFP in accordance with the State standard methodology for the tasks and activities, as well as deliverable phase end documents for the Packaged System Life Cycle, including External and Internal Specifications and Programming for all customization of packaged software that may be necessary and to complete the Test, Conversion, and Implementation phases and documents (or a pre-approved contractor methodology and its tasks/activities and documentation).

All proposed work shall be in accordance with these Special Provisions, specifications, and the General Terms and Conditions, included by reference and made a part hereof. Copies of the General Terms and Conditions are contained in Appendix C of this RFP.

TERM OF CONTRACT

Term of contract shall be initially for a nine months period, beginning approximately August 2, 1999 and ending March 31, 2000. Subsequent Supplemental Agreements may be executed for Phase 2, and post implementation support, with final completion of all work and termination of the contract and all Supplemental Agreements, including post implementation support, by December 31, 2004. The project/contract, or any of its supplemental agreements, may be extended by mutual agreement for additional mutually agreed periods of one (1) year, up ato three such extensions.

BID PREPARATION

Offeror must submit its offer using offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable. Failure to do so may delay proper execution of the contract.

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

METHOD OF AWARD

Prior to Awarding Contract, the State will require verification of the following insurance coverages:

Workers Compensation
Temporary Disability
Unemployment Insurance

400131

Prepaid Health Insurance
Liability Insurance (See Provision below)

PAYMENT

Section 103-10, Hawaii Revised Statues, provides that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the State will reject any bid submitted with a condition requiring payment within a shorter period. Further, the State will reject any bid submitted with a condition requiring interest payments greater than that allowed by Section 103-10, H.R.S., as amended.

The State will not recognize any requirement established by the Contractor and communicated to the State after award of the contract, which requires payment within a shorter period or interest payment not in conformance with statute.

For the fiscal year period August 2, 1999 to March 31, 2000, the State agrees to pay the Contractor for satisfactory completion of work for Phase 1, which minimally is expected to include Tasks 1-6. The initial contract amount is dependent upon the proposal/solution selected by the BOC and awarded.

The remainder of the work, i.e. Phase 2, Tasks 7-11, shall not be performed by the Contractor and the State will not be required to pay for such work unless and until funds are available. Therefore, if and when funds become available, the State and the Contractor will execute supplemental agreement(s) to this contract covering the remainder of the work for a which Contractor shall be paid at the rate accepted by the State, contingent upon availability of funds. Therefore, in the event that funds for Phase 2 are not appropriated and allotted in future fiscal years, this agreement will terminate with no further liability or obligation by the Contractor or by the State.

Part 2, Task 12 may be proposed and awarded separately.

ADDITIONS AND EXCEPTIONS TO THE GENERAL TERMS & CONDITIONS

Cancellation of Solicitations and Rejection of Offers. The solicitation may be cancelled or the offers may be rejected, in whole or in part, when in the best interest of the purchasing agency, as provided in sections 3-122-95 through 3-122-97, Hawaii Administrative Rules.

General Terms & Conditions Not Applicable. This solicitation is a Request for Proposals. Sections 2.11 and 2.14 of the General Terms & Conditions, which apply specifically to the Request for Proposals method of source selection, are not applicable to Invitations for Bids. Also sections 2.10 and 2.13, which apply specifically to the Invitation for Bids method of source selection, are not applicable to Requests for Proposals.

Records Retention. The Contractor and any subcontractors shall maintain the books and records that relate to the Agreement and any cost or pricing data for three (3) years from the date of final payment under the Agreement.

PERMITS, CERTIFICATES, AND LICENSES

The Contractor shall obtain and pay for all permits, certificates, and licenses required and necessary for the performance of work specified herein, shall post all notices required by law, and shall comply with all saws, ordinances, and regulations bearing on the conduct of the work as

specified.

WORK PROGRESS

In the event the Contractor anticipates or encounters any difficulties with regard to targeted completion dates or any requirement of the contract, the Contractor shall, in writing, immediately notify the ICSD Procurement Officer, providing all pertinent details which will be for informational purposes only. Receipt of such notification by the ICSD Procurement Officer shall not constitute any expressed or implied agreement of modification to the contract.

