

Attachment 2

1. DEFINITION OF TERMS

The words defined in this Section shall have the meanings set forth below whenever they appear in this contract unless:

- A. the context in which they are used clearly requires a different meaning; or
- B. a different definition is prescribed for a particular provision.

ADVERTISEMENT: A public announcement inviting bids for goods, services, and construction to be performed or furnished.

AMENDMENT OF SOLICITATION: A written document issued by the RCUH after issuance of an Invitation for Bid, but before bid opening or prior to submission of bids, to make changes in quantity, specifications, delivery schedule, opening dates, etc., or to correct a defective or ambiguous invitation.

BID: The executed document submitted by a bidder in response to an Invitation for Bid.

BID OPENING: The process by which all bids are publicly posted on the SuperQUOTE website (www.commercepoint.com) under "Sealed Bid Results" at the close of the posting period.

BID SECURITY: The legally sufficient form of security furnished by a bidder as a warranty of good faith that the bidder will enter into a contract with the RCUH and supply the necessary performance and payment bonds should the bidder's offer be accepted and which amount will be forfeited in the event of failure or refusal of the bidder to enter into a contract.

BIDDER: Any individual, partnership, or corporation submitting directly or through a duly authorized representative or agent, a bid in response to an Invitation for Bid to supply the goods specified and/or to perform the services as indicated.

CALENDAR DAY: Any working day as well as Saturdays, Sundays, and State-recognized holidays. If no designation of calendar or working day is made, "day" shall mean calendar day.

CHANGE ORDER: A written order signed by the Procurement Officer, directing the Contractor to make changes which the Changes clause of the contract authorizes the Procurement Officer to order without the consent of the Contractor. The written order shall establish the full payment and final settlement of all claims for direct, indirect and consequential costs, including costs of delays, and establishes any adjustments to contract time related to work covered and affected by one or more field orders, or for change work done or agreed to be done without issuance of a separate field order.

CONTRACT: The written agreement between the Contractor and the RCUH by which the Contractor is bound to furnish all labor, materials, tools, and equipment to perform the specified work within the contract time stipulated, and by which the RCUH is obligated to compensate the Contractor therefor at the prices set forth therein. The contract shall include the Contract Documents and also any and all amendments and change orders which are required to complete the construction in an acceptable manner; and any terms implied by law.

CONTRACT DOCUMENTS: Consists of the Notice to Proceed, the Contract/Award page, the Contract

Performance and Payment Bonds, the Bid Form (includes the Plans, Technical Specifications, Special Provisions, and General Provisions), all written Amendments and Change Orders.

CONTRACT MODIFICATION: Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual agreement of the parties to the contract.

CONTRACT PERFORMANCE AND PAYMENTS BONDS: The approved forms of security furnished by the Contractor and its Surety (Sureties) or by the Contractor alone, to guarantee the completion of the work in accordance with the terms of the contract, and to guarantee full payment of all claims for labor, materials, and supplies used or incorporated in the work.

CONTRACT TIME: The time stated in the IFB and the contract, giving the definite number of consecutive calendar days or successive work days in which to perform and complete all work covered by the contract. The contract time shall start on the specified date in the "Notice to Proceed."

CONTRACTOR: Any individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of the work under the terms of the contract with the RCUH, and acting directly or through its agents, employees, or subcontractors.

DEFAULT: Failure by a party to a contract without legal justification to comply with contractual requirements.

DISPUTE: A claim of the Contractor for the payment of money, adjustment, or interpretation of contract terms, or other relief, arising under or related to the contract.

FIELD ORDER: A written order issued by the Procurement Officer or its authorized representative to the Contractor requiring the contract work to be performed in accordance with a change or changes in the work. A field order may (1) establish a price adjustment and/or time adjustment in an amount the RCUH believes is reasonable for the change; or (2) may declare that the RCUH does not intend to adjust contract time or price for the work; or (3) may request the Contractor to submit a proposal for an adjustment to the contract time and/or price by a certain date.

F.O.B. POINT: The F.O.B. (free on board) point—origin or destination—of an order determines the point at which title to goods passes from the vendor to the RCUH.

FORCE ACCOUNT: Term used when Work is ordered to be done without prior agreements as to lump sum or unit price cost thereof and is to be billed for at cost of labor, materials and equipment, insurance(s), taxes, etc., plus an agreed percentage for overhead and profit.

GENERAL PROVISIONS: The terms and conditions applicable to all bidders for the solicitation in which they are contained.

GOODS: All property, including but not limited to equipment, equipment leases, materials and supplies, including computer systems and software, excluding land or a permanent interest in land, leases of real property, and office rentals.

HAZARDOUS MATERIALS: Any and all radioactive materials, asbestos, polychlorinated biphenyls, petroleum, crude oil, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, toxic substances or materials cited in Hazardous Material Laws.

HOLIDAYS: The days of each year which are set apart and established as State holidays pursuant to Chapter 8, Hawaii Revised Statutes.

HRS: Hawaii Revised Statutes.

INVITATION FOR BID (IFB): A written solicitation, including all documents, whether attached or incorporated by reference, to prospective bidders requesting bids on RCUH requirements.

LIQUIDATED DAMAGES: A specified sum of money in the contract to be paid by the Contractor to RCUH in the event the Contractor fails to perform as agreed.

MAY: Means permissive.

OFFER: A bid submitted in response to an Invitation for Bid.

OPTION: A unilateral right provided for in the contract by which the RCUH may elect to purchase additional quantities of the supplies or services called for by the contract, or to extend the term of the contract, or to terminate the contract, etc.

ORDER OF PRECEDENCE: In the event of an inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order:

- A. Bid Form;
- B. Plans and Technical Specifications or Scope of Work;
- C. Special Provisions; and
- D. General Provisions.

