



INVITATION FOR BIDS ("IFB")  
TOWING CONTRACT FOR TOWING SERVICES OPERATION  
AT THE  
OAHU, SMALL BOAT HARBORS  
ALA WAI SBH, HALEIWA SBH, HE'EIA-KEA SBH, KE'EHl SBH, WAIANAE SBH,  
SOUTH KE'EHl LAGOON LAUNCH RAMP, KAHANA BAY LAUNCH RAMP AND  
MAUNALUA BAY LAUNCH RAMP ("OSBH")

IFB No. LO-20-006

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

ERU APPROVED BY:

Suzanne D. Case

Suzanne D. Case  
Chairperson, Board of Land and Natural Resources,  
Department of Land and Natural Resources

May 8, 2020

Date

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**NOTICE TO BIDDERS**  
**INVITATION FOR BIDS**  
**TOWING CONTRACT FOR TOWING SERVICES**  
**AT THE OAHU SMALL BOAT HARBORS ("OSBH")**

IFB No. LO-20-006

The State of Hawaii, Board of Land and Natural Resources, is issuing an Invitation for Bids ("IFB") to qualified parties interested in a Towing Contract of state-owned lands within the OAHU SMALL BOAT HARBORS (OSBH) Ala Wai SBH, Haleiwa SBH, He'eia-Kea SBH, Ke'ehi SBH, Waianae SBH, South Ke'ehi Lagoon Launch Ramp, Kahana Bay Launch Ramp and Maunalua Bay Launch Ramp  
Situating on Oahu, Hawaii, as depicted in Exhibits A and A-1 thru A-8  
Pursuant to Chapter 102, Hawaii Revised Statutes.

Before any prospective bidder shall be entitled to submit a bid, the prospective bidder must meet the minimum qualifications set forth in the IFB and shall submit a completed Qualifications Questionnaire and give written notice of intent to bid on the Notice of Intention to Bid form by 4:00 P.M. June 8, 2020, to the Division of Boating and Ocean Recreation of the Department of Land and Natural Resources, 4 Sand Island Access Road, Honolulu, Hawaii 96819.

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

SEALED BIDS are due on or before 4:00 P.M. on June 15, 2020, at the Division of Boating and Ocean Recreation of the Department of Land and Natural Resources, State of Hawaii, located at 4 Sand Island Access Road, Honolulu, Hawaii 96819.

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

SEALED BIDS timely and properly received will be publicly opened at 4:00 P.M. on June 15, 2020, at the Division of Boating and Ocean Recreation of the Department of Land and Natural Resources, State of Hawaii, located at 4 Sand Island Access Road, Honolulu, Hawaii 96819.

The IFB, including required forms for bidding, qualifications, specifications and contract, may be obtained from the above-named office during the regular hours of 8:00 a.m. to 4:00 p.m. from Monday through Friday except on holidays. Requests for the IFB may also be made to Richard Howard, Property Manager VI, at telephone no. (808) 587-1964 or fax no. (808) 587-1977.



\_\_\_\_\_  
Suzanne D. Case, Chairperson  
Board of Land and Natural Resources

HONOLULU STAR ADVERTISER - Publication Dates: May 26, 27, and 28, 2020.

DEPARTMENT OF LAND AND NATURAL RESOURCES - Posting Date: May 22, 2020

WEB SITE - Posting Date: May 22, 2020.

**NOTICE OF INTENTION TO BID  
FOR TOWING CONTRACT FOR TOWING SERVICES  
AT THE OAHU SMALL BOAT  
HARBORS**

**IFB No. LO-20-006**

**DATE:**

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Division of Boating and Ocean Recreation  
Department of Land and Natural Resources  
4 Sand Island Access Road  
Honolulu, Hawaii 96819  
Fax: 808-587-1977

The undersigned intends to bid for the Towing Contract, for operation of the Towing Contract at the Oahu Small Boat Harbors, Ala Wai SBH, Haleiwa SBH, He'eia-Kea SBH, Ke'ehi SBH, Waianae SBH, South Ke'ehi Lagoon Launch Ramp, Kahana Bay Launch Ramp and Maunalua Bay Launch Ramp.

Attached is the fully completed Qualifications Questionnaire as required.

