

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

REQUEST FOR PROPOSAL

for

PROVIDING

OPERATIONS AND MANAGEMENT SERVICES  
FOR THE KEWALO BASIN HARBOR  
HONOLULU, OAHU, HAWAII

For the:

HAWAII COMMUNITY DEVELOPMENT AUTHORITY  
677 Ala Moana Boulevard, Room 1001  
Honolulu, Hawaii 96813

APPROVED:

HAWAII COMMUNITY DEVELOPMENT AUTHORITY



By: Daniel Dinell, Executive Director

RFP SET Website

**HAWAII COMMUNITY DEVELOPMENT AUTHORITY**

**REQUEST FOR PROPOSAL**  
**FOR PROVIDING**  
**OPERATIONS and MANAGEMENT SERVICES FOR**  
**KEWALO BASIN HARBOR**  
**HONOLULU, OAHU, HAWAII**

**CONTENTS**

NOTICE TO OFFERORS		
1.	INTRODUCTION	Introduction 1 - 2
2.	SPECIAL PROVISIONS	Special Provisions 1 - 18
3.	SPECIFICATIONS	Specifications 1 - 10
4.	OFFER FORM OF-1	Form OF-1 pages 1 - 5
5.	ATTACHMENTS	
	5.1	HCDA's Transition Plan
	5.2	NOTICE OF INTENT TO OFFER
	5.3	SAMPLE OF PERFORMANCE BOND
	5.4	WAGE CERTIFICATE
	5.5	POSITION DESCRIPTION FOR HARBOR AGENT II
	5.6	GENERAL CONDITIONS AG-008 (11/3/2006)
	5.7	SAMPLE CONTRACT

## NOTICE TO OFFERORS

SEALED proposals will be received up to **2:00 p.m., Tuesday, February 27, 2007**, at the Hawaii Community Development Authority ("HCDA"), 677 Ala Moana Boulevard, Suite 1001, Honolulu, Hawaii 96813, for:

### **FURNISHING OPERATIONS AND MANAGEMENT SERVICES FOR THE KEWALO BASIN HARBOR, HONOLULU, HAWAII.**

Each proposal shall be on a form furnished by the HCDA.

Only proposals from contractors having a minimum of three (3) years experience in operating and managing a harbor with a capacity of 150 slips or more will be considered.

Offerors are encouraged to attend a **pre-proposal conference** to be held promptly at **10:00 a.m., on Tuesday, January 23, 2007**, in HCDA's conference room, 677 Ala Moana Boulevard, Suite 1001, Honolulu, Hawaii 96813. Offerors are not required to attend the pre-proposal conference as a condition to submit a proposal.

The Request for Proposals ("RFP") will be available at the HCDA website: [www.hcdaweb.org](http://www.hcdaweb.org) or via pickup from the HCDA office at 677 Ala Moana Boulevard, Suite 1001, Honolulu, Hawaii 96813, **on January 16, 2007**.

In addition, all Offerors must give written notice of their **Intent to Offer** to the HCDA Executive Director, at the above address **on or before 4:00 p.m., Wednesday, January 31, 2007**.

For further information, please call Mr. Richard Kuitunen, HCDA Asset Manager, at (808) 587-8177.

HCDA reserves the right to cancel the RFP when it is in the best interest of the State of Hawaii. HCDA reserves the right to reject any and all proposals when it is in the best interest of the State of Hawaii.

HAWAII COMMUNITY DEVELOPMENT AUTHORITY  
DANIEL DINELL, EXECUTIVE DIRECTOR

Published: January 12 and 14, 2007 in the Honolulu Star Bulletin and on January 14 and 16, 2007 in the Honolulu Advertiser.

## **1. INTRODUCTION**

Kewalo Basin, a harbor of approximately 55 acres including ocean acreage, was first constructed in the 1920s to ease the congestion in Honolulu Harbor and provide docking for lumber schooners. By the time the concrete wharf was finished in 1926, lumber schooners had begun to fade out and commercial fishing operations moved into Kewalo Basin.

Half of the bulkhead along the mauka side of Kewalo Basin was built in 1928. The remainder of Kewalo Basin's mauka bulkhead was constructed in 1934.

Kewalo Basin's fishing gear shed and paving on the Waikiki side of the mooring basin was completed in 1954.

In 1955, approximately eight acres of filled land was deposited along the makai side of Kewalo Basin to form a peninsula protected by rock revetment.

In 1968, an extension to wharf and concrete-decked catwalk was installed in Kewalo Basin.

In 1972, repairs to Kewalo Basin's rock wall, jetty and aku catwalks were completed. In 1974, Kewalo Basin's Herringbone Pier was renovated.

Around 1977-1978, Kewalo Basin catwalk II 9-120 and the marginal wharf's fender system were replaced.

In 1988, at Kewalo Basin, the building housing the offices of the charter boat operators was renovated and the surrounding area landscaped. Building includes 6 office rooms, 2 men's restroom, 2 women's restroom, 1 electrical room. A dumpster enclosure is located on the Diamond Head side of the building.

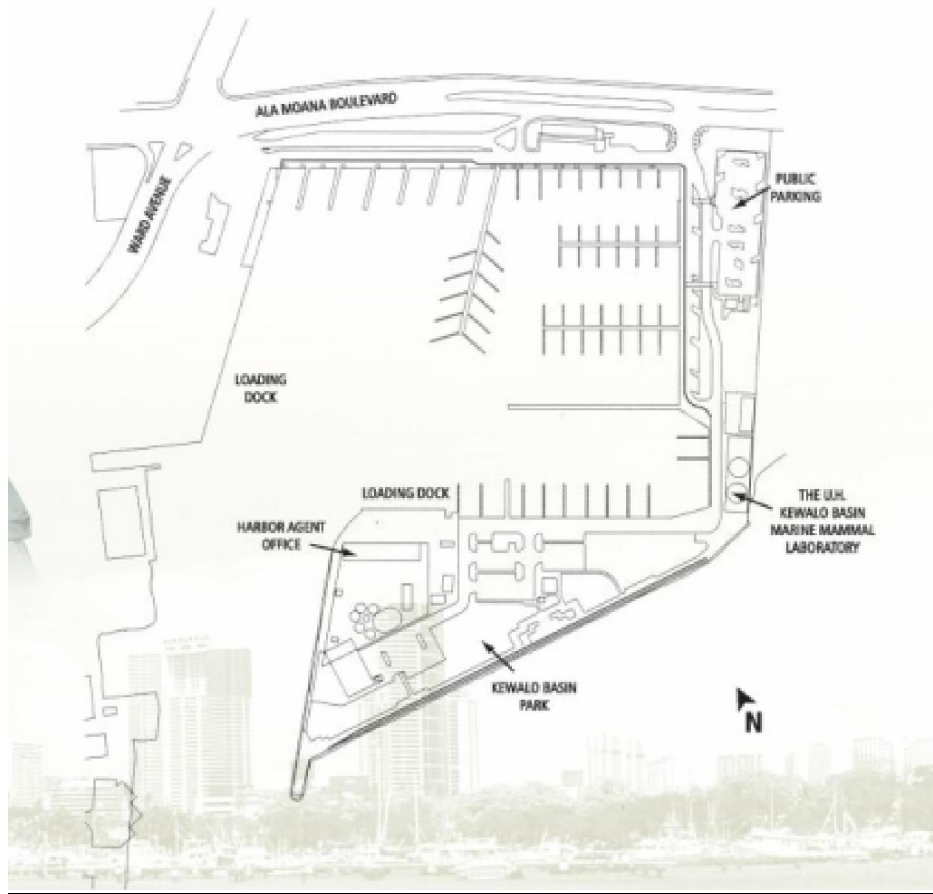
Kewalo Basin Harbor has been operated by the Department of Transportation, Harbors Division ("DOT-H") since statehood.

Act 86, SLH 1990, transferred State-owned lands and facilities Makai of Ala Moana Boulevard, including Kewalo Basin to the Hawaii Community Development Authority ("HCDA").

Since transfer of ownership, DOT-H has continued to operate Kewalo Basin Harbor and collect revenues from revocable permits as well as land leases.

Based on DOT-H's desire to relinquish management of the Harbor on July 1, 2006, it had been contemplated that the selected developer under the Kakaako Waterfront Request for Proposals ("RFP") would be assuming managerial duties from DOT-H; however, the RFP was terminated by HCDA Authority in June 2006.

DOT-H agreed to continue management of Kewalo Basin Harbor until July 1, 2007, at which point jurisdictional control would be transferred to HCDA.



## 2. SPECIAL PROVISIONS

### 2.1. TERMS AND ACRONYMS USED HEREIN

Contract	=	The Operations and Management Service Contract for Kewalo Basin Harbor awarded to Offeror.
Contractor	=	Awarded Offeror
GET	=	General Excise Tax
HAR	=	Hawaii Administrative Rules
HCDA	=	Hawaii Community Development Authority, State of Hawaii, located at 677 Ala Moana Boulevard, Suite 1001, Honolulu, Hawaii 96813.
HRS	=	Hawaii Revised Statutes
IFB	=	Invitation for Bids
Offeror	=	Any individual, partnership, firm, corporation, joint venture, or other entity submitting directly or through a duly authorized representative or agent, a proposal for the good, service, or construction contemplated.
Project	=	Operations and Management of Kewalo Basin Harbor
Proposal	=	Offeror's submission to this RFP
RFP	=	Request for Proposals
SPO	=	State Procurement Office, State of Hawaii

The operations and management service contract for Kewalo Basin Harbor, Honolulu, Hawaii, by Hawaii Community Development Authority, State of Hawaii, shall be in accordance with these Special Provisions, and the attached Specifications, and the General Conditions, State of Hawaii, State Procurement Office identified as Form AG-008 (11/3/2006). In the event of a conflict between the Specifications or Special Provisions and Form AG-008 (11/3/2006), the latter shall prevail.

### 2.2. RESPONSIBILITY OF OFFERORS

Offeror is advised that if awarded a contract under this solicitation, Offeror shall, upon award of the contract, furnish proof of compliance with the requirements of Section 3-122-112, HAR:

1. Chapter 103D, Certificate of Good Standing;
2. Chapter 103D-328, Tax Clearance;
3. Chapter 383, Unemployment Insurance;
4. Chapter 386, Workers' Compensation;
5. Chapter 392, Temporary Disability Insurance;
6. Chapter 393, Prepaid Health Care; and
7. One of the following:
  - a. Be registered and incorporated or organized under the laws of the State (hereinafter referred to as a "Hawaii business"); or
  - b. Be registered to do business in the State (hereinafter referred to as a "compliant non-Hawaii business").

Refer to the Award of Contract provision herein for instructions on furnishing the documents that are acceptable to HCDA as proof of compliance with the above-mentioned requirements.

### **2.3. CONTRACT ADMINISTRATOR**

For purposes of this RFP and Contract, the Contract Administrator is Mr. Richard Kuitunen, HCDA Asset Manager, telephone (808) 587-8177, fax (808) 587-8150, email: richard@hcdaweb.org.

### **2.4. TERM OF CONTRACT**

If awarded, the Offeror shall enter into a contract for Operations and Management Services for KEWALO BASIN HARBOR ("Project") for a **THIRTY-SIX MONTH period from May 1, 2007, to April 30, 2010**, with the option to extend not more than two (2) additional twelve-month periods or parts thereof upon written mutual agreement prior to expiration.

### **2.5. ADDENDA, CLARIFICATIONS**

Addenda may periodically be issued that may increase or decrease the scope of work or contract time, provisions or conditions. HCDA will make the addenda available to the Offerors at the HCDA office. Offerors are responsible for the information contained in the addenda or proposal clarification whether or not the Offeror receives the addenda or clarification.

Offerors discovering an ambiguity, inconsistency or error when examining the bidding documents or the site and local conditions or Offerors with questions or clarification requests shall send their written requests (email or fax notification are acceptable) to the Contract Administrator. Offerors shall comply with the following procedures:

1. Identify each request with the Project Name.
2. Indicate the appropriate section, paragraph, or other identifier.
3. The request should be brief, concise, but complete enough to properly evaluate and determine the merits or non-merits of the question or request.

Offerors shall make any requests for clarifications no later than **2:00 p.m., January 31, 2007**. Refer to the "Notice to Offerors" for the submission date.

HCDA will respond to important requests or clarifications by way of addenda. If HCDA determines the request or inquiry is unimportant or not required for dissemination to all Offerors then HCDA will not respond.

### **2.6. SUBMISSION OF OFFER**

Sealed Proposals shall be received at HCDA, 677 Ala Moana Boulevard, Suite 1001, Honolulu, Hawaii 96813, no later than **2:00 p.m. Thursday, February 27, 2007**. Timely receipt of offers shall be evidenced by the date and time registered by the HCDA time stamp clock. Offers received after the deadline shall be returned unopened.

Offerors shall submit one (1) original and (5) copies of their proposal. Each copy shall be marked "Copy" and numbered "1" through "5."

If the Offeror chooses to deliver its sealed proposal by United States Postal Service (USPS), please be advised that the USPS may not deliver the mail daily or by the time deadline. This may cause a delay in receipt by the HCDA and the sealed proposal may reach the HCDA after the deadline, resulting in automatic rejection.

## **2.7. CERTIFICATION OF INDEPENDENT COST DETERMINATION**

By submission of a proposal, Offeror certifies as follows:

1. The costs have been arrived at independently, without consultation, communication, or agreement with any other Offeror, as to any matter relating to such costs for the purpose of restricting competition.
2. Unless otherwise required by law, the Offeror prior to award has not knowingly disclosed the costs that have been quoted in this proposal, directly or indirectly, to any other Offeror or competitor prior to the award of the contract.
3. No other attempt has been made or will be made by the Offeror to induce any other person or firm to submit or not to submit a bid for the purpose of restricting competition.