PAYMENT BOND: The legally sufficient form of security which guarantees payment and protection for those furnishing labor and materials to the Contractor or its subcontractors for the work bonded.

PERFORMANCE BOND: The legally sufficient form of security which indemnifies the RCUH against loss resulting from the failure of the Contractor to perform a contract in accordance with the specifications.

PLANS: Plans, as used herein, means the contract drawings approved by the RCUH which show the location, character, dimensions, and details of the work to be done and which shall be a part of the contract.

POSTING: A public announcement inviting bids for construction services to be furnished or performed.

PROCUREMENT/CONTRACT OFFICER: The RCUH Executive Director, or any person who has been officially delegated authority to enter into and administer contracts and make written determinations with respect to the contract.

PROCUREMENT PROTEST: A complaint brought by an aggrieved bidder or Contractor in connection with the solicitation or award of a procurement contract.

PURCHASE ORDER: A purchasing document used to formalize a transaction with a vendor containing statements as to the quantity, description, and price of the goods or services ordered; agreed terms as to payment, discounts, date of performance, transportation terms, and all other information pertinent to the purchase and its execution by the vendor. Written acceptance of a purchase order or shipment of all or

any portion of the goods or services covered by a purchase order by a vendor constitutes a contract.

RCUH: Research Corporation of the University of Hawaii.

RESPONSIBLE BIDDER: A bidder who meets minimum or special standards as may be prescribed; has adequate financial resources, or the ability to obtain such resources as required for contract performance; is able to comply with required delivery or performance schedule, taking into consideration all existing business commitments; has a satisfactory record of performance; has a satisfactory record of integrity and business ethics; has the necessary organization, experience, licensing, accounting and operational controls, and technical skills or the ability to obtain them (including as appropriate, such elements as production control procedures, property control systems, and quality assurance measures applicable to materials to be produced or services to be performed by the prospective Contractor and subcontractors); has the necessary production, construction, and technical equipment, and facilities, or the ability to obtain them; and is otherwise qualified and eligible to receive an award under applicable laws. When the situation warrants, special standards of responsibility applicable to a particular procurement may be developed to ensure the existence of unusual expertise or other factors necessary for adequate contract performance.

RESPONSIVE BIDDER: A bidder whose bid conforms in all material respects to the Invitation for Bid as determined by the RCUH.

SHALL: Means mandatory.

SOLICITATION: An Invitation for Bid or any other document issued by the RCUH for the purpose of soliciting bids to perform an RCUH contract.

SPECIAL PROVISIONS: The terms and conditions pertaining to the specific solicitation in which they are contained; including but not limited to terms and conditions describing the preparation of bids, evaluation of bids, determination of award, plus those applicable to performance by the Contractor.

SPECIFICATIONS: Any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably.

STATE: State of Hawaii.

SUBCONTRACTOR: An individual, partnership, firm, corporation, joint venture, or other legal entity which enters into an agreement with the prime contractor to perform a portion of the work for the Contractor.

SUPPLEMENTAL AGREEMENT: A written contract modification that is signed by both the Contractor and the Procurement Officer.

SURETY: The individual, partnership, firm, or corporation other than the Contractor, which executes a bond with and for the Contractor to ensure the Contractor's acceptable performance of the contract.

TECHNICAL REPRESENTATIVE OF THE PROCUREMENT OFFICER: The person identified and designated by the Procurement Officer to address only technical matters within the Specifications, and is without contractual authority.

UNIVERSITY: University of Hawaii.

WORKING DAY: A calendar day, exclusive of Saturdays, Sundays and State-recognized legal holidays.

2. DISQUALIFICATION OF BIDDERS

Any one or more of the following causes shall be considered as sufficient for the disqualification of a bidder:

- A. Evidence of collusion among bidders/contractors.
- B. Lack of responsibility (see definition of Responsible Bidder), including, but not limited, to arrearages on existing contracts in litigation with the State of Hawaii, or defaults on a previous contract.
- C. Being in arrears on existing contracts with the RCUH, University of Hawaii, and the State of Hawaii, or having defaulted on a previous contract with the RCUH, University of Hawaii or the State of Hawaii.
- D. Submission of bids after the deadline. (See definition of Responsive Bidder.)
- E. Failure to follow directions and instructions in the invitation.
- F. Placing conditions, limitations, or restrictions on the bid.
- G. Failure to pay, or satisfactorily settle, all bills overdue for labor and materials of former contracts in force at the time of issuance of quotation forms.
- H. Debarment or suspension consistent with applicable Hawaii or Federal law.

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

By submission of this bid, each bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that in connection with this procurement:

- A. The prices in this bid have been arrived at independently, without any consultation, communication, or agreement, with any other contractor or competitor for the purpose of restricting competition, relating to (i) such prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices bid.
- B. Unless otherwise required by law, the prices submitted in this bid have not been knowingly disclosed by the bidder to any other Contractor or competitor and will not knowingly be disclosed by the bidder to any other Contractor or competitor prior to bid opening.

4. CONTENTS OF BID FORMS

Prospective bidders will be furnished bid forms giving the location, description, and the performance time of the work contemplated.

5. EXAMINATION OF INVITATION FOR BID AND SPECIFICATIONS

The bidder shall examine carefully the IFB and specifications. By signing the bid form, the bidder certifies that he/she has investigated and is satisfied as to the character, quality, and quantities of work to be performed, and material and labor to be furnished, and as to the requirements of these specifications.