Respectfully submitted,

---

Name of Bidder

---

Authorized Signature

---

Printed Name and Capacity

## **QUALIFICATIONS**

### **1. QUALIFICATIONS OF BIDDERS:**

- 1.1. Prospective Bidders must be capable of carrying out the terms and conditions of the Towing Contract ("Towing Contract") that may be awarded, for which bids are being called.
- 1.2. Each prospective Bidder must file a written Notice of Intention to Bid and the completed Qualifications Questionnaire at the Division of Boating and Ocean Recreation of the Department of Land and Natural Resources, 4 Sand Island Access Road, Honolulu, Hawaii 96819, no later than 4:00 P.M. (Hawaii Standard Time) on June 8, 2020.
- 1.3. The Qualifications Questionnaire, properly executed and notarized, shall be reviewed by DOBOR to determine whether the prospective Bidder's experience, competence and financial standing meet the minimum qualifications set herein.
- 1.4. Bidder must have at least five (5) years of experience with the required type of towing operation and must have trained towing staff available 24 hours a day and 7 days a week on the island of Oahu.
- 1.5. Bidder must demonstrate that its assigned project manager has at least two (2) years of experience in providing a towing service and management for a similar type of towing operation.
- 1.6. Bidder must have the financial ability to carry out the terms of the Towing Contract.
- 1.7. Bidder must have a tow yard located in the Sand Island/Kalihi area for the entire term of the Towing Contract and shall hold a minimum of fifty (50) vehicles at any one time.
- 1.8. Bidder must have a minimum of eight (8) tow trucks available 24 hours a day and 7 days a week.
- 1.9. Bidder must have an employee physically available at the tow yard 24 hours a day 7 days a week to release vehicles.
- 1.10. Bidder must provide a post tow hearing notice for persons entitled to seek to recover of possession of a towed vehicle registered in their name.
- 1.11. Upon execution of contract by Bidder, Bidder must have equipment and signs prepared and installed within thirty (30) calendar days. Bidder should be fully operational within thirty (30) calendar days from Towing Contract execution.
- 1.12. If upon review of the Qualifications Questionnaire, the prospective Bidder appears not fully qualified or able to carry out the terms and conditions of the Towing Contract that may be awarded, DOBOR may, at the prospective Bidders written request, meet to discuss the Qualifications Questionnaire.
- 1.13. Failure to complete the Qualifications Questionnaire or submit the Qualifications Questionnaire and the written Notice of Intention to Bid within the prescribed time, is sufficient cause to disqualify a prospective Bidder from submitting an offer.
- 1.14. All information contained in the Qualifications Questionnaire shall remain confidential, and Qualifications Questionnaires of all Bidders shall be returned after having served their purpose.

2. **QUALIFICATIONS QUESTIONNAIRE:**

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

Having been first duly sworn and deposed, the undersigned states that it has the minimum qualifications required under this IFB and that it is furnishing the attached information as proof of its qualifications. All Bidders shall submit this Qualifications Questionnaire and all the required evidence. Bidders that do not submit a Qualifications Questionnaire and the required documentation shall be disqualified from bidding. The named bidder has submitted the Notice of Intention to Bid for Towing Contract for Towing Services at OSBH:

2.1. Name of Bidder: \_\_\_\_\_

2.2. Business Organization: ☐ Individual ☐ Partnership ☐ Corporation ☐ Other

2.3. Principal Office Address: \_\_\_\_\_

2.4. State General Excise Tax Number: \_\_\_\_\_

2.5. Federal Employer I.D. Number: \_\_\_\_\_

2.6. If a Corporation, please answer the following:

☐ Profit ☐ Non-Profit

When incorporated and where: \_\_\_\_\_

When authorized to do business in the State of Hawaii: \_\_\_\_\_

Name of Officers:

President: \_\_\_\_\_

Vice President: \_\_\_\_\_

Secretary: \_\_\_\_\_

Treasurer: \_\_\_\_\_

Others: \_\_\_\_\_

**Principal Stockholders:**

Name and Address	% of Stock
(1) _____	_____
(2) _____	_____
(3) _____	_____
(4) _____	_____

**2.7. If a Partnership, please answer the following:**

When and where organized: \_\_\_\_\_

General or Limited Partnership: \_\_\_\_\_

When registered in the State of Hawaii: \_\_\_\_\_

**Partners:**

Name and Address	Share
(1) _____	_____
(2) _____	_____
(3) _____	_____

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

\_\_\_\_\_  
\_\_\_\_\_

Where and when organized: \_\_\_\_\_

List Members: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**2.9. Provide a description and evidence of a minimum of five (5) years of experience in the ownership and/or operation of a towing service, similar to that described in this IFB; including the number of years of experience, business name, business address, and dates of operation.**

**2.10. Provide evidence of the Bidder's ability to procure towing equipment that will meet the minimum requirements of this IFB. Attach any information sheet showing Bidder's financial means of procuring the equipment.**

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

☐ Yes

☐ No

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

☐ Yes

☐ No

2.13. Has the Bidder ever been fined for any violation of county, federal and/or State of Hawaii law during the previous two (2) years? If yes, give details on a separate sheet.

☐ Yes

☐ No

2.14. Provide satisfactory evidence to support the financial ability of the Bidder to operate and maintain a towing service operation. Minimum requirements must include income and expense statements, federal tax returns and balance sheets from the past two (2) years.

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

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

2.17. Attach copy of state and federal tax clearances.

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

2.19. Insurance Coverage:

Bidder's Business Address: \_\_\_\_\_

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

Contact Person: \_\_\_\_\_



Insurance coverage is carried by:

	Carrier	Policy No.	Agent	Limits
Commercial General Liability:	_____	_____	_____	_____
Automobile Liability:	_____	_____	_____	_____
Workers Compensation:	_____	_____	_____	_____
Temporary Disability:	_____	_____	_____	_____
Prepaid Health Care:	_____	_____	_____	_____
Unemployment: Insurance:	_____	_____	_____	_____

Bidder \_\_\_\_\_

\_\_\_\_\_  
Print Name of Person Signing

By \_\_\_\_\_  
It's

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

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
before me personally appeared \_\_\_\_\_, to me  
personally known, who, being by me duly sworn or affirmed, did say  
that such person executed the foregoing instrument as the free act  
and deed of such person, and if applicable in the capacity shown,  
having been duly authorized to execute such instrument in such  
capacity.