## **2.8. OFFEROR QUALIFICATION**

To assure HCDA that the Offeror is capable of performing the work specified herein, Offeror must meet the following:

1. Minimum of three (3) years experience in managing a harbor or marina of at least 150 slips. Offeror shall indicate on the Offer Form, his experience on current and prior contracts;
2. Have a permanent office location on Oahu from where he/she conducts business during normal working hours and from where he/she will be accessible to requests or complaints;
3. Licensed as a business entity in the State of Hawaii; and
4. Be a Licensed real estate broker in the State of Hawaii

## 2.9. SITE INSPECTION

Offerors may visit the site during normal hours of operation to familiarize themselves with existing conditions, and the extent and nature of work to be performed.

## 2.10. OFFER PREPARATION

**Offer Form, Page OF-1.** Offeror is requested to submit its offer using Offeror's exact legal name as registered with the State of Hawaii Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate space on Offer Form, page OF-1. Failure to do so may delay proper execution of the contract.

The authorized signature on the first page of the Offer Form shall be an original signature in ink. If 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.

**Hawaii Business.** A business entity referred to as a "Hawaii business", is registered and incorporated or organized under the laws of the State of Hawaii.

**Compliant Non-Hawaii Business.** A business entity referred to as a "compliant non-Hawaii business," is not incorporated or organized under the laws of the State of Hawaii but is registered to do business in the State.

**Hawaii General Excise Tax License.** Offeror shall submit his current Hawaii GET I.D. number in the space provided on Offer Form, page OF-1, thereby attesting that the Offeror is doing business in the State and that he will pay such taxes on all sales made to the State.

**Tax Liability.** Work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS, and Offerors are advised that they are liable for the Hawaii GET. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

**Taxpayer Preference.** For evaluation purposes, pursuant to Section 103D-1008, HRS, the Offeror's tax-exempt price offer submitted in response to this RFP shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

**Offeror's Price.** Offeror's prices shall include off-site employees and management, equipment, supplies, transportation, all applicable taxes and any other costs incurred to provide services as specified. On-site staff

positions and salary costs are Owner's costs but are to be separately itemized on a separate sheet and attached to the Offer Form.

**Offer Guaranty.** An offer guaranty is not required.

**Insurance.** Offeror shall provide the requested insurance information on the Offer Form, where indicated.

**2.11. PRIORITY LISTED OFFERORS**

HCDA may conduct discussions with priority-listed offerors, pursuant to HAR Section 3-122-53, however, proposals may be accepted without discussions. Priority list shall contain not more than five (5) offerors.

**2.12. AWARD OF CONTRACT**

**Method of Award.** Award, if made, will be to the responsive, responsible and qualified Offeror submitting the best value total sum offer based on the evaluation criteria in Specifications Section 3.1.5.

**Responsibility of Best Value Offeror.** Reference §3-122-112, HAR, Responsibility of Offerors. If compliance documents have not been submitted to HCDA prior to award, the best value Offeror shall produce documents to the procurement officer to demonstrate compliance with this section.

**HRS Chapter 237 tax clearance requirement for award.** Instructions are as follows:

Pursuant to §103D-328, HRS, best value and responsible Offeror shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received by HCDA.

The tax clearance certificate shall be obtained on the State of Hawaii, *DOTAX TAX CLEARANCE APPLICATION* Form which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms & Information): <http://www.hawaii.gov/tax/>  
DOTAX Forms by Fax: (808) 587-7572  
DOTAX Information Hotline: 1-800-222-757

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX: (808) 587-1488  
IRS: (808) 539-1573

The application for the clearance is the responsibility of the Offeror, and must be submitted directly to the DOTAX or IRS and not to HCDA. However, the tax clearance certificate shall be submitted to HCDA.

**HRS Chapter 383 (Unemployment Insurance), HRS Chapter 386 (Workers' Compensation), HRS Chapter 392 (Temporary Disability Insurance), and HRS Chapter 393 (Prepaid Health Care) requirements for award.** Instructions are as follows:

Pursuant to Section 103D-310(c), HRS, the best value Offeror shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by HCDA. A photocopy of the certificate is acceptable to HCDA.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR*, Form LIR#27 which is available at [www.hawaii.gov/labor/formsall.shtml](http://www.hawaii.gov/labor/formsall.shtml), (at the menu click on **Employer Forms**), or at the neighbor island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to HCDA.

The application for the certificate is the responsibility of the Offeror, and must be submitted directly to the DLIR and not to HCDA. However, the certificate shall be submitted to HCDA.

**Compliance with Section 103D-310(c)(1) and (2), HRS.** Pursuant to Section 3-122-112, HAR, the best value Offeror shall be required to submit a *CERTIFICATE OF GOOD STANDING* (Certificate) issued by the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (BREG). The Certificate is valid for six months from date of issue and must be valid on the date it is received by HCDA. A photocopy of the certificate is acceptable by HCDA.

To obtain the Certificate, the Offeror must first be registered with the BREG. A sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate.

On-line business registration and the Certificate are available at [www.hawaii.gov/dcca/areas/breg/registration/](http://www.hawaii.gov/dcca/areas/breg/registration/). To register or to obtain the Certificate by phone, call (808) 586-2727 (M-F 7:45 to 4:30 HST). Offerors are advised that there are costs associated with registering and obtaining the Certificate.

**Timely Submission of all Certificates.** The above certificates should be applied for and submitted to HCDA as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

**2.13. CONTRACT EXECUTION**

The successful Offeror receiving award shall be required to enter into a formal written Contract and required to furnish a tax clearance. The Contract shall be executed by the successful Offeror and returned, together with the tax clearances, within ten (10) days after the award of the Contract or within such further time as the Executive Director may allow after the Offeror has received the Contract for execution. Failure to execute the Contract and provide the tax clearances within ten (10) days after the award of the Contract, or within such further time as the Executive Director may allow, shall be cause for the cancellation of the award. Award of the Contract may then be made to the next best value responsible Offeror.

A performance bond is required for this contract and entire payment prior to the start of the Contract is required.

If the option to extend for each of the next two (2) additional twelve (12) month periods is mutually agreed upon in writing prior to expiration, the Contractor shall be required to execute a supplement to the Contract prior to the expiration of the preceding Contract term.

**2.14. INSURANCE**

The Contractor shall maintain in full force and effect during the life of this Contract, liability and property damage insurance to protect the Contractor and his subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this Contract, whether such operations be by himself or by a subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the Contract, the insurance policy or policies shall name the subcontractor as additional insured.

As an alternative to the Contractor providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, Offeror may require subcontractor to provide its own insurance that meets the requirements herein. It is understood that a subcontractor's insurance policy or policies are in addition to the Contactor's own policy or policies.

The Contractor, including its subcontractor(s) where appropriate, shall provide the minimum insurance coverage(s) and limit(s) as written in the Contract. Below are the required minimum limits and subject to change with written notice from HCDA:

Coverage	Limits
Commercial General Liability	Combined Single Limit of \$5,000,000
Comprehensive Automobile Liability	\$500,000

(Bodily Injury)	
Comprehensive Automobile Liability (Property Damage)	\$100,000

Each insurance policy required by this contract, including a subcontractor's policy, 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 Hawaii Community Development Authority, 677 Ala Moana Boulevard, Suite 1001, Honolulu, Hawaii 96813."
2. "State of Hawaii and Hawaii Community Development Authority are added as an additional insured as it respects to the operations performed for Hawaii Community Development Authority."
3. "It is agreed that any insurance maintained by Hawaii Community Development Authority will apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the Contract, including supplemental agreements.

Upon Offeror's execution of the Contract, the Offeror agrees to deposit with HCDA certificate(s) of insurance necessary to satisfy HCDA that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) there on deposit with HCDA during the entire term of this contract, including those of its subcontractor(s), where appropriate. Upon request by HCDA, Offeror shall be responsible for furnishing a copy of the policy or policies.

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

The procuring of such required insurance should not be construed to limit Offeror's liability hereunder or to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy or policies of insurance, Offeror shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

**2.15. INSPECTIONS**

The Contract Administrator or his representative reserves the right to inspect Contractor's job performance at any time.

**2.16. RE-EXECUTION OF WORK**

The Contractor shall re-execute any work that fails to conform to the requirements of the contract that appears during the course of the work and shall immediately remedy any defects due to faulty workmanship by the Contractor.

**2.17. REMOVAL OF CONTRACTOR'S EMPLOYEES**

Contractor agrees to remove any of his employees from services rendered and to be rendered HCDA, upon request in writing by the Contract Administrator.

**2.18. RIGHTS AND REMEDIES FOR DEFAULT**

In the event the Contractor fails, refuses or neglects to perform the services in accordance with the requirements of the contract, these Special Provisions, and the Specifications, HCDA reserves the right to purchase in the open market, a corresponding quantity of the services specified herein and to deduct from any moneys due or that may thereafter become due the Contractor the difference between the price named in the contract and the actual cost thereof to HCDA. In case any money due the Contractor is insufficient for said purpose, the Contractor shall pay the difference upon demand by HCDA. HCDA may also utilize all other remedies provided by law.

**2.19. PROTEST**

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract.

Any protest pursuant to Section 103D-701, HRS, and Section 3-126-3, HAR, shall be submitted in writing to the Contract Administrator, Hawaii Community Development Authority, 677 Ala Moana Boulevard, Suite 1001, Honolulu, Hawaii 96813

**2.20. ADDITIONS AND EXCEPTIONS TO THE GENERAL CONDITIONS**

**Approvals.** Any agreement arising out of this RFP is subject to the approval of the Department of the Attorney General as to form, and to all further approvals, including the approval of the governor, required by statute, regulation, rule, order or their directive.

**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 Section 3-122-95 through Section 3-122-97, HAR.

**Confidentiality of Material.** All material given to or made available to the Offeror by virtue of this contract, which is identified as proprietary or confidential information, will be safeguarded by the Offeror and shall not be disclosed to any individual or organization without the prior written approval of HCDA. All information, data, or other material provided by the Offeror to HCDA shall be subject to the Uniform Information Practices Act, Chapter 92F, HRS.

The Offeror shall designate in writing to the Contract Administrator those portions of its un-priced offer or any subsequent submittal that are trade secrets or other proprietary data that the Offeror desires to remain confidential, subject to Section 3-122-58, HAR. The Offeror shall state in its written communication to the Contract Administrator, the reason(s) for designating the material as confidential, for example, trade secrets. The Offeror shall submit the material designated as confidential in such manner that the material is readily separable from the offer in order to facilitate inspection of the non-confidential portion of the offer.

Price is not confidential and will not be withheld. In addition, the manufacturers and models, catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of opening regardless of any designation to the contrary.

If a request is made to inspect the confidential material, the inspection shall be subject to written determination by the Department of the Attorney General in accordance with Chapter 92F, HRS. If it is determined that the material designated as confidential is subject to disclosure, the material shall be open to public inspection, unless the Offeror protests under Chapter 3-126, HAR. If the request to inspect the confidential material is denied, the decision may be appealed to the Office of Information Practices in accordance with Chapter 92F-15.5, HRS.

**Nondiscrimination.** No person performing work under this Contract including any subcontractor, employee, or agency of the Contractor shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

**Records Retention.** The Contractor and any subcontractors shall maintain the books and records that relate to the Contract and any cost or pricing data for five (5) years from the date of final payment under the Contract.

**2.21. STATUTORY REQUIREMENTS OF SECTION 103-55, HAWAII REVISED STATUTES (HRS)**

Offeror shall complete and submit the attached wage certification by which the Offeror certifies that the services required would be performed pursuant to Section 103-55, HRS.

Offerors are advised that Section 103-55, HRS, provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Offerors are further advised that in the event of an increase in wages for public employees performing similar work during the period of the Contract, Contractor shall be obliged provide wages not less than those increased wages.

Contractor shall be further obliged to notify his/her employees performing work under this Contract of the provisions of Section 103-55, HRS, and of the current wage rates for public employees performing similar work. The Contractor may meet this obligation by posting a notice to this effect in the contractor's place of business in an area accessible to all employees, or the contractor may include such notice with each paycheck of pay envelope furnished to the employee.

Effective October 1, 2006, the basic hourly wages paid to these State positions are:

<u>Class</u>	<u>Hourly Rate</u>	<u>Monthly Salary</u>
<b>Harbor Agent II</b>	<b>\$13.35</b>	<b>\$2,314</b>

The above information is provided to the contractor for guidance only and is subject to change in accordance with existing collective bargaining contracts or shall change as contracts are renegotiated. It is the Contractor's responsibility to verify the accuracy of the wage rates contained herein and to provide for changes in the minimum wages which must be paid to personnel working on this project at all times. Information on the status of Bargaining Unit (BU) contracts can be obtained from the State Department of Human Resources Development Classification and Compensation Review Division (587-1010).

Contractors are further advised that they are not restricted to hire only those classifications of employees as listed, but are free to employ such other classifications of workers as the contractor deems proper and proposes to use on the Project, and as may be according to his/her common hiring practice. However, the principal duties of employees other than those listed hereinabove working on the Project will be matched against those of State workers to determine the closest equivalent State employee(s) at a rate which is no less than that of the equivalent State employee.

**2.22. PRICE ADJUSTMENT DUE TO WAGE INCREASE TO STATE EMPLOYEES**

1. Contractor may apply for price adjustment only if there is a wage increase to public employees.
2. In addition to the actual dollar amount of wage increase, Contractor may apply for the percentage (%) fringe benefits

required by Statute.