CUTTING AND FITTING

No cutting, notching, drilling, or altering of any kind shall be done to the building by the Contractor without first obtaining permission from the DLNR. Further, this work may require compliance to Chapter 104, Hawaii Revised Statutes, titled Wages and Hours of Employees on Public Works (see provision for Rate of Wages & Wage Certificate below).

BUILDING REPAIRS

The Contractor shall be liable and responsible for any building repairs required by reason of Contractor's work and caused by Contractor's employees. Any required repairs of any kind shall be made at the cost of the Contractor. The Contractor shall take the necessary precautions to protect the building areas adjacent to Contractor's work.

ACCESS AND AUTHORITY

The work shall be available for inspection, at any time, by the department or its representatives. All materials and work not in conformity with the specifications shall be subject to rejection. All rejected work or materials shall be immediately replaced with those called for in the specifications.

The department's representatives shall have the right to order the work of the Contractor or any subcontractor wholly or partially stopped if, in their judgment, the materials furnished or the work being done is not in strict accordance with the Specifications herein, or until any objectionable person or material is removed from the premises, and shall have the right to declare the contract forfeited for nonperformance when not being executed according to the intent and meaning of the contract. Such stoppage, suspension, or forfeiture shall not in any way invalidate any terms of the contract, and no extra compensation shall be allowed the Contractor by reason of such stoppage or suspension. The State shall notify the Contractor in writing of any deviations in the performance of the Contractor's obligations herein, and the Contractor shall be given a twenty-four (24) hour period to cure such deviations to the satisfaction of the State before executing the Contractor's rights hereunder.

CLEAR AWAY

Throughout the progress of work under this contract, the Contractor shall keep the working area free from debris of all types and remove from the premises all rubbish resulting from any work done by the Contractor and leave the work areas in a "broom clean" condition on a daily basis. At the completion of its work, the Contractor shall leave the premises in a clean and finished condition.

LIABILITY INSURANCE

400133

Contractor shall maintain insurance acceptable to the State in full force and effect throughout the term of this contract. The policy or policies of insurance maintained by the Contractor shall provide the following limit(s) and coverage(s):

Coverage	Limits
Commercial General Liability (occurrence form)	$300,000 combined single limit per occurrence for bodily injury and property damage

Each liability insurance policy required by this contract shall contain the following clauses:

1. "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the State of Hawaii, Department of Accounting and General Services, State Procurement Office, P.O. Box 119, Honolulu, Hawaii 96810-0119."

2. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."

3. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

Each insurance policy shall be written by insurance companies licensed to do business in the State or meet Section 431:8-301, Hawaii Revised Statutes, if utilizing an insurance company not licensed by the State of Hawaii.

The Contractor agrees to deposit with the State of Hawaii, on or before the effective date of this contract, certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) therefor on deposit with the State during the entire term of this contract. Upon request by the State, Contractor shall furnish a copy of the policy or policies.

Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default under this contract, entitling the State to exercise any or all of the remedies provided in this contract for a default of the Contractor.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor 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 or willful misconduct connected with this contract.

INVOICING

Contractor shall send an original and three (3) copies of the invoice(s) to:

Department of Land and Natural Resources
Bureau Of Converyances
1151 Punchbowl Street, Rom 120
Honolulu, Hawaii 96813

Attention: Mr. Carl Watanabe
Telephone: (808) 587-0120

400134

RATE OF WAGES & WAGE CERTIFICATE

a. Section 103-55, HRS. Refer to the General Terms and Conditions. Contractor shall complete and submit the attached Wage Certificate by which contractor certifies that the services required will be performed pursuant to Section 103-55, HRS.

At the time of this solicitation, although there are no public employee positions listed in the classification plan of the public sector that are similar to Offeror's network installers, Offeror must sign the Wage Certificate to show compliance with Section No. 2 of the certificate.