Notary Public, State of Hawaii

My Commission Expires:

## **TENTATIVE SCHEDULE**

The tentative schedule of related activities for this IFB is as follows:

Publication	June 6, 7 and 8, 2020
Notice of Intention to Bid And Qualifications Questionnaire Due	June 8, 2020
Bid Proposal Due and Opening of Bids	June 15, 2020
Estimated start of Towing Contract	July 1, 2020

**BID PROPOSAL**

TOWING CONTRACT FOR  
TOWING SERVICES  
AT THE OAHU SMALL BOAT HARBORS  
ALA WAI SBH, HALEIWA SBH, HE'EIA-KEA SBH, KE'EHl SBH, WAlANAE  
SBH, SOUTH KE'EHl LAGOON LAUNCH RAMP, KAHANA BAY LAUNCH  
RAMP AND MAUNALUA BAY LAUNCH RAMP ("OSBH")

IFB No. LO-20-006

The undersigned Bidder declares that it has carefully examined the attached specifications as well as the entire IFB for a Towing Contract for towing services and hereby makes application for the Towing Contract as described herein.

The undersigned Bidder agrees that, if awarded the Towing Contract, it will enter into a Towing Contract with the Board of Land and Natural Resources, State of Hawaii in accordance with the terms and conditions set forth in IFB No. LO-20-006 and this Bid Proposal.

- A. Fee. The Contractor shall pay one dollar and no/100 (\$1.00) to DLNR in advance, without notice or demand, upon execution of the contract.
- B. Payment. All payments due to Department of Land and Natural Resources ("DLNR") shall be made payable to the Division of Boating and Ocean Recreation, Department of Land and Natural Resources ("Division") located at 4 Sand Island Access Road, Honolulu, Hawaii 96819, in a form acceptable to the Division. Failure to make payment when due shall constitute a breach of the Towing Contract and shall be grounds for termination of the contract by DLNR.

The period of the Towing Contract shall be for five (5) years beginning July 1, 2020, and ending June 30, 2025, with two (2) extensions for additional one (1) year terms with the approval of the Chairperson of the Board of Land and Natural Resources.

It is understood and agreed that the DLNR has the right to accept or reject any or all bids, and to waive any defects, if such acceptance, rejection, or waiver is determined to be in the best interest of the State of Hawaii.

Respectfully submitted,

Name of Bidder

By:

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

\_\_\_\_\_  
Print Name of Person Signing

Title:

Person to contact if awarded contract: \_\_\_\_\_

Address of Bidder: \_\_\_\_\_

Telephone: \_\_\_\_\_

State of Hawaii General Excise Tax License Number: \_\_\_\_\_

Federal Employer Identification Number: \_\_\_\_\_

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

State of incorporation or other legal establishment: \_\_\_\_\_

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
at \_\_\_\_\_

\_\_\_\_\_

Respectfully submitted,

\_\_\_\_\_  
Name of Bidder

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

\_\_\_\_\_  
Print Name of Person Signing

\_\_\_\_\_  
Title

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
before me personally appeared \_\_\_\_\_, to me  
personally known, who, being by me duly sworn or affirmed, did  
say that such person executed the foregoing instrument as the  
free act and deed of such person, and if applicable in the  
capacity shown, having been duly authorized to execute such  
instrument in such capacity.

Notary Public, State of Hawaii

My Commission Expires:

## **SPECIFICATIONS**

### **1. DEFINITIONS AND INTERPRETATION:**

- 1.1. "ADA" means the Americans with Disabilities Act of 1990, any amendments thereto, and the regulations promulgated thereunder.
- 1.2. "Bidder" or "Bidders" means a qualified, responsive and responsible bidder.
- 1.3. "BLNR" means the Board of Land and Natural Resources.
- 1.4. "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the Department of Land and Natural Resources.
- 1.5. "County" means the City and County of Honolulu.
- 1.6. "Contractor" means the successful bidder entering into the Towing Contract with the Department of Land and Natural Resources.
- 1.7. "DCAB" means the Disabilities and Communication Access Board.
- 1.8. "DLNR" means the Department of Land and Natural Resources.
- 1.9. "DOBOR" means the Division of Boating and Ocean Recreation of DLNR.
- 1.10. "Harbors" means the areas within the OAHU SMALL BOAT HARBORS.
- 1.11. "DOCARE" means the Division of Conservation and Resources Enforcement of DLNR.
- 1.12. "HAR" means Hawaii Administrative Rules.
- 1.13. "HRS" means Hawaii Revised Statutes.
- 1.14. "IFB" and "Solicitation" are synonymous and refer to IFB No. LO-20-001.
- 1.15. "OSBH" means OAHU SMALL BOAT HARBORS.
- 1.16. "State" means the State of Hawaii.
- 1.17. "Towing Contract" means the contract, instrument, or agreement which grants a person or entity the privilege of conducting and managing a towing service at the OAHU SMALL BOAT HARBORS identified in Exhibit "A".
- 1.18. "Towing Contract area" means the areas within the OAHU SMALL BOAT HARBORS that are included within the Towing Contract.