6. PREPARATION OF BIDS

The bidder's offer shall be submitted on the bid form furnished by the RCUH. All information required in the bid shall be completed in accordance with the instructions thereon. The bidder shall state the prices (written in INK or TYPED, both in words and numerals) for doing the work contemplated. The bidder shall sign the bid in the spaces provided. If the bid is made by an individual, his/her name and post office address must be shown. If made by a corporation, the bid must show the name of the state under the

laws of which the corporation was chartered and the names, titles, and business addresses of the president, vice-president, and secretary, as well as evidence showing the authority of the bidder to enter on behalf of said corporation into a contract with the RCUH. If made by a joint venture, the name and post office address of each member of the individual firm, partnership, or corporation comprising the joint venture must be shown with other pertinent information required of firms, partnerships or corporations, as the case may be. The bid must be signed by all parties to the joint-venture or evidence in the form of a Joint-Venture Agreement must be submitted showing the authority of the joint-venture's representative to enter on behalf of the said joint-venture into contract with the RCUH.

Bid prices shall be in U.S. dollars.

When bids are signed by an agent, other than the officer or officers of a corporation authorized to sign the bid on its behalf, or a member of a co-partnership, a power of attorney must be on file with the RCUH prior to opening of bids, or it shall be submitted with the bid; otherwise, the bid will be rejected as irregular and unauthorized.

Bids submitted by mail, facsimile (FAX), and/or email are not acceptable. All bids must be submitted via the SuperQUOTE website (www.commercepoint.com).

7. **BID PREPARATION COSTS**

In no event shall the RCUH be liable for costs incurred in the preparation of bids.

8. **BID SECURITY**

No bid totaling \$50,000 or more will be considered unless accompanied by one of the following:

- A. Surety bid bond underwritten by a company licensed to issue bonds in this State (see attached Standard Form); or
- B. Legal Tender; or
- C. Certificate of Deposit; share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the Research Corporation of the University of Hawaii (RCUH) by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
 - (1) These instruments may be utilized only to a maximum of \$100,000.
 - (2) If the required security or bond amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be accepted.

Unless otherwise stated, the bid security shall be in an amount equal to at least FIVE PERCENT (5%) of the bid amount.

If the bidder is a corporation, evidence in the form of a corporate resolution, authorizing the corporate representative to execute the bond must be submitted with the proposal. If the bidder is a partnership, all partners must sign the bond or evidence in the form of a partnership agreement must be submitted showing the authority of the partner. If the bidder is a joint venture, all parties to the joint venture must sign the bond or evidence in the form of a joint-venture agreement must be submitted showing the authority of the bidder to sign the bond on behalf of the joint-venture.

In the case where the award will be made on a group or item basis, the amount of the bid security shall be

based on the total bid for all groups or items submitted.

Bidders are cautioned that surety bid bonds which place a limit in value to the difference between the bid amount and the next acceptable bid, such value not to exceed the purported amount of the bond, are not acceptable. Also, surety bid bonds which place a time limit on the right of the RCUH to make claim other than allowed by statutes or these Special Provisions and General Provisions are not acceptable. Bidders are hereby notified that a surety bid bond containing such limitation(s) is not acceptable and a bidder's bid accompanied by such surety bid bond will be automatically rejected.

9. DELIVERY OF BIDS

Each bid must be submitted via the SuperQUOTE system (www.commercepoint.com). Bids received after the time and date fixed in the Notice to Bidders will not be considered.

10. WITHDRAWAL OF BIDS

Any bid may be withdrawn at any time prior to, but not after, the time fixed in the public notice for the opening of bids, provided the withdrawal is processed and accepted by the SuperQUOTE system (www.commercepoint.com). The withdrawal of a bid shall not prejudice the right of a bidder to file a new bid prior to bid opening.

11. TAXES

The bid prices shall include all applicable taxes other than Federal Excise Tax for which exemptions may be claimed. In the State of Hawaii, applicable taxes include:

- A. the general excise tax (Chapter 237, Hawaii Revised Statutes) which is a tax on gross income derived from business activity in the State and is imposed on the business receiving the income for the privilege of doing business in Hawaii; and
- B. a 1/2 of 1% use tax (Chapter 238, Hawaii Revised Statutes) on the landed value of tangible property imported into Hawaii. The landed value is the cost plus shipping, handling, etc.; that is, the value of the property at the time it arrives in Hawaii.

If final acceptance of goods occurs in Hawaii or services are performed in Hawaii under this IFB, the transaction shall be taxable in accordance with Chapter 237, Hawaii Revised Statutes, and the bidder receiving an award for these goods or services will be required to pay the State of Hawaii General Excise Tax. In addition, in accordance with Chapter 238, Hawaii Revised Statutes, if tangible property is imported into Hawaii for resale at retail or for rent or lease, the bidder will be subject to the use tax of 1/2 of 1% on the landed value of the property.

For general overview of Hawaii State taxes, Publication-1, Information on Hawaii State Taxes Administered by the Department of Taxation, can be downloaded from the State of Hawaii Department of Taxation website: www.state.hi.us/tax/pubs/06pub1.pdf.

Questions pertaining to taxes should be directed to the State of Hawaii Department of Taxation, First Taxation District, P. O. Box 1425, Honolulu, Hawaii 96806-1425, telephone (808) 587-4242.

Out-of-state vendors are encouraged to contact the Department of Taxation, telephone 1-800-222-3229 regarding their specific circumstances.

12. TAX EQUALIZATION

If the Contractor is an out-of-state vendor not doing business in the State of Hawaii or is a person exempted from paying the applicable general excise tax, the Contractor's total price quoted shall be increased by the applicable retail rate of general excise tax, and/or the applicable use tax, for the purpose of determining the lowest quoted price. Any contract awarded, after taking into consideration the above increase, shall be in the amount of the quote offered and shall not include the amount of the said increase.