Work described in this RFP shall be performed by employees paid in accordance with the requirements of Chapter 104, HRS (see subsection b below).

b. Chapter 104, HRS. The latest minimum wage rates as promulgated by the Department of Labor and Industrial Relations shall be paid to the various classes of Electrician engaged in the performance of this contract on the job site (if Offeror engages the services of an Electrician for this project). All work shall be done in accordance with Attachment A to this RFP. Reference is made to Chapter 104, HRS, Wages and Hours of Employees on Public Works.

400135

ATTACHMENTS

400136

ATTACHMENT A

REQUIREMENTS OF CHAPTER 104, HRS
WAGES AND HOURS OF EMPLOYEES ON PUBLIC WORKS

Pursuant to Chapter 104, HRS, the minimum wages that shall be paid to the various classes of laborers and mechanics engaged in the performance of the contract on the job site shall be in accordance with the attached schedule of wages promulgated by the director of the Department of Labor and Industrial Relations.

The minimum wages shall be periodically increased during the performance of the contract in an amount equal to the increase in the prevailing wages for those kinds of work as periodically determined by the director of labor and industrial relations.

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

The contractor or the contractor's subcontractor shall pay all mechanics and laborers (listed on the attached schedule) employed on the job site, unconditionally and not less often than once a week, and without deduction or rebate on any account, except as allowed by law, the full amounts of their wages including overtime, accrued to not more than five working days prior to the time of payment, at wage rates not less than those stated in the contract and specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics.

The rates of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the job site. A copy of the rates of wages shall be given to each laborer and mechanic employed under the contract by the contractor at the time each laborer and mechanic is employed, provided that where there is a collective bargaining agreement the contractor does not have to provide the contract's employees the wage rate schedules.

The governmental contracting agency may withhold from the contractor so much of the accrued payments as the governmental contracting agency may consider necessary to pay to laborers and mechanics employed by the contractor or any subcontractor on the job site the difference between the wages required by the contract or specifications and the wages received and not refunded by the laborers and mechanics.

A certified copy of all payrolls shall be submitted weekly to the governmental contracting agency. The general contractor shall be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision of the director of labor and industrial relations attached to the contract, and that the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed.

400137

Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the contractor and the subcontractors, if any, during the course of the work and preserved for a period of three years thereafter. The records shall contain the name of each employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. The records shall be made available for inspection by the purchasing agency, director, and any authorized representatives thereof who may also interview employees during working hours on the job.

If the purchasing agency finds that any laborer or mechanic employed on the job site by the contractor or any subcontractor has been or is being paid wages at a rate less than the required rate by the contract or the specifications, or has not received the laborer's or mechanic's full overtime compensation, the purchasing agency may, by written notice to the contractor, terminate the contractor's right, or the right of any subcontractor, to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid and may complete such work or part by contract or otherwise, and the contractor and the contractor's sureties (if any) shall be liable to the purchasing agency for any excess costs occasioned thereby.

400138

WAGE CERTIFICATE

(For Service Contracts)

Subject: IFB/RFP No.: _____

Title of IFB/RFP: _____

_____

_____

(To be completed by offeror)

Pursuant to Section 103-55, Hawaii Revised Statutes (HRS), I hereby certify that if awarded the contract in excess of $25,000, the services to be performed will be performed under the following conditions:

1. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with; and

2. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work, with the exception of professional, managerial, supervisory, and clerical personnel who are not covered by Section 103-55, HRS.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Payment in the final settlement of the contract or the release of bonds, if applicable, or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected; and

I further understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wage required by section 103-55, HRS.

Offeror _____

Signature _____

Title _____

Date _____

400139

GENERAL CONDITIONS

Table of Contents

		Page(s)
1.	Coordination of Services by the STATE	1
2.	Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities	1
3.	Personnel Requirements	2
4.	Nondiscrimination	2
5.	Conflicts of Interest	2
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	5
12.	Suspension of Agreement	5
13.	Termination for Default	6
14.	Termination for Convenience	8
15.	Claims Based on the Agency Procurement Officer's Actions or Omissions	10
16.	Costs and Expenses	11
17.	Payment Procedures; Final Payment; Tax Clearance	12
18.	Federal Funds	12