1. **SCOPE OF TOWING CONTRACT:**

- 2.1. The term of the Towing Contract shall be for five (5) years commencing July 1, 2020, through June 30, 2025, with two (2) extensions of the contract for one (1) year terms with the approval of the Chairperson upon written request received by DOBOR ninety (90) calendar days prior to the expiration of the term. In addition to any provisions for early termination, DLNR may terminate the Towing Contract with or without cause by providing sixty (60) days prior written notice to the Contractor with approval of the Chairperson.
- 2.2. DLNR reserves the right with no recourse against the State of Hawaii in its sole and absolute discretion to interrupt or cancel the Towing Contract with or without cause. The Contractor shall bear all expenses or losses in full, with no recourse against the State of Hawaii.
- 2.3. Contractor shall keep on file a schedule of business hours and days open and a completed towing rate sheet of prices charged as approved by the Chairperson or their authorized representative. Monthly reports shall be prepared and submitted, in a format as approved by DOBOR.
- 2.4. The DOBOR Oahu facilities to be included under the Towing Contract is shown on the exhibit attached hereto and made part hereof in this IFB labeled as EXHIBIT "A". These facilities are open 24 hours a day, 7 days a week, except for the South Keehi Lagoon Launch Ramp, which is closed from 8:00 PM to 7 AM. DOBOR reserves the right to reconfigure the facilities towing Contractor portions thereof during the term of the Towing Contract at DLNR's discretion; provided that such reconfiguration shall not be unreasonable and shall be subject to the approval of the Chairperson and the BLNR or their designated representative.
- 2.5. The Contractor shall observe all parking rules within the Harbors.
- 2.6. The Contractor shall work with DOBOR and DOCARE for the enforcement of vehicle parking rules and other applicable laws by DOBOR and DOCARE, including the towing and removal of vehicles.

3. **BIDDING PROCESS AND TOWING CONTRACT AWARD:**

- 3.1. The Bidder shall download the Qualifications Questionnaire and fill in the required information. All bids shall be made on the bid form and shall be properly signed and acknowledged by the Bidder. Bids not complying with the IFB shall be rejected, except as may be otherwise provided in these specifications.
- 3.2. The Towing Contract shall be awarded to the responsive and responsible Bidder submitting the best bid as provided herein. The responsible Bidder shall be compliant on Hawaii Compliance Express (HCE) or by section 17.2 hereinbelow.



- 3.3. DLNR reserves the right to reject any or all bid(s) in the best interest of the State, as determined by the Chairperson.
- 3.4. DLNR reserves the right to waive or accept any defect in a bid if the Chairperson determines that such waiver or acceptance will be in the best interest of the State.
- 3.5. All potential Bidders are cautioned to thoroughly investigate all aspects and risks involved with the operation of the Towing Contract being bid upon. All potential Bidders are further cautioned to investigate availability and cost of the required insurance prior to submitting a bid.
- 3.6. Any Towing Contract entered into as a result of this IFB shall be signed by a person authorized to sign and shall be duly notarized. Additionally, if the Bidder is a business entity, a corporate resolution or other proof acceptable to DLNR showing the authority of that person to enter into contracts on behalf of the business entity shall be provided by the Contractor with its executed Towing Contract.

**3B. DISQUALIFICATION OF BIDDERS:**

- 3B.1. Any one or more of the following causes will be considered sufficient for the disqualifications of a Bidder or the rejection of a Bidder's offer:
  - 3B.1.1. Lack of adequate financial ability, ability to provide equipment, and/or sufficient experience to perform the work, as evaluated by DLNR based on the Qualifications Questionnaire;
  - 3B.1.2. Evidence of collusion among Bidders;
  - 3B.1.3. Being in arrears in the payment of taxes or other obligations owing the United States government, the State of Hawaii, or the county government, or having defaulted on a previous towing contract with the State within the past five (5) years;
  - 3B.1.4. Receipt of more than one bid from an individual, firm, partnership, corporation, or other legal entity as prohibited in this Solicitation;
  - 3B.1.5. Delivery of bids after the deadline specified for bid opening;
  - 3B.1.6. If the bid shows any erasures without notary initials, or additions to, modifications of, or deletions of, any term, consideration, or condition provided in any of the Solicitation documents;
  - 3B.1.7. If the bid shows irregularities or defects of any kind;
  - 3B.1.8. If the bid is conditional or incomplete;
  - 3B.1.9. If any of the required forms are unsigned and unacknowledged by the Bidder;

**Table A: Division of Boating and Ocean Recreation Oahu District Facilities:**

<b>DOBOR Oahu Facilities:</b>	<b>Exhibit</b>	<b>Facility Address:</b>
Ala Wai Small Boat Harbor	A-1	1651 Ala Wai Blvd. Honolulu, HI 96815
Keehi Small Boat Harbor	A-2	4 Sand Island Road, Honolulu, HI 96819
Haleiwa Small Boat Harbor	A-3	66-105 Haleiwa Road, Haleiwa, HI 96792
Waianae Small Boat Harbor	A-4	85-371 Farrington Highway, Waianae, HI 96792
Hecia Kea Small Boat Harbor	A-5	46-499 Kamehameha Highway, Kaneohe, HI 96744
Kahana Bay Launch Ramp	A-6	54-046 Kamehameha Highway, Hauula, HI 96717
Maunalua Bay Launch Ramp	A-7	6270 Kalanianaʻole Highway, Honolulu, HI 96825
South Keehi Lagoon Launch Ramp	A-8	10 Sand Island Parkway, Honolulu, HI 96819