However, the resulting fringe benefit percentage shall only be applicable to the actual dollar amount of increase.

3. These price adjustments shall only be considered at the time of contract extension(s) unless final extension has already been exercised, in which case the price adjustment shall be made upon request prior to expiration of contract.
4. If price adjustment is requested, Contractor must submit documentation verifying hourly rate being paid to Contractor's employees.

If request also includes adjusting for wage related fringe benefits; contractor must also provide support documentation and an itemized percentage breakdown of the fringe benefits being paid.

The State has determined that the applicable fringe benefits for wage related price adjustments shall be limited to:

- Federal Old Age Benefits
- Worker's Compensation
- Temporary Disability Insurance, and
- Prepaid Health Care

5. If wage increase occurs during the contract but prior to an extension period, price adjustment may be retroactively applied to the effective date of the State's increase, provided Contractor's payroll documents reflect an hourly rate less than the increased hourly rate being paid to State employees doing similar work.
6. For this contract, the price adjustment method by which the bid price per hour per worker shall be calculated is as follows:
  - a. Bid Price/Hr/Worker = (BPH) for example = \$11.00/hr.
  - b. Current Hourly Wage Rate = (CHW) for example = \$11.00/hr.
  - c. New Hourly Wage Rate paid = (NHW) for example = \$11.50./hr.
  - d. Hourly Wage Increase to State employees = (NHW) – (CHW) = (HWI), or \$11.50 - \$11.00 = \$0.50/hr.
  - e. Adjusted Bid Price/Hr. to State Employees = (BPH) + (HWI) = (\$1BP), or \$11.00 + \$0.50 = \$11.50/hr.

If allowable fringe benefits are also requested, then the following

method of calculation shall be applied:

- f. % Total for Allowable Fringe Benefits = (%FB) for example = 18%
- g. \$ Adjustment for Allowable Fringe Benefits = (HWI) X (%FB) = (\$AFB), or  $\$0.50 \times .18 = \$0.09$
- h. Adjusted Bid Price/Hr./ Fringe Benefits = (\$ABP) + (\$AFB) = (ABPFB), or  $\$11.50 + \$0.09 = \$11.59$

## **2.23. REQUIREMENT OF PERFORMANCE BOND**

At the time of execution of the contract, the successful Offeror shall file a good and sufficient payment and performance bond on the form furnished by the HCDA or a facsimile thereof, conditioned for the full and faithful performance of the contract in accordance with the terms and intent thereof in the manner, form and amount required by Sections 78-20, HRS, and Sections 3-122-224 through 3-122-228, HAR. The bond shall be an amount equal to fifty percent (50%) of the contract price, including amounts estimated to be required for extra work, or in the case of price-term, open-end or requirements contract under the total amount to be paid to the Contractor cannot be accurately estimated at the time the contract is to be awarded, the bond amount shall be as designated in the offer documents.

Acceptable performance bond shall be limited to: a bond in a form satisfactory to the HCDA underwritten by a company licensed to issue bonds in this State; legal tender; or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check acceptable by, a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. Certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, official check, or certified check may be utilized only to a maximum of \$100,000, provided however, 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, may be submitted.

## **2.24. START OF WORK**

Start of work will commence after the HCDA issues the Notice to Proceed. The Contract Administrator will notify the Contractor of the official work start date.

No work is to be undertaken by the Contractor prior to issuance of the Notice to Proceed or purchase order. The HCDA is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the work start date.

**2.25. LAWS TO BE OBSERVED**

The Contractor shall be responsible for compliance with all Federal, State and local laws or ordinances including, but not limited to laws or ordinances pertaining to permits, licensing, safety, work and labor, employees, wages and payrolls, withholding and other taxes, materials, etc., in any manner affecting its employees assigned to and the conduct of services herein described for the HCDA and shall indemnify and save the HCDA harmless against any claims arising from the violation of any such laws or ordinances.

**2.26. INVOICING**

Contractor shall submit original and three copies of the monthly invoice to:

Hawaii Community Development Authority  
677 Ala Moana Boulevard, Room 1001  
Honolulu, Hawaii 96813

Contractor shall submit monthly invoices. Such requests for payment shall be in a form approved by the HCDA and include such supporting information as may be required. All charges for additional work, if any, shall be described and the charges shall be computed at the contracted rate on a separate invoice. All invoices shall reference the Contract number assigned to the Contract.

An original or certified tax clearance certificate, not over two months old, must accompany the invoice for final payment.

**2.27. PAYMENT**

Section 103-10, HRS, provides that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory delivery of good or performance of services, to make payment. For this reason, the HCDA will reject any proposal submitted with a condition requiring payment within a shorter period. Further, the HCDA will reject any bid submitted with a condition requiring interest payments greater than that allowed by Section 103-10, HRS, as amended.

The HCDA will not recognize any requirement established by the Contractor and communicated to the HCDA, after award of the Contract, which requires payment within a shorter period.

**2.28. LIQUIDATED DAMAGES**

It is mutually understood and agreed by and between the parties to the Contract that the performance by the Contractor of his/her duties every calendar/working day is an essential part of the Contract and in case of failure on the part of the Contractor to perform his/her duties for the time specified in the Contract, HCDA will be damaged thereby and the

amounts of said damages being difficult, if not impossible of definite ascertainment and proof, shall be estimated, agreed upon and fixed at the sum equal to twice the amounts shown in the Contract for the work which shall have been performed for each and every calendar/working day that the Contractor fails to perform his/her duties during the period the Contract is in effect; and the Contractor shall pay the liquidated damages as provided for in the Contract and, in case the same are not paid, HCDA may deduct the amount thereof from any monies due or that may become due the Contractor under the Contract.

**2.29. BUSINESS RECORDS**

1. The Contractor shall keep full, true and correct books of accounts and records in accordance with accounting procedures approved by the HCDA in which shall be entered in detail the gross proceeds. Such books and records shall include all tax reports of every kind. All books and records shall be kept on the Island of Oahu separately for this harbor exclusive of any other business operation of the Contractor.
2. The HCDA shall have the right to have access to the contractor's books, accounts, records and reports, including tax reports, and on twenty-four (24) hours' notice, will have the right to complete an audit of the Contractor's entire business affairs and records relating to the harbor operation.
3. Annual Financial Report. On or before the ninetieth (90<sup>th</sup>) day following the close of the Project's fiscal year, the Contractor shall submit to the HCDA an audited annual financial statement of monthly gross income and expenses from the project prepared by an independent certified public accountant. The financial statement referred to herein shall be in such form and style and contain such detail and breakdown as the HCDA may require. An audited financial statement shall be due within sixty (60) days at the end of this contract.
4. Without prejudice to any remedies herein provided for the Contractor's default, if the Contractor shall fail to promptly furnish any such monthly report or certified public accountant's audit report, the HCDA may have such reports prepared by a certified public accountant selected by the HCDA, at the expense of the Contractor.

**2.30. FIDELITY BONDING**

Contractor shall provide evidence of fidelity bonding for itself, its employees and for on-site harbor staff of a minimum of \$25,000.

**2.31. INDEMNIFICATION**

The Contractor shall defend, indemnify and hold harmless the HCDA, State of Hawaii, and its officers, employees and agents from all claims for

losses, damages, liabilities, cost and expenses, including all attorney fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions beyond the scope of Contractor's engagement or the Contractor's employees, officers, agents or subcontractors occurring during or in connection with the performance of the Contractor's services. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.

## **2.32. DEFAULT AND TERMINATION**

### **1. Default**

The Contractor shall be in default of its obligations under the Contract based upon any of the following:

- a. Failure of the Contractor to properly, timely, and/or diligently fulfill its obligations, or otherwise comply with the terms, under this Contract;
- b. Failure of the Contractor to complete any work within the time frame set forth in any schedule;
- c. Notice or initiation of any remedial or enforcement action in connection with the actions of the Contractor or by any other Federal, State or local government agency or department if the default upon which such action shall be based shall be due to an act or omission of the Contractor;
- d. Failure of the Contractor to obtain and maintain any of the insurance coverage required herein;
- e. The Contractor becomes insolvent, a petition in bankruptcy is filed by or against the Contractor, the Contractor is adjudged bankrupt, or makes a general assignment for the benefit of its creditors, or becomes a subject of any proceeding commenced under any statute or law for the relief of debtors;
- f. Failure of the Contractor to comply with any applicable Federal, State or local laws, regulations or ordinances;
- g. Failure to comply with the Federal, State or local compliance requirements;
- h. Failure to comply with any terms under this Contract; and
- i. Failure to inform and receive approval from HCDA for any ownership or name change of the Contractor.

## 2. Termination

### a. Termination for Cause

Upon default by the Contractor, which default is not cured within any permitted cure period, HCDA shall have the right, and may exercise such right to terminate this Contract immediately. If HCDA determines that the Contractor's default is curable, HCDA shall give the Contractor written notice specifying the acts or omissions constituting such default prior to terminating this Contract. If the Contractor has not cured such default within ten (10) days from the date of such notice HCDA may terminate this Contract. The notice to the Contractor may specify the acts or omissions of the Contractor relied upon by HCDA as cause for such termination.

Upon termination of this Contract for cause, HCDA shall pay the Contractor fair and equitable compensation for satisfactory performance prior to the effective date of termination, less the amount of damages suffered by HCDA as a result of such default. If HCDA sustains any legally allowable damages from the Contractor's default greater than any amount payable to it, the Contractor will receive no compensation from HCDA and shall remain liable to HCDA for such damages after termination of this Contract. HCDA shall invoke all available legal remedies to collect damages resulting from the Contractor's default.

### b. Termination for Convenience

The performance of work under this Contract may be terminated by HCDA in accordance with this clause in whole, or from time to time in part, whenever HCDA shall determine that such termination is in the best interest of HCDA, State of Hawaii or any funding source for this project. Any such termination shall be effected by delivery to the Contractor with a 30 day written NOTICE OF TERMINATION specifying to the extent in which the performance of the work under this Contract is terminated and the date upon which such termination becomes effective.

Notwithstanding any provision to the contrary contained in this Contract, any termination for convenience of this Contract by HCDA shall not operate as a waiver by HCDA of the rights and remedies provided under this Contract for the Contractor's breach hereof. HCDA shall be entitled to invoke any and all remedies at law or in equity against the Contractor for such breach.

Upon termination of this Contract for convenience, HCDA shall pay the Contractor fair and equitable compensation for satisfactory performance prior to the effective date of termination.

3. HCDA Ownership of Property Upon Termination

Upon termination of this Contract for cause or for convenience, the entire contract file(s) maintained by the Contractor in connection with this Contract, including but not limited to all finished documents, electronic files and reports, purchases made in connection with this Contract, including, but not limited to, projects, services, supplies, equipment, audio visual recordings, and materials of the Project shall become the property of HCDA.

4. Accounting Upon Termination

Within 10 days after the termination of this Contract, HCDA and the Contractor shall account to each other with respect to all matters outstanding as of the date of termination, and the Contractor shall turn over to HCDA all records, documents or other instruments, waiting lists, and any and all other files and papers, including electronic files in its possession pertaining to the Contractor's performance under this Contract.

### **3. SPECIFICATIONS**

#### **3.1. GENERAL**

The Contractor shall furnish all labor and supervision to satisfactorily provide operations and management services for the Hawaii Community Development Authority ("HCDA"), at Kewalo Basin Harbor, Honolulu, Hawaii ("Project").

##### **1. Requirements and Instructions**

The Contractor shall abide by the requirements as specified herein, comply with all instructions relating to the management, operations and maintenance of the harbor that may be issued from time to time by the HCDA and adhere to all operating policies that have been or may be adopted and promulgated by the HCDA. With respect to new instructions and policies, the Contractor shall have the right to submit recommendations to the HCDA prior to their issuance or adoption or to recommend subsequent changes.

##### **2. Project Goals and Objectives**

Provide a well-organized, clean, safe and secure environment for the tenants, vendors, general users, and visitors of Kewalo Basin Harbor.

Provide quality operations and management services for the smooth operations of Kewalo Basin Harbor.

Maintain and foster communications between the tenants, users, community groups and the management of Kewalo Basin Harbor.

Recommend and implement when approved, best management practices, business processes and procedures.

##### **3. Description of Project Location**

Kewalo Basin Harbor is located on the island of Oahu, in the Kakaako/Ala Moana district bordered by the Diamond Head boundary of the Kakaako waterfront park, Ahui Street, Ilalo Street, Ala Moana Boulevard, Ala Moana Beach Park, and the Pacific Ocean excluding the Kewalo Basin Park and fast lands not dedicated to maritime use.

Approximately 456 square feet of office space in the Makai building whose address is 1125-B1 Ala Moana Boulevard will be provided for Contractor to use for the Project. Contractor is responsible for office maintenance, furnishings, office equipment, and office supplies. Electricity for office use is provided by HCDA. HCDA reserves the right to remodel, reconfigure, resize, and / or relocate Contractor's office.

#### 4. RFP Timeline

January 12, 14 & 16, 2007		Advertisement of RFP
January 23, 2007	10:00 a.m.	Pre-Proposal Conference
January 31, 2007		Intent to Offer due
February 27, 2007	2:00 p.m.	Proposals due
May 1, 2007		Tentative start date

#### 5. Evaluation Criteria

Pursuant to HAR 3-122-46 (7) and 3-122-52, the following evaluation criteria will be used to score each proposal on the technical capabilities and approach for meeting performance requirements, Competitiveness and reasonableness of price, managerial capabilities, and best value.