19. Modifications of Agreement 12

20. Change Order 14

21. Price Adjustment 15

22. Variation in Quantity for Definite Quantity Agreements 16

23. Changes in Cost-Reimbursement Agreement 16

24. Confidentiality of Material 17

25. Publicity 17

26. Ownership Rights and Copyright 17

27. Liens and Warranties 17

28. Audit of Books and Records of the CONTRACTOR 18

29. Cost or Pricing Data 18

30. Audit of Cost or Pricing Data 18

31. Records Retention 18

32. Antitrust Claims 18

33. Minimizing Congestion 18

34. Governing Law 18

35. Compliance with Laws 19

36. Conflict between General Conditions and Procurement Rules 19

37. Entire Agreement 19

38. Severability 19

39. Waiver 19

GENERAL CONDITIONS

1. Coordination of Services by the STATE. The "head of the purchasing agency," (which term includes the designee of the head of the purchasing agency), shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Agreement. The CONTRACTOR shall maintain communications with the head of the purchasing agency at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Agreement. "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 services.

2. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax Responsibilities.

   a. In the performance of services required under this Agreement, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the 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 Agreement. 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 Agreement, 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 Agreement. 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 Agreement, 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 Agreement, 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 Agreement.

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, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Agreement. 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 237-45, 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.

3. Personnel Requirements.

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

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 Agreement, 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 Agreement, 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 Agreement.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement 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, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR's assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Agreement 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 agreement 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 Agreement but waives all rights under this Agreement 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 Agreement 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 Agreement with the CONTRACTOR to effect such a change of name. The amendment to this Agreement changing the CONTRACTOR's name shall specifically indicate that no other terms and conditions of this Agreement are thereby changed.

c. Reports. All assignment agreements and amendments to this Agreement effecting changes of the CONTRACTOR's name or novations hereunder shall be reported to the CPO within thirty days of the date that the assignment agreement 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 agreements with more than one purchasing agency of the State, the assignment agreements 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 therefor, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

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 Agreement, 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 Agreement 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 shall remain 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 Agreement, any amounts owed to the State of Hawaii by the CONTRACTOR under this Agreement or any other agreements 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 126, Procurement Rules, as the same may be amended from time to time.

12. Suspension of Agreement. The STATE reserves the right at any time and for any reason to suspend this Agreement 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 Agreement. 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. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement 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 Agreement.

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 Agreement price, or both, and the Agreement 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 Agreement; 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 Agreement.

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 Agreement.

13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, otherwise fails to timely satisfy the Agreement provisions, or commits any other substantial breach of this Agreement, 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 Agreement or such part of the Agreement 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 Agreement 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 Agreement 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 Agreement. 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 126, Procurement Rules. 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 Agreement 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 Agreement. 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 Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Agreement. 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 such provision.

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 Agreement.

14. Termination for Convenience.

a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Agreement 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 Agreement 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. 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 Agreement.

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 Agreement 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 subchapter 15, chapter 3-122, Procurement Rules, 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 Agreement 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 Agreement 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 Agreement;

(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 Agreement 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 Agreement 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 Agreement. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement.

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 Agreement.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Agreement shall be subject to chapter 3-123 (Cost Principles) of the Procurement Rules 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 DIRECTOR is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for interisland 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 Agreement shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Agreement have been performed by the CONTRACTOR according to the Agreement.

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 dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and

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

d. Final payment. Final payment under this Agreement shall be subject to sections 103-53 and 237-45, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.

18. Federal Funds. If this Agreement is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Agreement 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.

19. Modifications of Agreement.

a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement permitted by this Agreement shall be made by written amendment to this Agreement, 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 Agreement shall be permitted.

c. Agency procurement officer. By a written order, at any time, and without notice to any surety, the Agency procurement officer, subject to mutual agreement of the parties to this Agreement and all appropriate adjustments, may make modifications within the general scope of this Agreement to include any one or more of the following:

(A) Drawings, designs, or specifications;

(B) Method or place of delivery;

(C) Description of services to be performed;

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

(E) Place of performance of the services; or

(F) Other provisions of the Agreement accomplished by mutual action of the parties to the Agreement.