**3C. BID DEPOSIT HAWAII GENERAL EXCISE TAX (GET) AND EFFECTIVE PERIOD OF BID OFFER:**

- 3C.1. Bid Deposit Accompanying Bid. In accordance with section 102-6, HRS, all bids must be accompanied by a deposit of legal tender or by a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, payable at sight or unconditionally assigned to "Division of Boating and Ocean Recreation," or by the surety bond attached. The bid deposit shall be ten dollars (\$10.00).
- 3C.2 Work to be performed under this Solicitation is a business activity taxable under Chapter 237, HRS, and Bidders are advised that they are liable for the Hawaii General Excise Tax (GET). If, however, a Bidder is a person exempt from paying the GET and, therefore, not liable for the taxes on this Solicitation, Bidder shall state its tax-exempt status and cite the HRS chapter or section allowing the exemption.
- 3C.3. The contract award, if any, will be made within thirty (30) calendar days after the bid opening date. The bid offer shall be effective up to sixty (60) calendar days after the bid opening date, during which time the Towing Contract shall be executed.

**4. SCOPE OF SERVICES:**

- 4.1. Bidder must be capable of carrying out the terms and conditions of the Towing Contract, that may be awarded, for which bids are being called.
- 4.2. Bidder must demonstrate that its assigned project manager has at least five (5) years of experience in providing towing services for a similar type of towing operation.
- 4.3. Bidder must have the financial ability to carry out the terms of the contract.
- 4.4. Upon execution of contract by Bidder, Bidder must be able to have equipment, and signs prepared which shall be approved by DOBOR and installed within thirty (30) calendar days of award. Bidder should be fully operational within thirty (30) calendar days from contract execution.

- 4.5. Tow yard shall be located in the Sand Island/Kalihi area for the entire term of the Towing Contract and any extensions and shall hold a minimum of fifty (50) vehicles at any one time.
- 4.6. The Bidder shall not charge the State for any tows and the State will not be paid anything from the Contractor, unless the vehicle is considered abandoned. Bidder shall provide cost estimate for towing and disposal of abandoned vehicles in the Qualifications Questionnaire. This shall be a no funds contract.
- 4.7. Bidder shall have a minimum of eight (8) tow trucks available 24 hours a day 7 days a week.
- 4.8. Bidder shall have an employee physically available at the tow yard 24 hours a day 7 days a week to release a vehicle.
- 4.9. Bidder shall provide a post tow hearing notice to all persons seeking to recover possession of a towed vehicle. Blank notice template will be provided by DOBOR to the successful Bidder prior to the award of the contract. The Bidder shall document the receipt of the notice to the vehicle's owner.
- 4.10. Bidder shall cooperate with DOBOR with respect to any post towing hearing. Bidder shall provide documentation (including video and photographs) concerning the tows, providing such documents and testifying at all of the hearings. Photos shall show date and time of the tow.
- 4.11. Site Specific Requirements:

Minimum response times are indicated in the table below:

<b>DOBOR Oahu Facilities:</b>	<b>Minimum Response Time</b>
Ala Wai Small Boat Harbor, Honolulu, Oahu	20 minutes
Keehi Small Boat Harbor, Honolulu, Oahu	20 minutes
Haleiwa Small Boat Harbor, Haleiwa, Oahu	40 minutes
Waianae Small Boat Harbor, Waianae, Oahu	60 minutes
Heeia Kea Small Boat Harbor, Kaneohe, Oahu	40 minutes
Kahana Bay Launch Ramp, Hauula, Oahu	40 minutes
Maunalua Bay Launch Ramp, Honolulu, Oahu	30 minutes
South Keehi Lagoon Launch Ramp, Honolulu, Oahu	20 minutes

Tow vehicles from Ala Wai Small Boat Harbor after 10:30 PM every night and until 4:30 AM. (Ala Wai Small Boat Harbor only.)

Tow vehicles from the public parking stalls after 10:00 PM every night and until 5:00 AM and shall tow any vehicles that are parked within the confines of the Keehi Small Boat Harbor without a valid parking permit. (Keehi Small Boat Harbor only.)

Tow vehicles from the public parking stalls in the South Keehi Lagoon Launch Ramp after 8:00 PM until 7:00 AM. (The South Keehi Lagoon Launch ramp parking lot is closed from 8:00 PM to 7:00 AM.)

**4.12. Insurance Requirements:**

- 4.12.1 Contractor shall procure and maintain, at its own cost and expense, in full force and effect throughout the term of the contract, comprehensive general liability insurance or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-VIII" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate. The policy shall name the State of Hawaii and Diamond Parking Services, LLC (Ala Wai Small Boat Harbor only) as additional insureds and a copy shall be filed with DOBOR. The insurance shall cover the OSBH. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance proved by State's policy.
- 4.12.2 Contractor shall also have Garage Keeper's Insurance with a \$1,000,000.00 minimum. The insurance shall be in effect for the entire contract period.
- 4.12.3 Contractor shall release, indemnify, defend, save and hold harmless the State of Hawaii and Diamond Parking Services, LLC (Ala Wai Small Boat Harbor only) and all of their officers, agents and employees from and against all liability, lost, damage, cost, and expense, including all attorney's fees, and all claims, suits and demands or proceedings for violation of law, property damage, or personal injury, including death, arising out of, resulting from, or in connection with the Towing Contract.

**4.13. Bidder's Acknowledgement:**

The Bidder will be required to acknowledge that "He/She has reviewed the filings in the United States District Court for the District of Hawaii case Carello et al v. Diamond Parking, Inc., et al, Civil No. 10-00734, and is familiar with the issues raised therein relating to managing state owned parking facilities and enforcing applicable restrictions and requirements." prior to the award of the contract.