<b>Qualifications</b> <ul style="list-style-type: none"> <li>• Demonstrated qualification of key personnel</li> <li>• Office location on Oahu</li> <li>• Licenses (State of Hawaii Real Estate and Business licenses)</li> <li>• Number of years in harbor and/or marina management</li> <li>• Demonstrated financial resources or performance, or ability to obtain such resources, as required during performance</li> <li>• Insurance</li> </ul>	25%
<b>Management Plan</b> <ul style="list-style-type: none"> <li>• Demonstrated understanding of the Kewalo Basin Harbor, harbor operations, harbor and grounds maintenance, security, vector control, budgeting, financial, management, berth and slip control, emergency procedures, and other harbor services.</li> <li>• Ability to provide sufficient qualified staffing for the operations and management of Kewalo Basin Harbor.</li> <li>• Ability and willingness to address and mitigate potential conflicts between tenants, vendors, neighbors and users of the Project.</li> <li>• Ability to provide complete and effective Customer Relations duties.</li> <li>• Sound Quality Control processes</li> <li>• Completeness and clarity of Operational Controls</li> <li>• Quality of Security Plan and Budget</li> <li>• Completeness and Quality of Facilities Maintenance</li> <li>• Demonstrated system for Revenue Control Equipment and Software</li> <li>• Clear and complete Accounting procedures</li> <li>• Quality of Reports</li> </ul>	35%
<b>Experience</b> <ul style="list-style-type: none"> <li>• Experience in harbor and marina operations and</li> </ul>	15%

<ul style="list-style-type: none"> <li>management</li> <li>• Experience working with multi-agency environment. Ability to coordinate effectively with State, Federal, City &amp; County and private agencies/organizations.</li> <li>• Reference Check</li> <li>• Success of Previous Projects</li> </ul>	
Price	25%
Total	100%

**3.2. PROPOSAL SUBMITTAL REQUIREMENTS**

Offerors shall submit one (1) original and five (5) copies of Form OF-1 and one (1) original and five (5) copies of the following items listed below to HCDA. Offerors should refer to section 2.8 Offeror Qualifications and 3.1.5. Evaluation Criteria

HCDA reserves the right to request any additional data deemed pertinent.

1. **Cover Letter.** The cover letter shall include the following:
  - a. The signature, name, title, address, business telephone number and email address of that individual(s) with the authority to negotiate and contractually bind the Contractor.
  - b. General company background information and mission statement
  
2. **Qualifications and Experience.**
  - a. Description of the Offeror’s skills, facilities, experience, and organizational and technical qualifications or the ability to obtain such as to be able to meet the requirements set forth in these Specifications and Special Provisions.
  - b. Description of experience in working with multi-agency environment. Ability to effectively coordinate effectively with State, Federal, City & County and private agencies/organizations.
  
3. **Operations and Management Plan.** The Operations and Management Plan shall clearly describe the following:
  - a. A summary of the Offeror’s overall approach to the management of the Project.
  - b. The methods and procedures the Offeror will employ with regard to harbor operation and management including, administration and assignment of slips, office and ticket booth spaces, vessel inspections, insurance verification, collection of rents and fees, maintenance, parking, ground

transportation and traffic controls, responding to public requests, complaints, inquiries, and any other essential management procedures.

- c. Business process and procedures used to address and mitigate potential conflicts between tenants, vendors, neighbors and users of Kewalo Basin Harbor.
  - d. The Offeror's specific organizational arrangements for management of the Project, i.e., project-based staff, contract services, services provided by maintenance personnel, etc.
  - e. Description of computer information system to be used for the Project.
  - f. Describe the Quality Control methods and procedures to be implemented for the Project.
  - g. Describe training provided for employees to ensure quality of performance.
  - h. Describe the methods to be used to document, measure, control, and improve quality processes.
  - i. Describe your security plan for the Project.
  - j. Describe your maintenance program and schedule for the Project.
  - k. Describe your accounting procedures for expenditures, rent collection, late fees, security deposits and any other related fiscal processes for the Project.
  - l. Provide sample monthly reports for:
    - Income statement
    - Balance Sheet
    - Rent roll
    - Depreciation schedule
    - Delinquency report
    - Property inspection
    - Capital Improvement
    - Vacancy report
    - Budget variance report
4. **Audited Financial Statements.** Provide audited financial statements for tax years 2004 and 2005.

### 3.3. SCOPE OF SERVICES

The Contractor shall:

1. Provide full fiscal and physical harbor operations and management services.
2. Be required to operate, and maintain a harbor of approximately 150 slips with office building facilities, other harbor facilities as described in this RFP.
3. Be required to operate the harbor with the following:

- a. Office Hours of Operation.

The Contractor shall maintain office hours for the Project during the hours as authorized in writing by the HCDA.

For the purposes of offer submittal, Offerors may use 5:00 a.m. to 10:00 p.m., 7 days a week, everyday of the year.

- b. Operate and manage the project in accordance with Hawaii Administrative Rules Section 15-211 through 15-214 and all other applicable laws, rules and regulations.
4. Develop and enforce procedures. The procedures shall be subject to the HCDA's approval. As part of the management plan, the Contractor shall make recommendations for changes as necessary from time to time, with the written approval of the HCDA.
  5. Respond to and resolve inquiries, complaints/problems from the tenants, users, public, and community groups.

The Contractor shall maintain good relations with the tenants and with any tenant groups or organizations of the Kewalo Basin Harbor by encouraging tenant interest and participation in affairs at the Project and by keeping tenants informed of any changes in rules, procedures, regulations and policies.

6. Provide for twenty-four (24) hour coverage of emergencies and provide necessary assistance.
7. Oversee any required services and contracts incidental to the maintenance, repair, security and operation of the project if such services are not done by in-house staff.
8. Hire, train and supervise any on-site management, operations and maintenance staff as is required for the operation of the harbor and its facilities.

9. Perform daily property inspections of the harbor and report to HCDA on a form approved by HCDA. Semi-annually, perform a comprehensive inspection of the Project and submit to the HCDA a written report of said inspection, to include but not limited to, recommendations and solutions to noted problems, preventive maintenance actions to be taken, etc.
10. Post, or cause to be posted, any signs which may be required for the lawful and efficient operation of the Project, provided that Contractor shall obtain prior written approval of the HCDA as to the size, design and content of the signs.
11. Prepare invitations for bid (IFB) for all required harbor security, maintenance, and other services not performed by Contractor and as approved by HCDA.
12. Manage and operate the facilities including leasing, management and maintenance at the highest standards for the:
  - a. Day-to-day operations of the harbor and its facilities;
  - b. Management of harbor, slip, ticket booth and office facilities and tenants;
  - c. Assignment of vessels to berths;
  - d. Direction and control of movement of vessels in the harbor;
  - e. Recording and reporting vessel arrivals and departures;
  - f. Preparation and collection of charges including Common Area Maintenance fees (CAM);
  - g. Enforcement of Harbor rules and regulations (including parking rules);
  - h. Maintenance of harbor facilities;
  - i. Participate in developing specifications for maintenance, repair and other harbor related Invitations for Bid or Request for Proposals as directed by HCDA;
  - j. Accounting of revenues;
  - k. Payment of invoices; and,
  - l. Prepare Budget and Common Area Maintenance (CAM) reconciliation.
13. Provide reports, including, but not limited to:
  - a. Financials
    - i. Income Statement
    - ii. Balance Sheet
    - iii. Cash Flow
    - iv. General ledger
    - v. Budget variance report
  - b. Monthly tenant report (i.e. slip leases, office space leases, etc).
  - c. Incident log (date, time, person(s) involved, description of incident, resolution). Frequency of incident reports will be determined by HCDA.

#### 14. Maintenance

The Contractor shall maintain the entire Project at a level of repair satisfactory to the HCDA. All work performed shall be recorded on a work order form or tradesman's invoice if contracted out. One (1) copy of the work order or invoice shall be transmitted to HCDA and one copy retained in a central maintenance file. The maintenance file shall be available to the HCDA upon request. All requests for service or repair shall be responded to immediately by the Contractor as soon as possible but not later than two (2) working days after the requests, except as noted below.

a. Routine Maintenance/Repairs

The Contractor shall be responsible for supervising in-house staff for all routine maintenance/repairs required. The Contractor shall develop a schedule of all routine maintenance activities for the HCDA's approval.

b. Emergency/Urgent Maintenance or Repairs

All requests for emergency/urgent maintenance or repairs shall be responded to immediately by the Contractor, but not later than within four (4) hours after the request.

c. Extraordinary Repairs

Repairs or service beyond the capacity of the maintenance person and requiring the services of a private contractor and/or repairs costing over ONE THOUSAND DOLLARS (\$1,000.00) shall have the prior approval of the HCDA, except in emergency situations. The Contractor shall be required to obtain at least three (3) bids for such work.

d. Preventive Maintenance Inspections

The Contractor shall schedule formal Project inspection meetings with HCDA on a semi-annual basis, during the second (2<sup>nd</sup>) and eighth (8<sup>th</sup>) months of each twelve-month period of the management contract, to check the safety and general condition of the Project and equipment. Reasonable advance notice shall precede these inspections and said inspections shall be made with appropriate HCDA representatives. An inventory report form and a checklist shall record the results of these inspections.

The Contractor shall then submit a report to the HCDA listing all maintenance work needed. All work shall then be performed by the Contractor, with prior approval from HCDA and charged to the Project.

**3.4. MANAGEMENT FEE**

The monthly management fee to be paid by the HCDA to the Contractor shall be an all-inclusive fee encompassing services as required in section 3.3 within these Specifications.

**3.5. OWNER'S COSTS**

The Owner's costs are generally operating costs of the Project and cost of any capital improvements.

**3.6. ON-SITE STAFF**

The Contractor shall have on duty at all times as many employees as are needed to ensure prompt and efficient service to the public, harbor tenants and vendors. The minimum number of employees to be present on duty at any time shall be subject to review by the HCDA and if required, changes may be implemented by amendments to the management plan.

**3.7. EXPENDITURE**

Notwithstanding any of the foregoing provisions, the prior approval of HCDA shall be required for any expenditure which exceeds ONE THOUSAND DOLLARS (\$1,000.00) in any one instance for labor, materials, or otherwise in connection with the maintenance and repair of the Project, except for recurring expenses within the limits of the operating budget or emergency repairs involving manifest danger to persons or property, or required to avoid suspension of any necessary service to the Project. In the latter event, the Contractor shall inform the HCDA of the facts as promptly as possible. The Contractor shall follow the purchasing policies and procedures as outlined in the Contract.

**3.8. ACCOUNTING AND FISCAL SERVICES**

1. The Contractor shall maintain cash receipt and disbursement registers to record all operating receipts and expenditures of the Project.
2. Contractor shall maintain separate bank accounts for this Project. Accounts for this Project shall not be commingled with other operations of the Contractor.
3. By the fifteenth (15<sup>th</sup>) day of each month, the Contractor shall submit monthly statements of the income and expenditures for the previous month. The monthly statements shall include charges collected and any other project revenues. They shall also list all project owners' expenses for the month. The monthly statements shall reflect actual and budget income and expense figures for the reported month as well as cumulatively year-to-date and shall

reflect the percentage variance between actual income and expense versus the budget for the reported month and for the cumulative year-to-date. A report of significant variances shall accompany each monthly statement.

A check representing the net operating income of the Project for the previous month, payable to HCDA on the 15<sup>th</sup> of the current month shall accompany each monthly statement and sent to HCDA.

In the event of a net operating loss or zero net operating income, HCDA shall fund the shortfall.

4. The Contractor shall make all payments for salaries wages, fringe benefits and payroll taxes to or for on-site staff.
5. The Contractor shall make all refunds of security deposits. Likewise, appropriate charges for security deposit, if any, shall be assessed and collected by the Contractor.
6. The Contractor shall make all records available to the HCDA and its auditors when requested.
7. The Contractor shall submit recommended operating budgets for the initial fiscal year of the Project. No later than ninety (90) days prior to the end of each fiscal year, the contractor shall submit to the HCDA for approval an operating budget for the next fiscal year.
8. The Contractor shall provide any additional financial data to the HCDA as may be requested from time to time.

### **3.9. GROSS INCOME STATEMENT**

The Contractor shall itemize revenue collections as shown below on a daily basis and present to the HCDA a statement certified to by the Contractor reporting the gross income within 48 hours after the close of the fifteenth (15<sup>th</sup>) day and the last day of each and every month. Said statement shall itemize the receipts from the project to include the following information:

1. Lease rent itemized by:
  - a. Slip leases
  - b. Office building leases
  - c. Ticket booth leases
  - d. Parking
  - e. Concessions (i.e. Fuel station)
  - f. Others
2. Late fees and Penalties

3. Common Area Maintenance ("CAM")

In addition, the Contractor shall furnish any other information relating to the harbor operations as requested at any time by the HCDA.

If the Contractor shall furnish any statement of the amount of his gross income, which understates, whether knowingly, mistakenly or otherwise, said gross income for any month by as much as five percent (5%) of the true amount thereof; the same shall be deemed a breach of the Contract.

If any question arises with respect to what constitutes gross income not otherwise covered in the contract, the interpretation given and made by the HCDA shall govern and control.

**4. OFFER FORM (OF-1)**

Executive Director  
Hawaii Community Development Authority  
677 Ala Moana Blvd., Room 1001  
Honolulu, Hawaii 96813

Gentlemen:

The undersigned has carefully read and understands the terms and conditions specified in this Request for Proposal and the General Conditions identified as AG-008 (11/3/2006), attached hereto; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof.