Each Contractor possessing a Hawaii General Excise Tax License shall enter the number in the space provided in the bid form, thereby attesting that business is being conducted in the State and that such taxes will be paid on all sales made to the RCUH. Any bidder who does not furnish a valid Hawaii General Excise Tax License number in the space provided shall be considered as not doing business in the State and its quote will be evaluated accordingly.

13. TAX CLEARANCE FOR FINAL PAYMENT

In accordance with Section 103-53, HRS, final payment for the settlement of the contract will not be made by the RCUH until the Contractor has submitted to the RCUH a valid tax clearance from the Hawaii Department of Taxation and the U.S. Internal Revenue Service. A Certificate of Vendor Compliance that reflects a "Compliant" status from Hawaii Compliance Express (HCE), <https://vendors.ehawaii.gov/hce/splash/faq.html> is acceptable in satisfying the tax clearance requirement.

Notwithstanding Sections 40-57 and 40-58, HRS, if a Contractor fails to provide the tax clearance within SIX (6) months of the notice of final settlement or completion date of the contract, the RCUH shall assign the final settlement payment in an amount not to exceed the tax liability to the State of Hawaii Department of Taxation or Internal Revenue Service, provided that the State of Hawaii Department of Taxation may first offset its tax debt against the sum owed to the Contractor. This shall apply to all contracts whether with Hawaii vendors, out-of-state vendors, or non-profit organizations.

The foregoing shall not apply to the Contractor if the State of Hawaii Department of Taxation certifies that the Contractor is in good standing under a plan in which delinquent taxes are being paid to the State of Hawaii Department of Taxation (and the Internal Revenue Service, if applicable) in installments.

Any questions pertaining to tax clearances may be addressed to the following:

- A. Internal Revenue Service, Compliance Division – LTC
300 Ala Moana Boulevard, #50089
Honolulu, Hawaii 96850-4922
Telephone No.: (808) 541-1160
- B. Department of Taxation
State of Hawaii
Oahu District Office
P. O. Box 259
Honolulu, Hawaii 96808-0259
Telephone No.: (808) 587-4242 Toll-Free: 1-800-222-3229

14. BIDS TO BE HELD VALID

The bid prices quoted therein shall be held valid for a period of at least NINETY (90) consecutive calendar days from the date of the bid opening.

15. PUBLIC OPENING OF BIDS

All bidders submitting offers on the SuperQUOTE website (www.commercepoint.com) under Sealed Bid will have their names and bid amounts publicly posted under "Sealed Bid Results" at the close of the posting period.

16. EVALUATION OF BIDS

In comparison of bids where extension or other errors are detected, words written in the bid shall govern over figures and unit prices shall govern over totals when needed to clarify to determine bid prices, i.e., if the product of the Unit Price bid multiplied by the number of units does not equal the total amount indicated by a Contractor of any item, it will be assumed that the error was made in computing the total amount and for the purpose of computing the lowest bidder, the Unit Price alone will be considered as representing the Contractor's intention and the total amount bid on such item shall be considered to be the amount arrived at by multiplying the Unit Price by the number of units.

17. TIE BIDS

Low tie bids shall be decided by the drawing of cards. The Contractor drawing the highest card shall be awarded the contract. "Low tie bids" are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the IFB.

18. REJECTION OF BIDS

Bids may be rejected if they show any alterations of form, additions not called for, uninitialed erasures or corrections. Conditional and incomplete bids may also be rejected. The RCUH reserves the right to reject any and/or all bids and to waive any defects or authorize any substitutions, when in its opinion, such rejection, waiver, or substitutions shall be in the best interest of the RCUH.

19. AVAILABILITY OF FUNDS

An award shall be contingent upon the availability of funds, and any contract awarded shall be subject to cancellation by the RCUH at any time, if funds are unavailable.

20. CANCELLATION OF INVITATION

The RCUH reserves the right to cancel any IFB before the contract is awarded on behalf of the RCUH.

21. REQUIREMENT OF PERFORMANCE AND PAYMENT BONDS

Performance and Payment Bonds shall be required for contracts of \$50,000 or more. At the time of the execution of the contract, the successful bidder shall file good and sufficient performance and payment bonds on the forms furnished by the RCUH, each in an amount equal to ONE HUNDRED PERCENT (100%) of the amount of the contract price unless otherwise stated. Acceptable performance and payment bonds shall be limited to the following:

- A. Surety bid bond underwritten by a company licensed to issue Bonds in this State (see attached Standard Form); or
- B. Legal Tender; or
- C. Certificate of Deposit; share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the RCUH by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

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

If the required security or bond amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be accepted.

22. EXECUTION OF CONTRACT

The contract shall be presented to the successful bidder for execution and shall be returned to the RCUH with compliant insurance certificates, satisfactory performance and payment bonds within TEN (10) days not including Saturdays, Sundays, and State recognized legal holidays or within such further time as the RCUH may allow.

The contract shall not be binding on the RCUH until such time as it is fully executed by the RCUH.

23. FAILURE TO EXECUTE CONTRACT

If the bidder to whom a contract is presented shall fail to properly execute the contract and furnish compliant insurance certificates, and bonds within TEN (10) days (not including Saturdays, Sundays, and State recognized legal holidays) after such award or within such further time as the Contracting Officer may allow, the RCUH may thereupon award the contract to the next lowest responsive and responsible bidder who submitted the new lowest bid, or may call for bids, whichever method it may deem to be in the best interest of the RCUH.

24. NOTICE TO PROCEED

A written notice from the RCUH Procurement and Disbursing Manager shall be issued, advising the Contractor of the date on which work under the contract shall proceed.