**5. OPERATING CONDITIONS:**

- 5.1. Contractor shall provide at its own expense, all equipment, furniture, software, and supplies necessary for the proper operation of the towing service.
- 5.2. Contractor shall keep and maintain all equipment in good repair.
- 5.3. Towing rates and hours of operation signs must be plainly displayed.
  - i The Towing Contract locations are shown in Exhibit "A".

**6. NOTICES TO PARTIES:**

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

**7. MISCELLANEOUS TOWING CONTRACT TERMS:**

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

**8. BUSINESS RECORDS:**

- 8.1. Contractor shall be responsible for establishing and maintaining strict internal accounting controls, policies, procedures, and preparing and maintaining true, accurate and complete books and records. These accounting controls, policies, procedures and records shall be subject to DOBOR review and approval.
- 8.2. Contractor shall maintain the books and records that relate to the Towing Contract and any cost or pricing data for five (5) years after the expiration date of the Towing Contract.
- 8.3. There must be a log of daily cash sales available for inspection when requested by DOBOR. Upon written notice to Contractor, DOBOR has the right to review and examine all financial records of the Contractor for the Towing Contract.

**9. PROHIBITED USES:**

- 9.1. Under no circumstances will Contractor, its own employees, or its patrons, agents, guests or invitees, be allowed to reside or camp in the OSBH, in any way, whether outside or aboard any vehicle.
- 9.2. Under no circumstances will Contractor, its own employees, or its patrons, agents, guests or invitees, use the Towing Contract area for purposes other than for towing services.
- 9.3. Contractor shall not alter, modify or change the designated Towing Contract area or any improvements located thereon without first obtaining prior written approval from the Chairperson.
- 9.4. Contractor shall not, without written consent of DLNR, assign or hypothecate this Towing Contract or any rights thereunder; any consent given by BLNR shall not operate as a waiver of this condition for future assignment or hypothecating.

**10. LOSS OR DAMAGE TO PROPERTY:**

Contractor assumes the risk of any loss or damage to its equipment and other property on the Towing Contract area. DLNR and the State shall not be responsible or liable for any loss of, or damage to, the Contractor's equipment and property on the Towing Contract area.

**11. COVENANT AGAINST DISCRIMINATION:**

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

**12. INSPECTIONS:**

- 12.1. DOBOR reserves the right to enter the Towing Contract area at all reasonable times, for the purpose of inspecting the area; observing the performance by Contractor of its obligations under the Towing Contract; to serve, post, or keep posted, notices required by any statute, rule, or regulation of the federal, State, or county government; or for valid government business, including safety, emergencies, and law enforcement.
- 12.2. No abatement of Towing Contract obligations shall be claimed by or allowed to Contractor by reason of the exercise by DOBOR of any or all of the rights contained in Section 12.1 hereinabove; provided, that nothing contained in Section 12.1 hereinabove shall be construed to permit DOBOR to exercise any right to access or entry in a manner that will unreasonably interfere with or hinder the use, occupancy, or enjoyment of the Towing Contract area by Contractor.

**13. UNSAFE UNSANITARY OR UNSATISFACTORY CONDITIONS:**

In the event an inspection by DOBOR reveals that the Contractor's Towing Contract area is not in a safe, sanitary and otherwise satisfactory operating condition, Contractor, upon being so informed by written notice from DOBOR to correct the condition, shall promptly proceed to correct the condition within thirty (30) calendar days to the satisfaction of DOBOR. If within ten (10) calendar days following the date of the notice, or within additional time as DOBOR may allow, Contractor has not substantially complied with the provisions of such notice, DOBOR shall then have the right to remedy the condition at the full expense of Contractor, and Contractor shall promptly fully reimburse DOBOR for any and all costs incurred thereof.

**14. FAILURE TO EXECUTE TOWING CONTRACT:**

If the Bidder to whom a Towing Contract is awarded fails or neglects to enter into the Towing Contract as required by chapter 102, HRS, within ten (10) calendar days after award or within such further time as DLNR may allow, DOBOR may then award the Towing Contract to the next qualified Bidder.

**15. CONTACT INFORMATION AND QUESTIONS:**

For this Solicitation, DLNR's contact person is Richard Howard, Property Manager, at the Division of Boating and Ocean Recreation, DLNR. Address: 4 Sand Island Access Road, Honolulu, Hawaii, 96819, Ph: (808) 587-1964. Fax: (808) 587-1977. All questions regarding the contents of this Solicitation must be submitted in writing. Any response will be provided to all Bidders in writing.

**16. REQUIRED REVIEW:**

16.1. Bidder is responsible for becoming knowledgeable of all bid and Towing Contract requirements and documents and making all necessary investigations and examinations of the Towing Contract areas. Bidder accepts that the Towing Contract area is in "AS IS" condition. Bidder shall be responsible for becoming familiar with the physical location and condition, the characteristics of the tow areas, and the excluded areas, and shall judge for itself all of the circumstances affecting its offer. Failure to do so will not be grounds for any claim that the Bidder did not understand the circumstances and will not act to relieve any condition of the Towing Contract or Solicitation documents. The submission of a bid shall be considered conclusive evidence that the Bidder has made such investigations and examinations.