The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Date: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Respectfully submitted,

Fax No. \_\_\_\_\_

\_\_\_\_\_  
Exact Legal Name of Company

Email Address: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature (Original)

\_\_\_\_\_  
Name and Title (Print)

Mailing address, if other than street address at right:

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
City, State, Zip Code

Hawaii General Excise Tax License

Social Security or Federal I.D. No.:

I.D. No.: \_\_\_\_\_

\_\_\_\_\_

If Offeror shown above is a “dba” or a “division” of a corporation, furnish the exact legal name of the corporation under which the contract, if awarded, will be executed:

\_\_\_\_\_

Offeror is: \_\_\_\_\_ Individual \_\_\_\_\_ Partnership \_\_\_\_\_ Corporation \_\_\_\_\_ Joint Venture

State of incorporation: Hawaii \_\_\_\_\_ \*Other \_\_\_\_\_

\*If “other”, is corporate seal available in Hawaii? \_\_\_\_\_ Yes \_\_\_\_\_ No

How many years has Offeror been in this business doing this type of work? \_\_\_\_\_

The following price proposal is hereby submitted for providing operations and management services for the Kewalo Basin Harbor, as specified herein:

	Column 1 Year 1	Column 2 Year 2	Column 3 Year 3	Column 4 Extension 1	Column 5 Extension 2	Total Offer Price (add columns 1 through 5)
<b>Monthly fee for Operations and Management Services</b>						
<b>Percentage amount which represents Salaries and Wages</b>	_____ %	_____ %	_____ %	_____ %	_____ %	

**Note: On-site staff positions and salary costs are Owner’s costs but are to be separately itemized on a separate sheet and attached to the Offer Form.**

Offeror shall provide the following information:

Offeror’s Permanent Office Address: \_\_\_\_\_

\_\_\_\_\_

Representative: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**Insurance coverage and fidelity bond is carried by:**

	Carrier	Policy No.	Agent
Commercial General Liability			
Fidelity Bond			
Workers' Compensation and Employer's Liability			
Temporary Disability			

Prepaid Health Care	Carrier:	
---------------------	----------	--

Unemployment Insurance:	State of Hawaii, Dept. of Labor No.:	
-------------------------	--------------------------------------	--

**Current On-Going Contracts:**

Offeror shall list government and private sector contracts for which Offeror currently is contracted. HCDA reserves the right to contact these governmental agencies or companies to discuss the Offeror's work.

---

---

---

**References:**

Offeror shall provide a minimum of three (3) references for which he/she has performed or is currently providing operations and management services. If services performed are for harbor operations, indicate the number of slip in the space provided. The HCDA reserves the right to contact the references provided to inquire about past job performance

List below the names and addresses of government agencies and/or companies for whom the bidder has provided or is currently providing management and operations services as specified herein:

<u>Name of Client Contact Person</u>	<u>Address Telephone</u>	<u>Contract Period</u>	<u># of Slips</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**PROPOSAL SUBMITTAL REQUIREMENTS**

Pursuant to Section 3.2 of the Specifications, the Offeror is to provide the following as attachments to Form OF-1:

1. Cover Letter
2. Qualifications and Experience
3. Operations and Management Plan
4. Audited Financial Statements

Submitted by:

Offeror \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## **5. ATTACHMENTS**

- 5.1. HCDA's TRANSITION PLAN (For Informational Purposes Only)**
- 5.2. NOTICE OF INTENT TO OFFER**
- 5.3. SAMPLE OF PERFORMANCE BOND**
- 5.4. WAGE CERTIFICATE**
- 5.5. POSITION DESCRIPTION FOR HARBOR AGENT II**
- 5.6. GENERAL CONDITIONS AG-008 (11/3/2006)**
- 5.7. SAMPLE CONTRACT**

**ATTACHMENT 5.1  
HCDA's TRANSITION PLAN**



**KEWALO BASIN TRANSITION & OPERATING PLAN**

**December 2006**

**HAWAII COMMUNITY DEVELOPMENT AUTHORITY**



## TABLE OF CONTENTS

<b>PURPOSE</b>	<b>- 1 -</b>
<b>BACKGROUND</b>	<b>- 1 -</b>
<b>HARBOR MANAGEMENT APPROACH</b>	<b>- 2 -</b>
<b>PRESENT CONDITIONS</b>	<b>- 3 -</b>
<b>ASSETS and LIABILITIES</b>	<b>- 5 -</b>
<b>WHAT NEXT?</b>	<b>- 6 -</b>
<b>RISKS</b>	<b>- 8 -</b>
<b>OPPORTUNITIES</b>	<b>- 8 -</b>
<b>SUMMARY OF CASH FLOW</b>	<b>- 9 -</b>



Mauka Slips Fronting Ala Moana Boulevard

## **PURPOSE**

The purpose of this document is to articulate a strategically sound and viable transition and operating plan (“Plan”) to effectuate the transfer of operational and management of Kewalo Basin responsibility from the State Department of Transportation-Harbors Division (DOT) to the Hawaii Community Development Authority (HCDA). In order to establish a record of accomplishments, solicit existing and future stakeholder input and acceptance, proceed in a fiscally prudent manner, provide flexibility for future development and avoid having the transition of physical changes conflict with current operations, the transition approach will be gradual in regards to physical changes of the facility. The main premise is to avoid sweeping changes that could create more problems than they solve and act in a systematic and informed manner.

## **BACKGROUND**

Kewalo Basin was originally built in the 1920’s to relieve congestion at Honolulu Harbor and service lumber schooners. By the end of the 1920’s Kewalo Basin became a home for commercial fishing. It has been operated by the DOT since statehood. Act 86, SLH 1990, transferred State-owned lands and facilities Makai of Ala Moana Boulevard, including Kewalo Basin, to HCDA. Since transfer of ownership, DOT has continued to operate Kewalo Basin and collect revenues from revocable permits as well as land leases.

Based on DOT’s desire to relinquish management of Kewalo Basin on July 1, 2006, it had been contemplated that the selected developer under the Kakaako Waterfront Request for Proposals (RFP) would be assuming managerial duties from DOT. However, the RFP was terminated by the Authority in June 2006. DOT agreed to continue management of Kewalo Basin until July 1, 2007, at which point jurisdictional control would be transferred to HCDA, thus the need to develop this Plan.

The challenges HCDA faces in assuming jurisdiction of this asset include deteriorating infrastructure, obsolete systems, low tenant morale, underutilization of facilities, inadequate custodianship of the property, reputation for drug and other illegal activities and isolation of

the harbor from the surrounding community as well as less than complete transfer of documentation from DOT.

### **HARBOR MANAGEMENT APPROACH**

In order to effectively transition operations from DOT to HCDA, a key issue is the management structure. Various options were evaluated:

1. Have DOT continue to manage the harbor. This was not considered a viable option based upon the position of DOT to date. However, consideration is being given to request DOT to allow current on site personnel to remain for a short transition period after harbor management is selected.
2. Request Department of Land and Natural Resources (DLNR) to assume jurisdiction. This was not considered a viable option as DLNR is actively pursuing a policy of transferring to the counties its responsibility for small boat harbors statewide and DLNR has limited experience running purely commercial harbors.
3. Have HCDA assume management in-house. HCDA currently does not have experienced staff available to undertake such a project and would need to hire experienced personnel at expected higher cost and requiring greater time than options 4 and 5.
4. Offer the harbor out to bid (similar to a ground lease) and allow the winning bidder to manage the harbor and set rates as they see fit. While this approach has several distinct advantages for both HCDA and the tenants, potential bidders have indicated that the harbor operation, by itself, would not generate significant interest as the value in such a structure arises from the development rights of the surrounding property. As the surrounding property will be going through a lengthy public planning process to determine what uses may be permitted, this approach is not viable given the time frame necessary for action.

5. Issue a Request for Proposals (RFP) to retain harbor management (similar to a property manager). The property manager would handle day-to-day activities including leasing, accounting, hiring vendors and managing capital projects. HCDA would pay a fee for services as well as all harbor expenses.

Given the uncertainty of what future development, if any, will take place in the Makai Area and the Authority's desire to not inhibit future opportunities, the last option is deemed most desirable as it provides the greatest flexibility to change approaches in the future and is capable of being implemented within the time frame available. HCDA intends to improve services and facilities (e.g. addressing deferred maintenance, replacing condemned piers, ensuring public health and safety) that need to occur regardless of possible future scenarios since it is clear that the harbor itself will remain in maritime use.

#### **PRESENT CONDITIONS**

An aerial view of Kewalo Basin with dates when improvements were built is attached as Exhibit C.

Immediate attention needs to be directed to deferred maintenance of the harbor including:

- Replacement of slab and fendering on apron areas;
- Replacement of pilings on Makai and Mauka slips;
- Replacement of electrical conduits, wiring, metering and service to slips;
- Upgrade electrical service to 220/330 where necessary; and
- Installation of street lighting along the basin roadways.

Slip safety and ability to lease up requires the following actions:

- Repair/replacement of the Herringbone, B and C piers;
- Stub in electrical, water and sewer connections on Ewa bulkhead to accommodate transient users; and
- Installation of waste holding tank.



**Below water line electrical conduit unsafe**



**Poor maintenance has led to condemned piers**

In order to encourage new water based usage, improve public safety, provide for requirements of existing users, increase amenities to attract patrons, and provide flexibility to conform with future developments in the area to maximize activity and synergy, capital projects include the following:

- Existing roadways currently do not provide adequate ingress/egress for the property and create bottlenecks for vehicular traffic both within Kewalo Basin and at the Ala Moana Boulevard and the Ward Avenue intersections. New roadway and intersections to better connect the harbor with the surrounding area, especially adjacent Ala Moana, Kewalo and Kakaako Waterfront parks. Additionally, they are necessary to accommodate the expected increase in traffic as well as provide additional parking. Intersection reconfiguration will enhance access, improve public safety from the dangerous u-turn at Ward Avenue and increase pedestrian safety by providing crosswalks and drop off zones, calm traffic flow around the Kewalo Basin park and streamline traffic along Ala Moana Boulevard.
- In order to service harbor users and visitors, new commercial tenancy including convenience store, bait shop, fuel station, restaurants, and renovation of the Fisherman's Wharf building should be considered.

- Removal of the former Kewalo Basin Marine Mammal Laboratory, as a separately funded project, is being undertaken. After the ramshackle buildings are removed, HCDA intends to construct a pedestrian promenade connection between Kewalo Basin Park and Ala Moana Beach Park as well as establish a small refreshment/concession outlet with outdoor seating to not only create a new revenue opportunity, but activity and interest in the area.

### **ASSETS and LIABILITIES**

Kewalo Basin's major attributes are its prominent central location and ocean frontage. It is also the only small boat commercial harbor within the Honolulu urban core. It is adjacent to Ala Moana Beach and Kewalo Basin parks and across the street from the Victoria Ward Center retail complex, which includes about 700,000 sq. ft. of commercial and retail space. Its location on Ala Moana Boulevard guarantees high visibility and recognition factor from both tourists and residents.

With relocation of the current tenant, Honolulu Marine, expected in the 2008-2009 timeframe, the bulkhead offers additional opportunities for diversification of use by adding launch ramps and a "boatel" operation where vessels can be stored, prepped and stocked for their owners. Minor ship repairs could also be performed providing a service for all of the ships that visit the harbor.

A common area maintenance ("CAM") fee will be assessed on Kewalo Basin tenants to pay for security, maintenance, management services and other day-to-day expenses.

The greatest liability of Kewalo Basin is the deferred maintenance that HCDA is inheriting. An ancillary liability resulting from this, based on a survey of users conducted by HCDA, is the low morale of current harbor users who have endured the existing conditions of the harbor far too long.

## **WHAT NEXT?**

In order to execute this Plan, HCDA needs to accomplish the following, each of which is elaborated upon in the following section:

- Engage in Community Outreach;
- Promulgate Administrative Rules;
- Issue RFP for harbor management;
- Complete Documentation and Contract Negotiations; and
- Finalize Capital Improvement Plan.

### **Engage in Community Outreach**

HCDA established a user group Task Force that has been meeting monthly since August 2006. This group will likely transform into a “merchants association” once the change in management occurs. Community outreach, especially with park users and the neighborhood board, is essential to successfully execute this Plan and is being programmed. Some activities under this Plan will require Hawaii Administrative Rule amendments and public hearings. In addition, there will be traffic studies, special management area permits and environmental assessments that will undergo public review. Since these projects must be submitted to entitlement and funding procedures similar to any public project, good communications to enlist community support and feedback is important to achieving objectives. Additionally, since legislative appropriations are needed to cover the costs of major improvements, community support is essential along with briefings of legislators.

### **Promulgate Administrative Rules**

Proposed Administrative Rules for Kewalo Basin are currently under review by the Department of Budget and Finance. Once permission to hold a public hearing is secured from the Governor, HCDA will have a meeting with all of the current harbor permittees to present the rules, explain the difference between them and the DOT rules, answer any questions and address and concerns that they raise. For general public input, a public hearing will be held 30 days after publication of the notice.

### **Issue RFP For Harbor Management**

Management of Kewalo Basin will be awarded on best value to the state; as such, HCDA has formed an evaluation committee comprised of HCDA staff and representatives from DOT and DLNR. The committee will rate the respondents to the RFP based upon their experience, reputation, presentation and price.

### **Complete Documentation and Contract Negotiation**

Upon engagement of harbor management, all contracts, leases, budgets and capital improvement prioritization will be finalized. Vendor contracts for all service providers such as trash pick-up, security, etc. will also be executed.