25. ACCEPTANCE OF GOODS AND SERVICES

The goods and services furnished by the Contractor shall be exactly as specified, free from all defects in design, workmanship and materials and shall be inspected by the RCUH upon receipt of goods or completion of services. If any goods and/or services supplied are found to be defective or not as specified, the Contractor shall correct the defects without charge. If the Contractor is unable or refuses to correct such defects, the RCUH may terminate the contract in whole or in part. Contractor shall bear all risks as to rejected goods and/or services, and in addition to any costs for which the Contractor may become liable to the RCUH for all payments made to the Contractor. Notwithstanding final acceptance and payment, the Contractor shall be liable for latent defects, fraud or misrepresentation.

26. CANCELLATION OF CONTRACT

In the event the successful bidder fails to meet its commitments under this contract, the RCUH, in addition to any other remedy at its disposal, shall have the right to cancel this contract and may use the Contractor's performance bond to complete the contract requirements.

27. EXCUSABLE DELAY

The Contractor shall not be liable for delays arising out of the causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, Acts of God, public enemy, government in its sovereign or contractual capacity, fires, floods, strikes, freight embargoes and unusually severe weather; but, in every case, the failure to deliver or perform must be beyond the control and without the fault or negligence of the Contractor; if the failure to deliver or perform is caused by

the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the Subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for failure to perform within the time agreed, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery or performance schedule. If such delay should occur, the Contractor shall notify the RCUH, in writing, setting forth the reasons for the delay at the earliest possible date. The RCUH Procurement and Disbursing Manager shall ascertain the facts and extent of such failure, and if he/she determines that any failure to perform was occasioned by any one or more of the said causes, a Supplemental Agreement shall be issued if extension of completion time is allowed.

28. INDEMNIFICATION: RESPONSIBILITY FOR DAMAGE CLAIM

Contractor shall indemnify, defend, and hold harmless RCUH, the University of Hawaii, and the State of Hawaii, and their officers, employees, agents, or any person acting on behalf from and against: (1) any claim or demand for loss, liability, or damage, including, but not limited to, claims for property damage, personal injury or death, by whomsoever brought, arising from any accident or incident connected with the performance of this contract except liability arising out of the sole negligence of RCUH or its employees; (2) all claims, suits, and damages by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms, covenants, and conditions herein or the rules, regulations, ordinances, and laws of the federal, state, municipal, or county governments. Furthermore, Contractor shall reimburse RCUH, the University of Hawaii, and State of Hawaii, and their officers, employees, agents, or any person acting on their behalf for all attorney's fees, costs, and expenses incurred in connection with the defense of any such claims.

Contractor shall pay all just claims for materials, equipment, supplies, tools, labor, and other just claims against the Contractor or any subcontractor in connection with this contract. The RCUH may, but is not obligated to, withhold or retain as much of the monies due or to become due the Contractor under this contract considered necessary by the RCUH to cover such just claims until satisfactory proof of payment or the establishment of a payment plan is presented.

29. FORCE ACCOUNT WORK

- A. Force Account Method – When, for the convenience of the RCUH, payment is to be made by the Force Account method, all work performed or labor and materials and equipment furnished shall be paid for as described below. Payment by the Force Account method will not alter any rights, duties, and obligations under the contract.
- B. Labor – For all hourly workers, the Contractor will receive the rate of wage including fringe benefits when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work, which shall be agreed upon in writing before beginning work for each and every hour that said labor is actually engaged in said work
 - 1. All markups for overhead and profit shall be added subject to limitations established in subparagraph 45.C Allowances for Overhead and Profit of the SPECIAL PROVISIONS.
 - 2. No allowance for overtime compensation will be given without the written approval of the RCUH prior to performance of such work
- C. Insurance and Taxes – The Contractor and subcontractor(s) will also receive the actual additional costs paid for property damage, liability, workers compensation insurance premiums, State unemployment contributions, Federal unemployment taxes, social security and Medicare taxes to

which a markup of up to SIX PERCENT (6%) may be added.

- D. Materials – For materials accepted by the Engineer and used, the Contractor and subcontractor(s) shall receive the actual cost of such materials delivered and incorporated into work, plus a markup allowed under subparagraph 45.C Allowances for Overhead and Profit of the SPECIAL PROVISIONS.
- E. Subcontractors – Subcontractor costs shall be the actual costs of the subcontractor plus a markup allowed under subparagraph 45.C Allowances for Overhead and Profit of the SPECIAL PROVISIONS.
- F. Equipment
 - 1. For machinery or special equipment (other than small tools as herein defined in clause 30.F.8 owned or leased by the Contractor or a related entity, the use of which has been authorized by the RCUH:
 - a. The Contractor will be paid at the per hour rental rates based on the monthly rate established for said machinery or equipment in the then-current edition of the Rental Rate Blue Book for Construction Equipment including the estimated operating cost per hour and regional correction provided therein.
 - b. If no rate is listed for a particular kind, type or size of machinery or equipment, then the monthly, hourly rates shall be as agreed upon in writing by the Contractor and the RCUH prior to the use of said machinery or equipment. If there is no agreement, the RCUH will set a rate. The Contractor may contest the rate pursuant to GENERAL PROVISION 37, DISPUTES.
 - c. Rental rates which are higher than those specified in the aforesaid Rental Rate Blue Book publication may be allowed where such higher rates can be justified by job conditions such as work in water and work on lava, etc. Request for such higher rates shall be submitted in writing to the RCUH for approval prior to the use of the machinery or equipment in question.
 - 2. For machinery or special equipment (other than small tools as herein defined in clause 30.F.8 rented by the Contractor or a related entity specifically for the Force Account work, the use of which has been authorized by the RCUH. The Contractor will be paid the actual rental cost for the machinery or equipment, including mobilization and demobilization costs. A receipt from the equipment supplier shall be submitted to the RCUH.
 - 3. For machinery or special equipment (other than small tools as herein defined in clause 30.F.8 rented by the Contractor or a related entity for use in the project, but which will also be used for the Force Account work, the use of which has been authorized by the RCUH. The Contractor will be paid the actual rental cost for the machinery or equipment. No additional mobilization and demobilization costs will be paid. A receipt from the equipment supplier shall be submitted to the RCUH.
 - 4. The rental rate for trucks not owned by the Contractor shall be those as established under the Hawaii State Public Utilities Commission, which will be paid for as an equipment item pursuant to Paragraph 30.F. Rental rates for Contractor-owned trucks not listed in the Rental Rate Blue Book shall be agreed upon in writing by the Contractor and RCUH prior to the use of said trucks. If there is no agreement, the RCUH shall set the rate. The Contractor may contest the rate pursuant to GENERAL PROVISION 37, DISPUTES.