16.2. Should a Bidder find discrepancies or ambiguities in or omissions from the bidding documents, or be in doubt as to their meaning, the Bidder shall submit a written request for interpretation or correction to DLNR in a timely manner. Any interpretation or correction of the bidding documents will be made only by written addendum to all Bidders receiving a set of bid documents. The State will not be responsible for any oral statements or representations.

**17. TOWING CONTRACT EXECUTION:**

- 17.1 The Towing Contract, when executed, becomes a formal contract with the successful Bidder. The Towing Contract shall be executed by Contractor and returned to DLNR along with proper insurance documentation, minimum payment, and all other required documents, within ten (10) calendar days after the award of the contract or within such time as the Chairperson may allow. Contractor will be given a written notice to proceed upon receipt thereof.
- 17.2 Other documents required to be submitted to DLNR along with the Towing Contract executed by Contractor are (a) a tax clearance certificate issued by the State Department of Taxation and the Internal Revenue Service, which must have an original green certified copy stamp and be valid when it is submitted to DLNR; (b) a certificate of compliance issued by the State Department of Labor and Industrial Relations for unemployment insurance, workers' compensation, temporary disability insurance, and prepaid health care, which must be valid when it is submitted to DLNR; and (c) a certificate of good standing from the State Department of Commerce and Consumer Affairs ("DCCA") (which that is valid when it is submitted to DLNR), unless the Contractor is a sole proprietor who has not registered a business name with DCCA and therefore need not provide this certificate.
- 17.3 In the alternative, instead of the certificates required by section 17.2. hereinabove Contractor may submit to DLNR a "Certificate of Vendor Compliance" obtained through Hawaii Compliance Express at the State Procurement Office, Department of Accounting and General Services, which shall be kept compliant.
- 17.4 DLNR and the State are not liable for any work, contract, costs, expenses, loss of profits or any damages whatsoever incurred by Contractor prior to the official commencement date of the Towing Contract.



## GENERAL CONDITIONS

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## GENERAL CONDITIONS

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

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

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

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

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

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

1.3. Termination for Default.

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

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

14. Termination for Convenience.

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

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

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

**d. Compensation.**

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

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

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

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

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

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

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



- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
  - c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.
17. Payment Procedures: Final Payment: Tax Clearance.
- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
  - b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
  - c. Prompt payment.
    - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
    - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
  - d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.
18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.
19. Modifications of Contract.
- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
  - b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
  - c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

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

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

21. Price Adjustment.

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

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

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

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

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

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

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

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

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

31. Records Retention.

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

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

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

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

- (2) Immediately terminate this Contract.

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

c. Records Retention.