### **Finalize Capital Improvement Plan**

Total development costs of capital improvements are projected to be \$14.1M over five phases. Phase I would entail repair to Kewalo Basin infrastructure including extending sewer and water lines to the ticket booths, installation of a waste tank, replacement of pilings on Ala Moana Boulevard and Makai slips, replacement of the apron slabs and replacement of the fenders. Phase II would entail replacement of all conduits, wiring and meter service to slips, upgrade electrical service to those slips that do not have 220/330 lines, replacement of street lighting and stub in electrical, water and sewer to Ewa bulkhead. Phase III would entail reconfiguring ingress and egress into Kewalo Basin including establishing a new signalized intersection, connecting roadway to Ala Moana Beach Park and improving the driveway connecting to Ahi street. Phase IV would entail repair or replacement of all pilings, walkways, slips and infrastructure for Piers B, C and Herringbone. Phase V would entail constructing 12,000 square feet of retail space, renovation of Fisherman's Wharf Restaurant, adding a second floor to existing commercial building and constructing additional restroom facilities.

HCDA initially submitted its request for \$14.1M in CIP funds to the Department of Budget and Finance for all of the improvements. However, the Governor's office has only approved \$5.5M for the replacement of piers B, C and the Herringbone in the upcoming fiscal

biennium. HCDA will concentrate on first putting the unproductive piers back in service to increase cash flow from the property and then pursue the other contemplated phases as funds become available. The Task Force rated the pier repairs in the top five priorities for Kewalo Basin. Other items included in the top five categories were additional restrooms, replacing electrical and pilings on the other piers, improving ingress/egress and installation of a waste tank. HCDA will work with the Harbor Management in sourcing the funding to pursue the additional priorities upon assuming jurisdiction of the harbor.

### **RISKS**

The usual concerns involving existing conditions, market, budget and environmental risks all apply to this endeavor.

In addition, the effectiveness of the Harbor Management will be key to the success of the Kewalo Basin management and transition.

The proposed rules contemplate an increase in the slip fees to be paid by tenants. The ability of the tenants to absorb the increased cost will determine if funds are available to provide the increased level of services contemplated and pay debt service.

Failure to obtain the legislative funding requested could preclude improvements until an alternative source of funding is identified or until a permanent owner/manager is selected.

### **OPPORTUNITIES**

Kewalo Basin enjoys a diverse tenant mix that includes long line fisherman, tour boat operators, charter deep sea boats and excursion vessels for scuba and parasailing. It is contemplated that the mix will be further diversified with the addition of private pleasure craft as space allows. Current news articles indicate that demand exceeds supply in the area for approximately 170 slips. DOT has indicated that there are currently 127 slips in the harbor. Pier B has 22 of its 28 slips condemned. Pier C and the Herringbone pier cannot service the number of vessels they were designed for due to structural damage. In addition, due to DOT's rules favoring daily permittees, many users do not show on the rent roll leaving the

opportunity to make the income stream more predictable and stable by converting these users to annual leases.

Completion of the planned improvements will increase the efficiency and occupancy of the harbor. In addition, expanding the diversity of users in the harbor will increase its popularity and cash flow and serve to better position the surrounding lands for whatever the Waterfront Advisory Group, and ultimately, the Authority determines is in the best interest of the state.

### **SUMMARY OF CASH FLOW**

In order to complete the Plan, it will be necessary to obtain legislative funding for capital needs. Therefore, even assuming a reasonably successful lease up of the vacant slips and value added development by use changes in existing rental inventory, the objective to establish operational self-sufficiency will only be possible if CAM is collected from all tenants for the additional maintenance, security, management and landscaping expenses inevitable in such a large and high-profile area.

A preliminary Executive Summary of Cash Flow for the project is attached as Exhibit A assuming CIP debt service on the \$5.5 million included in the Administration's biennium budget. The projected Internal Rate of Return for the investment using the scaled back improvements of just piers B, C and Herringbone as included over the 20-year term of the bonding approximates 27%. HCDA's preliminary estimate of capital costs totals about \$14.1 million as outlined in Exhibit B, the Administration's biennium budget only includes the column for the pier work.

**KEWALO BASIN  
EXECUTIVE SUMMARY OF CASH FLOW  
2006-2013**

Summarized below is the projected cash flow after debt service of operations of Kewalo Basin after assumption of jurisdiction from Department of Transportation - Harbors on July 1, 2007 and completion of proposed capital improvements

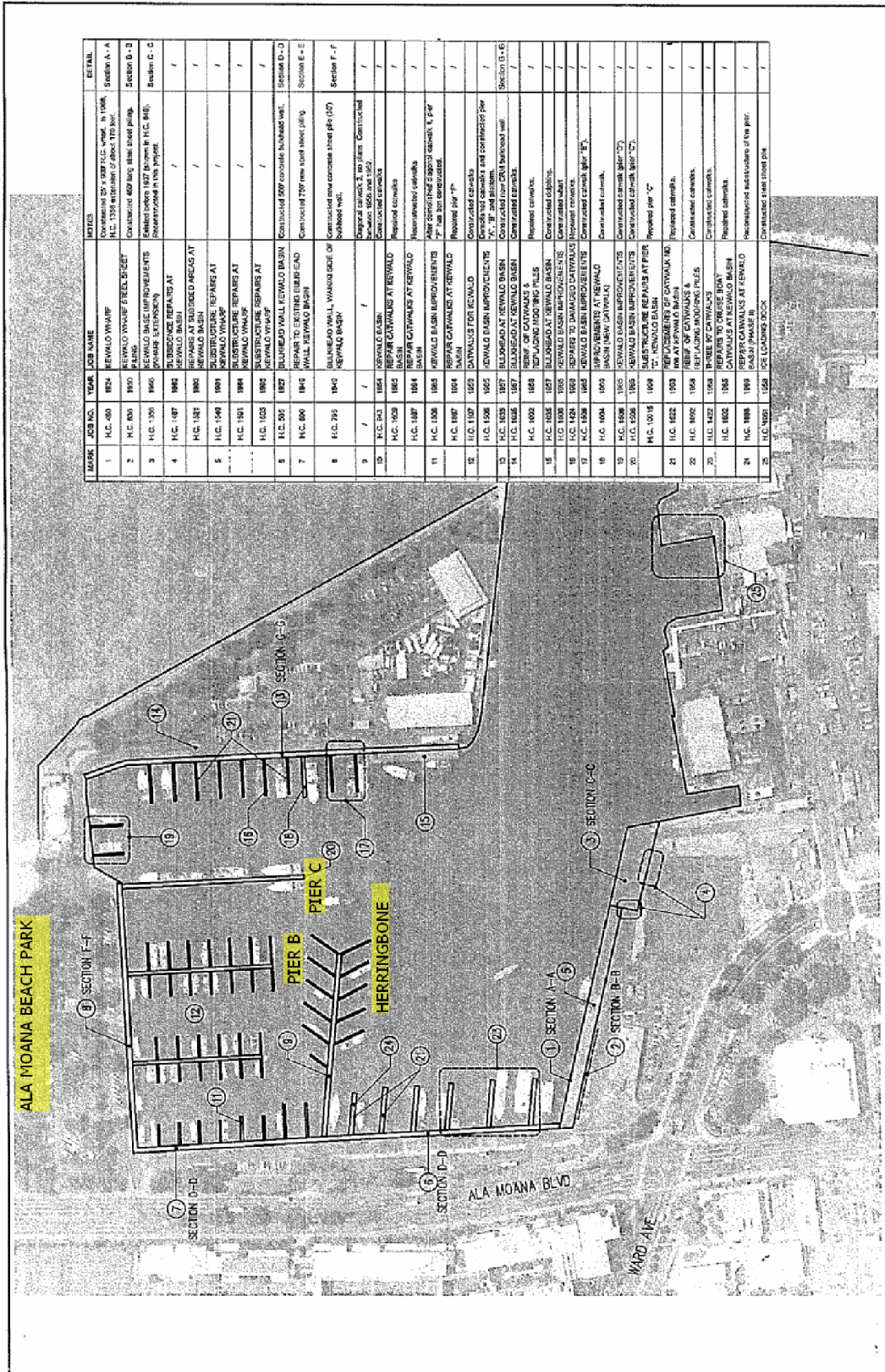
	FYE 6/30/06	FYE 6/30/07	FYE 6/30/08	FYE 6/30/09	FYE 6/30/10	FYE 6/30/11	FYE 6/30/12	FYE 6/30/13
	DOT Budget (1)	DOT Budget (1)	Projected	Projected	Projected	Projected	Projected	Projected
<b>INCOME</b>								
Base Rent	\$ 401,000	\$ 401,000	\$ 509,000	\$ 804,000	\$ 1,274,000	\$ 1,839,000	\$ 2,061,000	\$ 2,101,000
Common Area Maintenance	\$ -	\$ -	\$ 311,000	\$ 275,000	\$ 434,000	\$ 548,000	\$ 667,000	\$ 687,000
<b>TOTAL GROSS INCOME</b>	\$ 401,000	\$ 401,000	\$ 820,000	\$ 1,079,000	\$ 1,708,000	\$ 2,387,000	\$ 2,728,000	\$ 2,789,000
<b>TOTAL OPERATING EXPENSES</b>								
	\$ 679,000	\$ 682,000	\$ 708,000	\$ 736,000	\$ 774,000	\$ 816,000	\$ 842,000	\$ 858,000
<b>NET INCOME FROM OPERATIONS</b>	\$ (278,000)	\$ (281,000)	\$ 112,000	\$ 343,000	\$ 934,000	\$ 1,571,000	\$ 1,886,000	\$ 1,931,000
<b>OWNER EXPENSES</b>								
Vehicles	\$ -	\$ -	\$ 24,000	\$ -	\$ -	\$ -	\$ -	\$ -
Disposal Abandoned Vessels	\$ 93,000	\$ 93,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
CIP Debt Service	\$ -	\$ -	\$ 338,000	\$ 406,000	\$ 398,000	\$ 390,000	\$ 382,000	\$ 375,000
Capital Improvements	\$ 465,000	\$ 30,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
OHA Payments	\$ 80,200	\$ 80,200	\$ 101,800	\$ 160,800	\$ 254,800	\$ 367,800	\$ 412,200	\$ 420,200
Allocation Statewide Expenses/HCDA central office allocation	\$ -	\$ -	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000
<b>TOTAL OWNER EXPENSES</b>	\$ 638,200	\$ 203,200	\$ 493,800	\$ 596,800	\$ 682,800	\$ 787,800	\$ 824,200	\$ 825,200
<b>NET INCOME / NET LOSS:</b>	\$ (916,200)	\$ (484,200)	\$ (381,800)	\$ (253,800)	\$ 251,200	\$ 783,200	\$ 1,061,800	\$ 1,105,800

Notes:  
(1) Income based upon: rent roll (excluding Honolulu Marine, NOAA, Fishermans Wharf restaurant and Simply Ono) dated 7/6/06 provided by DOT and supplemented with slip permits received by HCDA to date.

Hawaii Community Development Authority  
 List of Projects for Kewalo Basin CIP  
 In order of priority  
 in \$1,000

Cost Item	Total			In order of priority ----- >															
	FY08	FY09	FY10	Kewalo Basin Infrastructure			All Pier Electrical			Ingress/Egress			Pier B,C & Herringbone Replace			Commercial Improvements			
				FY08	FY09	FY10	FY08	FY09	FY10	FY08	FY09	FY10	FY08	FY09	FY10	FY08	FY09	FY10	
PLANS	182	1	-	150			1			1			30					1	
LAND	-	-	-																
DESIGN	995	340	150	200			120			225			450	100	150			240	
CONSTRUCT	7,038	3,719	1,590	1,135			579	160	240	1,274	500		4,050	900	1,350			2,159	
EQUIPMENT	-	40	60					40	60										
<b>TOTAL</b>	<b>8,215</b>	<b>4,100</b>	<b>1,800</b>	<b>1,485</b>			<b>700</b>	<b>200</b>	<b>300</b>	<b>1,500</b>	<b>500</b>		<b>4,530</b>	<b>1,000</b>	<b>1,500</b>			<b>2,400</b>	