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 Agreement, an adjustment shall be made and this Agreement modified in writing accordingly. Any adjustment in Agreement price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Agreement or as negotiated.

e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written agreement of modification is not made prior to final payment under this Agreement.

f. Claims not barred. In the absence of an Agreement modification, nothing in this clause shall be deemed to restrict the CONTRACTOR's right to pursue a claim under this Agreement or for a breach of contract.

g. CPO approval. If a modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement increases the amount payable to the CONTRACTOR by at least $25,000.00 or ten per cent (10%) of the initial

Agreement price, whichever increase is higher, the prior approval of the CPO is required.

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 Agreement, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.

i. Sole source agreements. Amendments to sole source agreements 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 agreement 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 Agreement 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 Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in the Agreement price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Agreement. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement 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. CPO approval. If a contract change order increases the amount payable to the CONTRACTOR by at least $25,000.00 or ten per cent (10%) of the initial

Agreement price, whichever increase is higher, the prior approval of the CPO is required.

c. Time period for claim. Within thirty (30) 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 file notice of intent to assert a claim for an adjustment. Later notification shall not bar the CONTRACTOR's claim unless the STATE is prejudiced by the delay in notification.

d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Agreement.

e. 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 Agreement or for breach of contract.

21. Price Adjustment.

a. Price adjustment. Any adjustment in the Agreement price pursuant to a provision in this Agreement 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 Agreement 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 Agreement 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 of the Procurement Rules.

b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of subchapter 15, chapter 3-122 of the Procurement Rules.

22. Variation in Quantity for Definite Quantity Agreements. 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 Agreement, 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 CPO makes a written determination that such an increase will either be more economical than awarding another Agreement or that it would not be practical to award another Agreement.

23. Changes in Cost-Reimbursement Agreement. If this Agreement is a cost-reimbursement Agreement, 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 Agreement 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 Agreement, whether or not changed by the order, or otherwise affects any other terms and conditions of this Agreement, 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 Agreement 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 Agreement.

d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Agreement. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Agreement as changed.

e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Agreement and, if this Agreement is incrementally funded, the funds allotted for the performance of this Agreement, shall not be increased or considered to be increased except by specific written modification of the Agreement indicating the new Agreement estimated cost and, if this Agreement is incrementally funded, the new amount allotted to the Agreement.

24. Confidentiality of Material.

a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, 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 head of the purchasing agency, the CPO, the DIRECTOR, the Agency procurement officer, or to the services or goods, or both, provided under this Agreement, 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 Agreement 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 Agreement, 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 Agreement. 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 Agreement.

27. Liens and Warranties. Goods provided under this Agreement shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Agreement 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 purchasing 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 procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for agreements 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. The CONTRACTOR and any subcontractors shall maintain the books and records that relate to the Agreement and any cost or pricing data for three (3) years from the date of final payment under the Agreement.

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 Agreement, except as to overcharges which result from violations commencing after the price is established under this Agreement and which are not passed on to the STATE under an escalation clause.

33. Minimizing Congestion. The CONTRACTOR shall undertake all necessary precautions to minimize any adverse impact the performance under this Agreement may have on traffic congestion.

34. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, 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 Agreement 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 Agreement.

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 Agreement became effective shall control and are hereby incorporated by reference.

37. Entire Agreement. This Agreement sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Agreement. This Agreement 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 Agreement 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 Agreement.

39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Agreement 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 Agreement. 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 Agreement shall not constitute a waiver or relinquishment of the STATE's rights or the CONTRACTOR's obligations under the Procurement Rules or statutes.

The following provision is a general condition for this Agreement:

If this Agreement was entered into between July 20, 1998, and July 1, 2001, and extends beyond June 30, 2001, it is subject to a single review pursuant to the managed process developed pursuant to part III, section 6 of Act 230, 1998 Haw. Sess. Laws, 785, 787. Pursuant to the managed process review, this Agreement may be cancelled, continued, or extended by the State.