5. The rental period shall begin at the time equipment reaches the site of work, shall include each day that the machinery or equipment is at the site of the work and shall terminate at the end of the day on which the equipment is no longer needed. In the event the equipment must standby due to work being delayed or halted by reason of design, traffic, or other related problems uncontrollable by the Contractor, excluding Saturdays, Sundays and Legal Holidays, unless the equipment is used to perform work on such
 - a. The rental time to be paid will be for the time actually used. Any hours or operation in excess of EIGHT (8) hours in any one day must be approved by the RCUH prior to the performance of such work.
 - b. Rental time will not be allowed or credited for any day on which machinery or equipment is inoperative due to its breakdown. On such days, the Contractor will be paid only for the actual hours, if any, that the machinery or equipment was in operation.
 - c. In the event the Force Account work is completed in less than EIGHT (8) hours, equipment rental shall nevertheless be paid for a minimum EIGHT (8) hours.
 - d. For the purpose of determining the rental period the continuous and consecutive days shall be the normal EIGHT (8)-hour shift work day, Monday through Friday excluding legal holidays. Any work day to be paid less than EIGHT (8) hours shall not be considered as continuous, except for equipment removed from rental for fuel and lubrication.
 - e. No additional premium beyond the normal rates used will be paid for equipment over EIGHT (8) hours per day or FORTY (40) hours per week.
6. All rental rates for machinery and equipment shall include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs, maintenance, tire wear, depreciation, storage, and all other incidentals.
7. All machinery and equipment shall be in good working condition and suitable for the purpose for which the machinery and equipment is to be used.
8. Individual pieces of equipment or tools having a replacement value of ONE THOUSAND DOLLARS (\$1,000) or less, whether or not consumed by use, shall be considered to be small tools and included in the allowed markup for overhead and profit and no separate payment will be made therefor.
9. The total of all Force Account rental charges accrued over the duration of the contract for a specific item of equipment shall not exceed the replacement cost of that equipment.
 - a. The Contractor shall provide the cost of replacement to the RCUH prior to using the equipment. If the RCUH does not agree with the replacement cost, the RCUH shall set the replacement cost. The Contractor may contest the replacement cost pursuant to GENERAL PROVISION 37, DISPUTES.
10. Should the item of equipment be rented from an unrelated entity, the rental cost will be treated as an equipment cost under Paragraph 30.F.

11. Transportation and/or Mobilization: The following provisions shall govern in determining the compensation to be paid to the Contractor for use of equipment or machinery on the Force Account method:
- a. The location from which the equipment is to be moved or transported shall be approved by the RCUH.
 - b. Where the equipment must be transported to the site of the force account work, the RCUH will pay the reasonable cost of mobilizing and transporting the equipment, including its loading and unloading, from its original location to the site of force account work. Upon completion of the work, the RCUH will pay the reasonable cost of mobilizing and transporting the equipment back to its original location or to another location, whichever cost is less.
 - c. The cost of transporting the equipment shall not exceed the rates established by the Hawaii State Public Utilities Commission. If such rates are nonexistent, then the rates will be determined by the RCUH based upon the prevailing rates charged by established haulers within the locale.
 - d. Where the equipment is self-propelled, the RCUH will pay the cost of moving the equipment by its own power from its original location to the site of the force account work. Upon completion of the work the RCUH will pay the reasonable cost of moving of the Equipment back to its original or another location, whichever cost is less.
 - e. At the discretion of the RCUH, when the Contractor desires to use such equipment for other than Force Account work, the costs of mobilization and transportation shall be prorated between the Force Account and non-Force Account work.
 - f. Pickup trucks, vans, storage trailers, unless specifically rented for the Force Account work, shall be considered incidental to the Force Account work and the costs therefore are included in the markup allowed under SPECIAL PROVISION 45.C, Allowances for Overhead and Profit.
- G. State Excise (Gross Income) Tax and Bond – A sum equal to the current percentage rate for the State excise (Gross Income) tax on the total sum determined in Paragraphs 30.B, 30.C, 30.D and 30.E above, and the bond premium shall be added as compensation to the Contractor. The actual bond premium not to exceed ONE PERCENT (1%) shall be added to items covered by Paragraphs 30.B, 30.C, 30.D and 30.E when applicable.
1. The compensation as determined in Paragraphs 30.B, 30.C, 3, 30.D, 30.E and 30.F above shall be deemed to be payment in full for work paid on a force account basis.
- H. Records – The Contractor and the RCUH shall compare records of the labor, materials, and equipment rentals paid by the Force Account basis at the end of each day. These daily records, if signed by both parties, shall thereafter be the basis for the quantities to be paid for by the Force Account method. The Contractor shall not be entitled to payment for Force Account records not signed by the RCUH.
- I. Statements – No payment will be made for work on a Force Account basis until the Contractor has

submitted to the RCUH, duplicate itemized statements of the cost of such Force Account work detailed as follows:

1. Laborers – Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman and also the amount of fringe benefits payable if any.
2. Equipment – Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
3. Materials
 - a. Quantities of materials, prices and extensions
 - b. Costs of transporting materials, if such cost is not reflected in the prices of the materials.
 - c. Statements shall be accompanied and supported by receipted invoices for all materials used and transportation charges. However, if materials used on the Force Account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractors shall submit an affidavit certifying that such materials were taken from stock and that the amount claimed represents the actual cost to the Contractor.
4. Insurance – Cost of property damage, liability and workers compensation insurance premiums, unemployment insurance contributions, and social security tax.