# EXHIBIT C



MARK	JOB NO.	YEAR	JOB NAME	NOTES	DETAIL
1	H.C. 800	1974	RENEWAL WHARF	Construction of 20' x 100' wharf. In 1986, H.C. 1251 replaced of about 175 feet.	Section A-A
2	H.C. 801	1974	RENEWAL WHARF STEEL SHEET PILING	Construction of 400' long steel sheet piling.	Section D-D
3	H.C. 1000	1980	RENEWAL BASE IMPROVEMENTS	Established between 1987 (shown in H.C. 848). Reconstructed in this project.	Section C-G
4	H.C. 107	1980	SUBSTRUCTURE REPAIRS AT RENEWAL BASIN		/
5	H.C. 148	1980	SUBSTRUCTURE REPAIRS AT RENEWAL WHARF		/
6	H.C. 181	1984	SUBSTRUCTURE REPAIRS AT RENEWAL WHARF		/
7	H.C. 102	1980	SUBSTRUCTURE REPAIRS AT RENEWAL WHARF		/
8	H.C. 200	1987	REPAIR TO EXISTING BULKHEAD WALL, RENEWAL BASIN	Constructed 200' concrete bulkhead wall.	Section D-D
9	H.C. 800	1984	REPAIR TO EXISTING BULKHEAD WALL, RENEWAL BASIN	Constructed 200' new bulkhead wall.	Section E-E
10	H.C. 793	1984	BULKHEAD WALL, WARDIAN SIDE OF RENEWAL BASIN	Constructed new concrete bulkhead wall.	Section F-F
11	H.C. 843	1984	RENEWAL BASIN	Repaired concrete.	/
12	H.C. 109	1985	REPAIR CATWALKS AT RENEWAL BASIN	Repaired concrete.	/
13	H.C. 187	1984	CATWALKS AT RENEWAL BASIN	Reconstructed catwalks.	/
14	H.C. 108	1985	REPAIR BASIN BULKHEADS	Reconstructed catwalks.	/
15	H.C. 187	1984	REPAIR CATWALKS AT RENEWAL BASIN	Repaired concrete.	/
16	H.C. 107	1985	CATWALKS FOR REWARD	Constructed catwalks.	/
17	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
18	H.C. 103	1987	BULKHEAD AT REWARD BASIN	Constructed concrete bulkhead wall.	Section G-G
19	H.C. 105	1987	BULKHEAD AT REWARD BASIN	Constructed concrete bulkhead wall.	Section G-G
20	H.C. 106	1987	BULKHEAD AT REWARD BASIN	Constructed concrete bulkhead wall.	Section G-G
21	H.C. 108	1985	REPAIR OF CATWALKS & REPLACING FLOORING PILLS	Repaired concrete.	/
22	H.C. 105	1987	BULKHEAD AT REWARD BASIN	Constructed concrete.	/
23	H.C. 108	1985	REPAIR OF BASIN BULKHEADS	Repaired concrete.	/
24	H.C. 108	1985	REPAIR OF BASIN BULKHEADS	Repaired concrete.	/
25	H.C. 104	1985	SUBSTRUCTURE REPAIRS AT REWARD BASIN (NEW CATWALK)	Repaired concrete.	/
26	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
27	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
28	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
29	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
30	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
31	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
32	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
33	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
34	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
35	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
36	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
37	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
38	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
39	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
40	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
41	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
42	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
43	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
44	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
45	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
46	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
47	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
48	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
49	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
50	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
51	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
52	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
53	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
54	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
55	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
56	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
57	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
58	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
59	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
60	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
61	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
62	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
63	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
64	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
65	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
66	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
67	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
68	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
69	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
70	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
71	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
72	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
73	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
74	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
75	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
76	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
77	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
78	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
79	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
80	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
81	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
82	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
83	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
84	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
85	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
86	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
87	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
88	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
89	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
90	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
91	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
92	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
93	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
94	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
95	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
96	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
97	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
98	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
99	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/
100	H.C. 108	1985	REWARD BASIN IMPROVEMENTS	Repaired concrete.	/

**ATTACHMENT 5.2  
NOTICE OF INTENT TO OFFER  
FOR THE OPERATIONS AND MANAGEMENT OF KEWALO BASIN HARBOR  
HONOLULU, HAWAII**

DATE: \_\_\_\_\_

Hawaii Community Development Authority  
677 Ala Moana Boulevard, Suite 1001  
Honolulu, Hawaii 96813  
Fax: 808-587-8150

The undersigned intends to submit a proposal offer for the Operations and Management of Kewalo Basin Harbor Request for Proposals.

Respectfully submitted,

\_\_\_\_\_  
Name of Offeror

\_\_\_\_\_  
Authorized Signature

**ATTACHMENT 5.3**  
**SAMPLE OF PERFORMANCE BOND**  
**PERFORMANCE BOND**  
*(11/17/98)*

**KNOW TO ALL BY THESE PRESENTS:**

That we,

\_\_\_\_\_  
(full legal name and Street address of Contractor)

as Contractor, hereinafter called Contractor, is held and firmly bound unto the

**Hawaii Community Development Authority**, its successors and assigns, as Obligee, hereinafter called Obligee, in the amount of \_\_\_\_\_

\_\_\_\_\_  
(50% of the contract's total dollar amount)

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

Legal tender;

Share Certificate unconditionally assigned to or made payable at sight to

\_\_\_\_\_  
Description  
\_\_\_\_\_  
\_\_\_\_\_;

Certificate of Deposit, No. \_\_\_\_\_ dated \_\_\_\_\_, issued by

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

\_\_\_\_\_;

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

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

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

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

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

**WHEREAS:**

The Contractor has by written agreement dated \_\_\_\_\_ entered into a contract with Obligee for the following Project:

**Furnishing Operations and Management Services for Kewalo Basin Harbor.**

hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

**NOW, THEREFORE,**

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, and shall deliver the Project to the Obligee, or to its successors or assigns, fully completed as in the Contract specified and free from all liens and claims and without further cost, expense or charge to the Obligee, its officers, agents, successors or assigns, free and

harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect

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

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

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

(Seal)

\_\_\_\_\_  
Name of Contractor

\*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

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

**ACKNOWLEDGMENT:**

State of Hawaii                    )  
  ) SS.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me appeared \_\_\_\_\_ and \_\_\_\_\_ to me personally known, who on oath deposed and said that (it is/they are/he is/she is) the \_\_\_\_\_ and \_\_\_\_\_, respectively, of \_\_\_\_\_, that (it has) (they have) (he has) (she has) executed the foregoing in (its) (their) (his) (her) authorized capacity (capacities) as such and that (it has) (they have) (he has) (she has) read the foregoing, know(s) the content thereof and that the same is true to the best of (its) (their) (his) (her) knowledge and belief.

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

My Commission Expires:\_\_\_\_\_

**ATTACHMENT 5.4**  
**WAGE CERTIFICATE**

**Subject: FURNISHING OPERATIONS AND MANAGEMENT SERVICES FOR THE KEWALO BASIN HARBOR**

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. The services to be rendered shall be performed by employees paid at wages or salaries not less than wages paid to the 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, and;
2. All applicable laws of the Federal and State governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will by full complied with.

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 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 wages required by Section 103-55, H.R.S.

Offeror: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT 5.5**  
**POSITION DESCRIPTION FOR HARBOR AGENT II**

PART I	DEPARTMENT OF PERSONNEL SERVICES	8.688
	STATE OF HAWAII	8.689
.....		8.690
	Class Specifications	8.691
	for the classes:	8.692

HARBOR AGENT I, II, III, IV, V

Series Definition:

This series includes all positions the duties of which primarily concern the operation and maintenance of harbors for light and medium draft vessels in the State of Hawaii. The positions are concerned with such functions as assigning berths; regulating movement of vessels in the harbor; providing for billing and collection of fees; enforcing traffic, boating and harbor regulations; inspecting boats; and inspecting and maintaining harbor facilities and equipment.

Small boat harbors are intended primarily for the berthing of recreational and fishing boats. However, at several small boat harbors, commercial activity is also permitted. Commercial activities at these harbors may include such ventures as tour boats, charter cruises, commercial fishing. Activities at medium draft harbors include the same type of commercial activities, as well as inter-island barge traffic and cargo handling.

The work described in this series does not reflect the operation of large State deep draft commercial harbor operations such as Honolulu Harbor, Nawiliwili Harbor, Kahului Harbor, or Hilo Harbor, which are concerned primarily with the movement of bulk and general cargo and the accommodation of large international ocean-going passenger liners.

It is not the intention of these specifications to draw fine distinctions between such terms as "harbors," "ports" or "marinas". For the purpose of these specifications, the terms "harbors" and "small boat harbors" shall be used and are intended to mean a body of water sheltered naturally or artificially against currents, waves and winds and deep enough to furnish berthing for ships and/or boats.

No attempt is made to make distinctions between "ships" and "boats". For the purpose of these specifications, the terms "boats" or "small boats" will also be used to identify all vessels which use the harbors covered in these specifications.

Classes in this series are distinguished on the basis of the following classification factors: 1) nature and variety of work, 2) nature of available guidelines, 3) nature of supervision received, 4) purpose and nature of interpersonal relationships required, 5) supervisory responsibilities, and 6) knowledge and abilities required. The interaction of these factors are

discussed at each level under two major headings: (1) the characteristics of the harbor, and (2) the nature and scope of responsibility.

- (1) Characteristics of the harbor. This factor is critical in the classification of positions in this series. It deals with such considerations as the size and location of the harbor; number and types of users; intensity of operational and administrative activity; extraneous elements (e.g., proximity to tourist areas, vehicular and pedestrian traffic); and combinations thereof. Combinations of these considerations contribute toward making the operational activity of a harbor more intense and complex. Increasing intensity and complexity of harbor operations, in turn, makes the job of the harbor operations agent increasingly more difficult. For instance, the larger harbors have more tenants, increasing proportionately the number and impact of decisions which must be made and enforced. Multiple use harbors which service both recreational and commercial activity require enforcement of different rate structures for use of harbor facilities; increase the potential for conflicting interests among different groups of harbor users; and increase the kinds and amounts of harbor traffic. These factors in turn increase the number, kind and criticality of decisions which must be made and enforced. Proximity to major metropolitan, tourist and other recreational areas also increases the amount of shore traffic and congestion (vehicular and pedestrian) with which the harbor agent must contend.

While each harbor differs from any other according to particular characteristics of individual local conditions, common elements characterize certain harbors and such harbors are grouped in categories according to operational activity and complexity as follows:

a) Least active and complex

Harbors in this group are characterized by such factors as locations away from principal metropolitan and/or tourist areas; small number of berths (less than 50); little demand for temporary and permanent berthing; minimal harbor and shore activity.

b) Moderately active and complex

Harbors in this group are characterized by locations away from principal metropolitan and/or tourist areas, a large number of berths and harbor activity which is

moderately active and complex. Two groups of harbors fall into this category: (1) those larger harbors (50 to 300 berths) which primarily service recreational boating and/or fishing activities; and (2) multiple use harbors (recreational and commercial) in locations away from major tourist areas (i.e., Kawaihae and Kaunakakai) with commercial activity primarily concerned with periodic bulk and general cargo movement.

c) Significantly active and complex

Harbors in this group are characterized by such factors as locations in principal metropolitan or tourist areas; large number of berths (over 50) with long waiting periods for berthing space; frequent need to provide temporary berthing for transient boats; usually a mix of recreational and commercial boating activity; high intensity of vessel, vehicular and pedestrian traffic; and periodic special activities such as hosting local, national and international fishing and sailing events.

Proximity to major metropolitan and tourist areas increase the diversity of commercial activity. In addition to commercial and charter fishing boats, these harbors also berth passenger-carrying boats engaged in various tourist oriented boating activities (e.g., harbor cruises, glass bottom boat rides and sunset and dinner cruises).

d) Most active and complex

The Ala Wai Harbor system is the largest and most active and complex small boat harbor in the State (over 700 berths and moorings). Apart from size, the Ala Wai Harbor is characterized by its location in the principal city on the principal Island; its proximity to the major tourist destination in the State; large waiting list for permanent berths; the need to provide temporary berthing for transient boats; a significant population of "liveaboards"; high intensity of vessel, vehicular and pedestrian traffic (much of which is not harbor connected); and periodic special activities such as hosting prestigious international sailing

- (2) Nature and Scope of Responsibility. This factor concerns the nature and extent of supervisory control received and exercised over the work of other employees.

- - - - -

PART I  
HARBOR AGENT I, II, III, IV, V  
8.688, 8.689, 8.690, 8.691, 8.962

Page 4

This is the first class specification for the new classes HARBOR AGENT I, II, III, IV & V which replaces Harbor Attendant I (8.692), approved on June 2, 1961, Harbor Attendant II & III (8.694 & 8.695) approved on February 24, 1964 and Harbor Superintendent (8.697) approved on July 15, 1955.

DATE APPROVED: 6/7/83 /s/ James H. Takushi  
JAMES H. TAKUSHI  
Director of Personnel Services

HARBOR AGENT I 8.688

Duties Summary:

Operates and maintains one or several small boat harbors representing harbor activities which are operationally the least active and complex; and performs other related duties as assigned.

Distinguishing Characteristics:

This class is distinguished by its responsibility for the operation and maintenance of one or several small boat harbors or other boating facilities representing harbor activities which are operationally the least active and complex, the scope of which are characteristic of the small boat harbor facilities at Manele Bay (Lanai), Nawiliwili (Kauai), and Port Allen (Kauai).

A position in this class is assigned to one or several small boat harbors and boat launching facilities which are located in more rural areas, have a small number of berths (less than 50), and which service a low level of commercial boating activities. The Harbor Agent I works alone with latitude for scheduling his daily activities. General supervision in these operations and maintenance activities is received from a higher level representative of harbors management who is located at the harbors district office. Matters outside of routine day-to-day operational and maintenance activities of the assigned harbor are referred to the harbors district office for guidance.

Examples of Duties:

Assigns and reassigns berths to permanent and visiting boaters; inspects boats for compliance with State laws and

requirements and makes reports concerning violations; performs minor electrical and plumbing repairs, rough carpentry and painting; makes recommendations for more extensive repairs or improvements; performs grounds keeping and custodial duties; keeps records necessary to bill tenants for use of moorings and other facilities; collects fees and charges; issues receipts; records and reports unsafe practices, damage to property, condition of harbor facilities, vessel counts, arrivals and departures; investigations and reports oil spillage or other pollution in the harbor; maintains order, enforces boating laws and harbor rules; issues citations when required; serves as liaison between the State Harbors Division, harbor tenants and the general public.

Knowledge and Abilities Required:

Knowledge of: Simple clerical procedures; simple arithmetic (addition, subtraction, multiplication, division); hand tools and their use.

Ability to: Establish and maintain effective working relationships with boaters and the general public; keep simple records and make simple reports; make arithmetic computations; learn and apply various rules and regulations; use simple hand tools used in minor repair and painting tasks; operate motor vehicles including small vans and pick-up trucks.

HARBOR AGENT II

8.689

Duties Summary:

Assists a higher level representative of harbors management in the operation and maintenance of one or several harbors representing harbor activities which are operationally, significantly active and complex, or the most active and complex; and performs other related duties as assigned.