30. SUPPLEMENTAL AGREEMENT

This contract may be modified by a Supplemental Agreement executed by the Contractor and the Procurement Officer.

31. UTILIZATION OF SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

- A. It is the policy of the RCUH that small business and small disadvantaged business concerns shall have the maximum practicable opportunity to participate in the performance of contracts let by the RCUH.

As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to FAR 52.219 Small Business Program Representations and relevant regulations promulgated pursuant thereto.

The term "small disadvantaged business concern" shall mean a small business of which at least 51% is unconditionally and directly owned and controlled by one or more socially disadvantaged and economically disadvantaged persons who are U.S. citizens. See [13 CFR 124.105](#) for exceptions.

The Contractor shall presume that socially disadvantaged individuals include Black Americans; Hispanic Americans; Native Americans (Alaska Natives, Native Hawaiians, or enrolled members of a Federally or State recognized Indian Tribe); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa,

Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal); and members of other groups designated from time to time by SBA. See 13 CFR 124.103.

Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged. See 13 CFR 124.104.

- B. The RCUH, acting in good faith, may rely on written representations by the Contractors and Subcontractors regarding their status as either a small business concern or a small disadvantaged business concern.

32. UTILIZATION OF WOMEN-OWNED SMALL BUSINESS CONCERN

- A. It is the policy of the RCUH that women-owned small business concerns shall have the maximum practicable opportunity to participate in the performance of contracts awarded by the RCUH.
- B. The Contractor agrees to use its best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract. The term "women-owned small business concern" shall mean a small business of which at least 51% is unconditionally and directly owned and controlled by one or more women who are U.S. citizens
- C. As used in this contract, the term "small business concern" shall mean a small business that is independently owned and operated, is organized for profit, is not dominant in its field, meets the SBA size standard eligibility, is registered and has its status represented in the U.S. Government's System for Award Management (SAM) database. See <http://www.sba.gov/content/what-sbas-definition-small-business-concern>
- D. The RCUH, acting in good faith, may rely on written representations by the Contractors and Subcontractors regarding their status as women-owned businesses.

33. EQUAL OPPORTUNITY

In compliance with Executive Order 11246 and the applicable rules, regulations, and orders of the Secretary of Labor, the Contractor agrees that, during the performance of this contract, it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

34. AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (Applicable to Contracts for \$10,000 or more)

The Contractor agrees to comply with the rules, regulations, or relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, if such rules, regulations, or relevant orders apply to this procurement. The Contractor agrees to indemnify and hold the RCUH/University harmless from any claims or demands with regard to the Contractor's compliance.

35. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Rehabilitation Act of 1973 (29 U.S.C. 793), as amended, if such rules, regulations, and relevant orders apply to this procurement. The Contractor agrees to indemnify and hold the RCUH/University harmless from any claims or demands with regard to the Contractor's compliance.

36. DISPUTES

All disputes arising under or related to this contract shall be resolved in accordance with this clause.

- A. All controversies between the RCUH and the Contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the Procurement Officer in writing, within NINETY (90) calendar days after a written request by the Contractor for a final decision concerning the controversy; provided that if the Procurement Officer does not issue a written decision or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if an adverse decision had been received.
- B. The Procurement Officer shall immediately furnish a copy of the decision to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
- C. Any such decision shall be final and conclusive, unless fraudulent, or the Contractor brings an action seeking judicial review of the decision in the circuit court of the State within the SIX (6) months from the date of receipt of the decision.
- D. The Contractor shall comply with any decision of the Procurement Officer and proceed diligently with performance of this contract pending final resolution by the circuit court of this State of any controversy arising under, or by virtue of, this contract, except where that has been a material breach of contract by the RCUH provided that in any event the Contractor shall proceed diligently with the performance of the contract where the Procurement Officer has made a written determination that continuation of work under the contract is essential to the public health and safety.

37. GOVERNING LAW

The contract and any litigation arising therefrom shall be governed and determined by the laws of the State of Hawaii.

38. COMPLIANCE WITH LAWS, ORDINANCES, AND REGULATIONS

The Contractor shall comply with all federal, state, and local laws or ordinances of any kind pertaining, but not limited, to permits, licensing, safety, work and labor, employees, wages and payrolls, withholding and other taxes, and materials, and shall indemnify and save the RCUH/University harmless against any claim arising from the violation of any such laws or ordinances.

39. SERVICE OF PROCESS

The Contractor may designate a representative within the State of Hawaii duly authorized to accept service of process on its behalf. In the event that the Contractor fails to so designate such a representative, or such representative is unavailable, the Contractor consents that service of any notice or process issued against it may be served upon it by filing same with the Director of Commerce and Consumer Affairs, State of Hawaii, or in his absence with the Deputy Director. The RCUH shall forward by certified mail to the Contractor a copy of any such notice or process served on the Director of Commerce and Consumer Affairs. A copy of such notice must also be sent to the Contractor.

40. NO-THIRD PARTY BENEFICIARY STATUS

Nothing contained in the Contract Documents or otherwise shall create any contractual relationship between the RCUH and any subcontractor or sub-subcontractor.

41. RECORDS, ACCOUNTS AND DOCUMENTS

All records, accounts and documents of the Contractor and his subcontractors, if any, in connection with the work performed under the terms of the contract, shall be retained and preserved for a period of not less than THREE (3) years from the date of final acceptance of the project by the RCUH and shall be available for inspection and auditing by representative and agents of the RCUH, the University of Hawaii, and other participating State agency or agencies, if any, at the respective offices of the Contractor and his subcontractors. During such inspection and auditing of records, accounts and documents, the Contractor shall assist in every way possible without cost to the RCUH.

42. CHANGE ORDER PRICING GUIDELINES

For each change, the Contractor, Subcontractor or material supplier shall furnish a detailed written Change Order Proposal (COP) itemized according to these Pricing Guidelines and in accordance with Chapter 3-123, Hawaii Administrative Rules, and the categorical definitions and conditions listed below:

Materials:

1. All materials purchased by the Contractor and/or its Subcontractor and incorporated into the changed work, showing quantities, units, description, unit costs of all items, and subtotals, as appropriate. Reimbursement of material costs shall only be allowed in the amounts of the actual documented cost, including any and all discounts, rebates and related costs;
2. Materials related to asbestos abatement work; and
3. Fees for dumping, disposal, transporting, permits, licenses, inspections, etc., shall not be identified or listed in this category.

Labor:

1. All labor shall be priced at or above the current prevailing wage of the current wage rate schedule in accordance with Chapter 104, HRS, as amended. The Contractor shall indicate classification, number of man-hours and break down labor costs (for each classification of worker) by the straight time basic hourly rate;
2. The fringe benefit hourly rate shall be priced in accordance with Chapter 104, HRS, as amended, and shall be listed as a separate cost from the basic hourly rate; and
3. If overtime is approved by the Facilities Office, it shall be listed as separate line items and identified as such. Overtime must be paid for all hours worked on Saturday, Sunday, or legal state holiday, or after EIGHT (8) hours on any other day at 1-1/2 times the laborers' or mechanics' basic hourly rate.

Overhead and Profit:

1. Pursuant to Section 103D-501, Hawaii Revised Statutes, the allowances for all overhead, extended overhead resulting from change order work or adjustments to contract time (including home office and field overhead) and profit combined shall not exceed the percentages set forth below:
 - a. For the Contractor, for any work performed by its own labor forces, TWENTY PERCENT (20%) of the cost;
 - b. For each subcontractor involved, for any work performed by its own forces, TWENTY PERCENT

(20%) of the cost; and

- c. For the Contractor or any subcontractor, for work performed by their subcontractors, TEN PERCENT (10%) of the amount due the performing subcontractor.
2. Not more than THREE (3) line item percentages for fee and overhead, not to exceed the maximum percentages shown above, shall be allowed regardless of the number of tier subcontractors.
3. Overhead/extended overhead includes Home Office costs (i.e., executive costs, administrative costs, support staff costs, and other related work) and Field Overhead (i.e., supervisory cost, superintendent costs, project management costs, etc.).
4. The allowance percentages (20% and 10% where applicable) shall be applied to all credits where work is deleted by the changes and/or to the net increase of direct costs where work is added.

Insurance and Taxes:

1. Percentage shall be based on the figure provided by Contractor and all subcontractors, regardless of tier. Tax rates shall be in accordance with Section 3-123-15, Hawaii Administrative Rules.

Overhead for Insurance and Taxes:

1. Incorporation of Indirect Costs when calculating this overhead is not allowed. Only direct overhead costs specific to a particular project [not to exceed SIX PERCENT (6%)] are allowed.

Equipment/Miscellaneous:

1. Property/Equipment (Rentals):
 - a. All charges for certain non-owned heavy or specialized equipment at up to ONE HUNDRED PERCENT (100%) of the documented rental cost.
 - b. No rental charges shall be allowed for hand tools, minor equipment, simple scaffolds (one level high), etc.
 - c. Downtime due to repairs and maintenance of the equipment shall not be allowed.
2. Property/Equipment (Contractor-Owned):
 - a. All charges for certain owned, heavy or specialized equipment at up to ONE HUNDRED PERCENT (100%) of the cost listed by the Associated Equipment Dealers Blue Book. Depreciation and use allowances shall be in accordance with Section 3-123-8, Hawaii Administrative Rules.
 - b. Pursuant to Section 3-123-8(e), recovery, depreciation or application of a use allowance for tools, equipment, simple scaffolds (one level high) or other items having a purchase price for the new item or equivalent of less than ONE THOUSAND DOLLARS (\$1,000) shall not be allowed.
 - c. The longest period of time that the equipment is to be required for the Work shall be the basis for pricing. Downtime due to repairs and maintenance of the equipment shall not be allowed.

Miscellaneous:

1. Pursuant to Section 3-123-16, Hawaii Administrative Rules, the following items are allowable (supporting documents must be provided) at the cost of that specific item. The assessment of any overhead or profit on any of these items is prohibited:
 - a. The cost of extended general liability, property damage, builder's risk or specialty coverage insurance;
 - b. Fees for dumping, transporting, permits, licenses, inspections, airfreight, etc.; and
 - c. When requested by the Contractor and approved in writing by the RCUH due to special circumstances, reimbursement shall be paid for overnight lodging, related travel, and food in an amount not to exceed the State travel guidelines.

Bond Fee:

1. Percentage is generally based on cost per ONE THOUSAND DOLLARS (\$1,000) of contract amount on a sliding scale set at various thresholds. If percentage given exceeds TWO PERCENT (2%), documentation of the rate schedule from the Surety providing the bond or documentation of the rate schedule on file with the State of Hawaii Insurance Commissioner for the identified Surety shall be provided.