Distinguishing Characteristics:

This class is distinguished by its responsibility for assisting a higher level representative of harbors management in the operation and maintenance of one or several harbors or other boating facilities representing harbors which are characterized, in these specifications, as operationally, significantly active and complex, such as the harbors at Kewalo Basin (Oahu), Lahaina (Maui), Kailua-Kona (Hawaii) or the small boat harbors program of the East and South Hawaii District, or the most active and complex, such as the harbor at Ala Wai.

A position in this class acts in an assistant capacity and performs most of the duties required to operate, and maintain, the assigned harbor facilities. Because of the complex and very active nature of the harbors' operations, the principal harbor agent and assistant positions share in the performance of most of the duties, although the principal position is the superior position and has authority over and responsibility for the activities.

Examples of Duties:

Assists a higher level representative of harbors management by performing all or most of the duties described below:

Interprets, explains and enforces all laws, rules and regulations pertinent to the operation of small boat and commercial harbors; issues citations for violations of small boat and commercial harbor rules and tariff; maintains order and insures that restricted areas are secured against entry by unauthorized vehicles and individuals; regulates and controls the movement and parking of vehicles; regulates the movement of vessels in the harbors; assigns berths; observes and assists in the docking and undocking of vessels; records vessel arrival and departure times; arranges for mooring of boats in the harbors; reports the arrival of out-of-state and foreign vessels to the proper authorities; maintains visitor log book; issues temporary moorings permits to transient boats; conducts initial and annual vessel inspections for compliance with State and Federal boating laws and to ensure boats are in good material and operating condition; maintains checking procedures for proper vessel registration and documentation; initiates action on abandoned and derelict vessels; conducts physical inventory of vessels in the harbor to ensure no unauthorized mooring and to determine availability of berths; maintains current waiting list for mooring and other harbor use permits; inspects the physical condition of harbor grounds and facilities; performs minor painting and simple repair work in the upkeep of harbor facilities; performs custodial duties to keep grounds and facilities clean, sanitary and in good working order; maintains inventory of office and janitorial supplies; processes maintenance and repair requests to appropriate agency; prepares periodic reports on facility condition; investigates and reports oil spillage and other pollution to proper authorities; maintains records necessary for the billing of wharfage, dockage, oil line usage and other related tariffs and fees; collects charges and furnishes receipts for demurrage and registration fees; prepares deposit slips and deposits daily receipts; prepares correspondence, reports and replies to queries; maintains harmonious relationships among the tenants and the

boating public; may testify and make recommendations on small boat and commercial harbors rules and tariff; may act as harbors representative to special events groups using the harbors as headquarters or designation.

Knowledge and Abilities Required:

Knowledge of: Simple clerical procedures; simple arithmetic (addition, subtraction, multiplication, division), hand tools and their use.

Ability to: Establish and maintain effective working relationships with boaters and the general public; keep simple records and make simple reports; make simple arithmetic computations; learn and apply various rules and regulations; use simple hand tools used in minor repair and painting tasks; operate motor vehicles up to small vans and pick-up trucks.

<u>HARBOR AGENT III, IV, V</u>	8.690
	8.691
	8.692

Duties Summary:

Operates and maintains one or several harbors; and performs other related duties as assigned.

Distinguishing Characteristics:

These classes represent responsibility for the operation and maintenance of assigned harbors. Positions in these classes are concerned with such functions as assigning berths; regulating movement of vessels in the harbors; providing for billing and collecting of fees from harbors users; enforcement of traffic, boating and harbor regulations; inspection of boats; inspection and maintenance of harbor facilities and equipment; and representing the operation to harbor users and the general public.

Harbor Agent III: This class is distinguished by its responsibility for the operation and maintenance of one or several harbors or other boating facilities representing harbor activities which are operationally moderately active and complex, such as the harbors at Keehi, Haleiwa, Waianae (all on Oahu); Maalaea (Maui); Kawaihae (Hawaii); and Kaunakakai (Molokai); acting as the senior on-site representative of harbors management at the assigned harbor complex; and interpreting and enforcing State laws, and rules governing small boat and commercial harbors and tariff; and,

usually, supervising one or two clerical or laborer positions.

Harbor Agent IV: This class is distinguished by its responsibility for overseeing, supervising and participating in the operation and maintenance of one or several harbors or boating facilities representing harbor activities which are operationally significantly active and complex, such as the harbors at Kewalo (Oahu); Lahaina (Maui); and the Kailua-Kona/Honokohau Complex (Hawaii); acting as the senior on-site representative of harbors management at the assigned harbor complex; interpreting and enforcing State laws, and rules governing small boat and commercial harbors; and supervising a lower level harbor agent.

Harbor Agent V: This class is distinguished by its responsibility for overseeing, supervising and participating in the operation and maintenance of the Ala Wai Boat Harbor, Ala Wai Canal and adjacent areas; the largest and operationally most active and complex small boat harbor in the State; acting as the senior on-site representative of harbors management at the assigned harbors; interpreting and enforcing State laws, rules and regulations governing small boat harbors; and supervising a lower level harbor agent, several clerical and several laborer positions.

Examples of Duties:

Interprets, explains and enforces all laws, rules and regulations pertinent to the operation of small boat and commercial harbors; issues citations for violations of harbor rules; maintains order and insures that restricted areas are secured against entry by unauthorized vehicles and individuals; regulates and controls the movement and parking of vehicles; regulates the movement of vessels in the harbors; assigns berths; observes and assists in the docking and undocking of vessels; records vessel arrival and departure times; arranges for mooring of boats in the harbors; reports the arrival of out-of-state and foreign vessels to the proper authorities; maintains visitor log book; issues temporary mooring permits to transient boats; conducts initial and annual vessel inspections for compliance with State and Federal boating laws and to ensure boats are in good material and operating condition; maintains checking procedures for proper vessel registration and documentation; initiates action on abandoned and derelict vessels; conducts physical inventory of vessels in the harbor to ensure no unauthorized mooring and to determine availability of berths; maintains current waiting list for mooring and other harbor use permits; inspects the physical condition of harbor grounds and facilities; maintains inventory of office and janitorial supplies; processes maintenance and repair requests to appropriate agency; prepare periodic reports on

facility condition; investigates and reports oil spillage and other pollution to proper authorities; maintain records necessary for the billing of fees; collects charges and furnishes receipts for registration fees; prepares deposit slips, deposits daily receipts; prepares correspondence and reports and replies to queries; maintains harmonious relationships among the tenants and the boating public; may testify and make recommendations on small boat and commercial harbor rules and tariff; may act as harbors representative to special events groups using the harbors as headquarters or destination; may plan, schedule and assign the work of others.

Knowledge and Abilities:

Knowledge of: Arithmetic; simple recordkeeping and reporting procedures. In addition, applicants for Harbor Agent IV and V must demonstrate knowledge of laws, rules and regulations pertaining to the operation of small boats; safety practices pertaining to the operation of small boats and the use of harbors and harbor facilities; property management and maintenance methods and practices; principles and practices of supervision.

Ability to: Keep simple records and prepare simple operational reports; make arithmetic computations; read, understand and enforce appropriate laws, rules and directives pertaining to the operation of small boats and small boat and commercial harbors; establish and maintain effective working relationships with boat owners and the general public; act authoritatively within assigned jurisdiction; operate vehicles up to vans and pick-up trucks.

In addition, applicants for Harbor Agent III, IV and V must be able to supervise the work of others.

PART II	DEPARTMENT OF PERSONNEL SERVICES	8.688
	STATE OF HAWAII	8.689
.....		8.690
		8.691
	Minimum Qualification Specifications for the Classes:	8.692

HARBOR AGENT I, II, III, IV, V

Basic Education/Experience Requirement:

One year of full-time work experience which demonstrated the applicant's ability to read and understand oral and written instructions; write simply and directly; and make simple arithmetic computations (addition, subtraction, multiplication and division).

Graduation from high school with coursework in mathematics and English may be substituted for the foregoing basic experience requirements.

Experience Requirement:

In addition to the above, applicants must have had progressively responsible experience of the type and quality described in the paragraphs below and in the amounts shown in the following table:

Class Title	Spclzd Exp (Yrs)	Harbors Operations Exp (Yrs)	Total Exp (Yrs)
Harbor Agent I	1	0	1
Harbor Agent II	2	0	2
Harbor Agent III	2-1/2	1/2	3**
Harbor Agent IV	3	1*	4**
Harbor Agent V	3	2*	5**

Specialized Experience: Full-time experience which involved meeting and dealing effectively with people in a person-to-person work relationship. Such experience must have demonstrated the ability to: (1) establish and sustain positive relationships with people; (2) elicit and provide pertinent information; (3) read, understand and apply various rules and regulations; and (4) prepare clear and concise reports.

Examples of acceptable work experience include, but are not limited to: (1) managers, such as a Harbor Agent who, in operating and maintaining a project or project area, establishes

and maintains a continuing relationship with clients and users, applying various rules and regulations; and (2) professionals, para-professionals, or clerical and others who deal constantly with clients in eliciting and providing information and in providing advice/guidance.

Examples of non-acceptable work experience include, but are not limited to, experience as a sales clerk, office clerk, station attendant, counter worker or other such experience which may have involved much contact with people but only in a minimal context (such as in taking and filling an order).

Harbor Operations Experience: Work experience in harbor operations which included participation in such activities as the assignment of vessels to berths; direction and control of movement of vessels in the harbor; recording and reporting vessel arrivals and departures; preparation and collection of charges for use of harbor facilities; enforcement of harbor rules and regulations.

In order to be qualifying, the work must have involved substantive participation in harbor operation activities. Experience limited to peripheral supportive activities such as maintenance or grounds keeping functions will not qualify for Harbor Operations Experience.

Alternative Harbor Operations Experience:

1. Work and/or recreational experience (full-time or part-time) in the operation of small boats which demonstrates that the applicant has a good working knowledge of the laws, rules and regulations pertaining to the operation of small boats; safety practices relating to the operation of small boats and use of harbors and harbor facilities; seamanship; aids to navigation; and other activities related to the safe and proper operation of small boats and utilization of harbors and harbor facilities may be substituted for Harbor Operations Experience to a maximum of six months.
2. Clerical or security work experience performed at a small boat harbor facility in which the applicant actually participated in some aspects of harbor operations and which demonstrates that the applicant has a good working knowledge of the laws, rules and regulations relating to the use of harbors and harbor facilities may be substituted for Harbor Operations Experience to a maximum of six months.

\*Applicants for Harbor Agent IV and V must have at least six months of experience comparable in scope and responsibility to that of the class Harbor Agent III or at least one year of experience comparable to the class Harbor Agent II in the State service.

\*\*Supervisory Aptitude: Applicants for Harbor Agent III, IV and V must possess Supervisory Aptitude. Supervisory Aptitude is the demonstration of aptitude or potential for the performance of supervisory duties through successful completion of regular or special assignments which involve some supervisory responsibilities or aspects; by serving as a group or team leader, or in similar work in which opportunities for demonstrating supervisory capabilities exist; by completion of training courses in supervision accompanied by application of supervisory skills in work assignments or by favorable appraisals by a supervisor indicating the possession of supervisory potential.

Quality of Experience:

Possession of the required number of years of experience will not in itself be accepted as proof of qualification for a position. The applicant's overall experience must have been of such scope and level of responsibility as to conclusively demonstrate that he has the ability to perform the duties of the position for which he is being considered.

License Requirement:

Possession of a valid Hawaii State motor vehicle operator's license is required.

Selective Certification:

Specialized knowledge, skills and abilities may be required to perform the duties of some positions. In such positions, certification may be restricted to eligibles who possess the pertinent experience and/or training required to perform the duties of the position.

Agencies requesting selective certification must show the connection between the kind of training and/or experience on which they wish to base selective certification and the duties of the position to be filled.



**ATTACHMENT 5.6**  
**GENERAL CONDITIONS AG-008 (11/3/2006)**

# GENERAL CONDITIONS

## Table of Contents

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

## GENERAL CONDITIONS

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

3. Personnel Requirements.
  - a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
  - b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.
6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, 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 Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.
  - a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
    - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
    - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
    - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
  - b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.
  - c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency

of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.

7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
  - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:
    - (1) Cancel the stop performance order; or

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

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.
- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual

capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.

- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:
  - (1) Any completed goods or work product; and
  - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

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

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.
- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

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

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

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
    - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
    - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
    - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
  - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
  - (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
  - (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
  - c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.
16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:
- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
  - b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
  - c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.
17. Payment Procedures; Final Payment; Tax Clearance.
- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.

- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
  - c. Prompt payment.
    - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
    - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
  - d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.
18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.
19. Modifications of Contract.
- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
  - b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
  - c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
    - (A) Changes in the work within the scope of the Contract; and
    - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
  - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.

- g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.
  - b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
  - c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
  - d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.
21. Price Adjustment.
- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
    - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
    - (2) By unit prices specified in the Contract or subsequently agreed upon;

- (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.
22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.
23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:
- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
    - (1) Description of performance (Attachment 1);
    - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
    - (3) Place of performance of services;
    - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
    - (5) Method of shipment or packing of supplies; or
    - (6) Place of delivery.
  - b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this

Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

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

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

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

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

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

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR

hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.
34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.

41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.

**ATTACHMENT 5.7  
SAMPLE CONTRACT**



or services performed, or both, under this Contract in a total amount not to exceed \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), including approved costs incurred and taxes, at the time and in the manner set forth in the RFP and CONTRACTOR'S Proposal.

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

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

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

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

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) per day, in accordance with the terms of paragraph 9 of the General Conditions.

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

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

**STATE**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Date)

**CONTRACTOR**

**CORPORATE SEAL**  
**(If available)**

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Date)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Deputy Attorney General

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