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



# OAHU SMALL BOAT HARBOR ("OSBH")

Towing Areas

Exhibit A

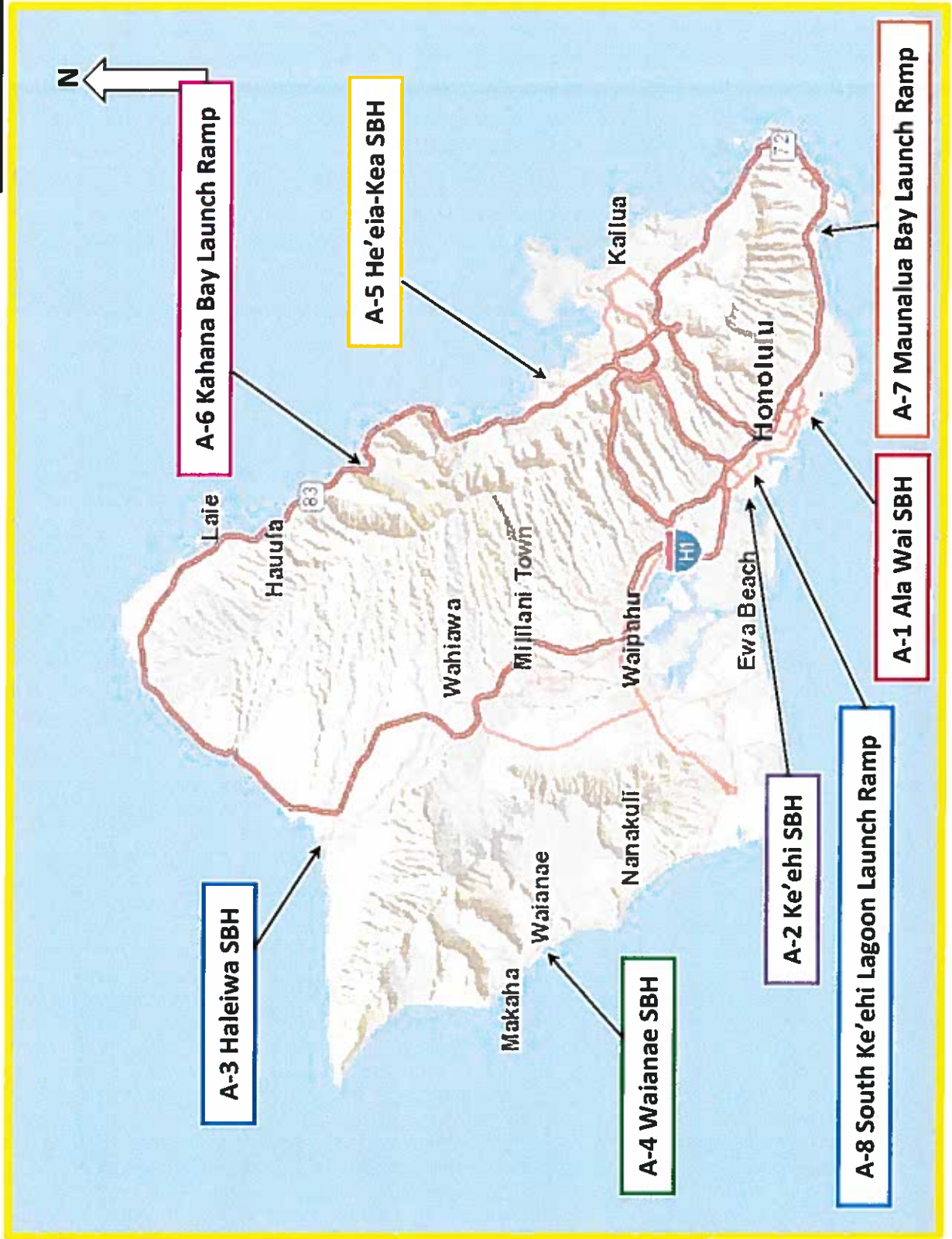


Exhibit A



**Ala Wai Small Boat Harbor**

**Exhibit A-1**





Ke'ehi Small Boat Harbor

Exhibit A-2



Exhibit A-2



Exhibit A-3

Haleiwa Small Boat Harbor

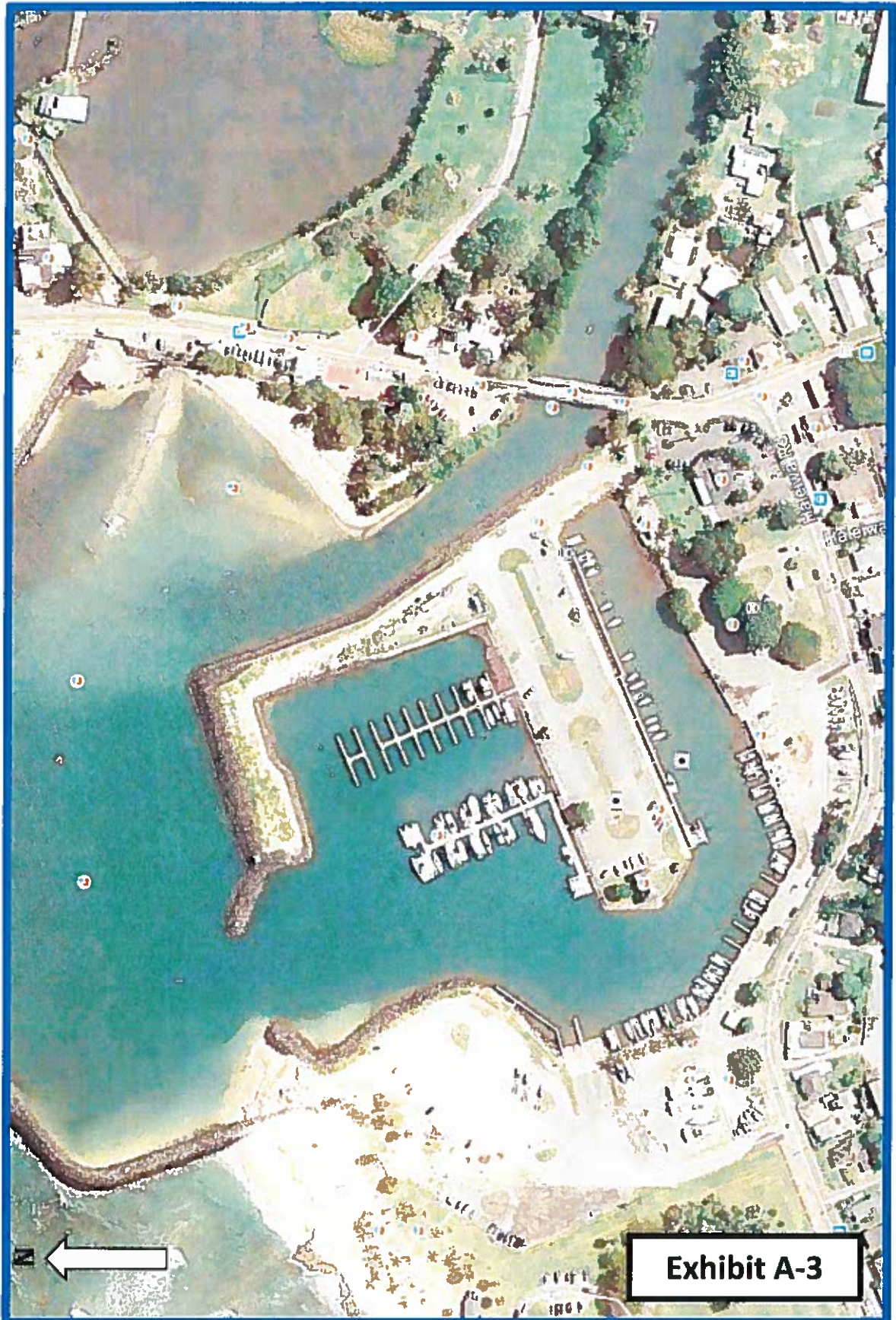




Exhibit A-4

Waianae Small Boat Harbor

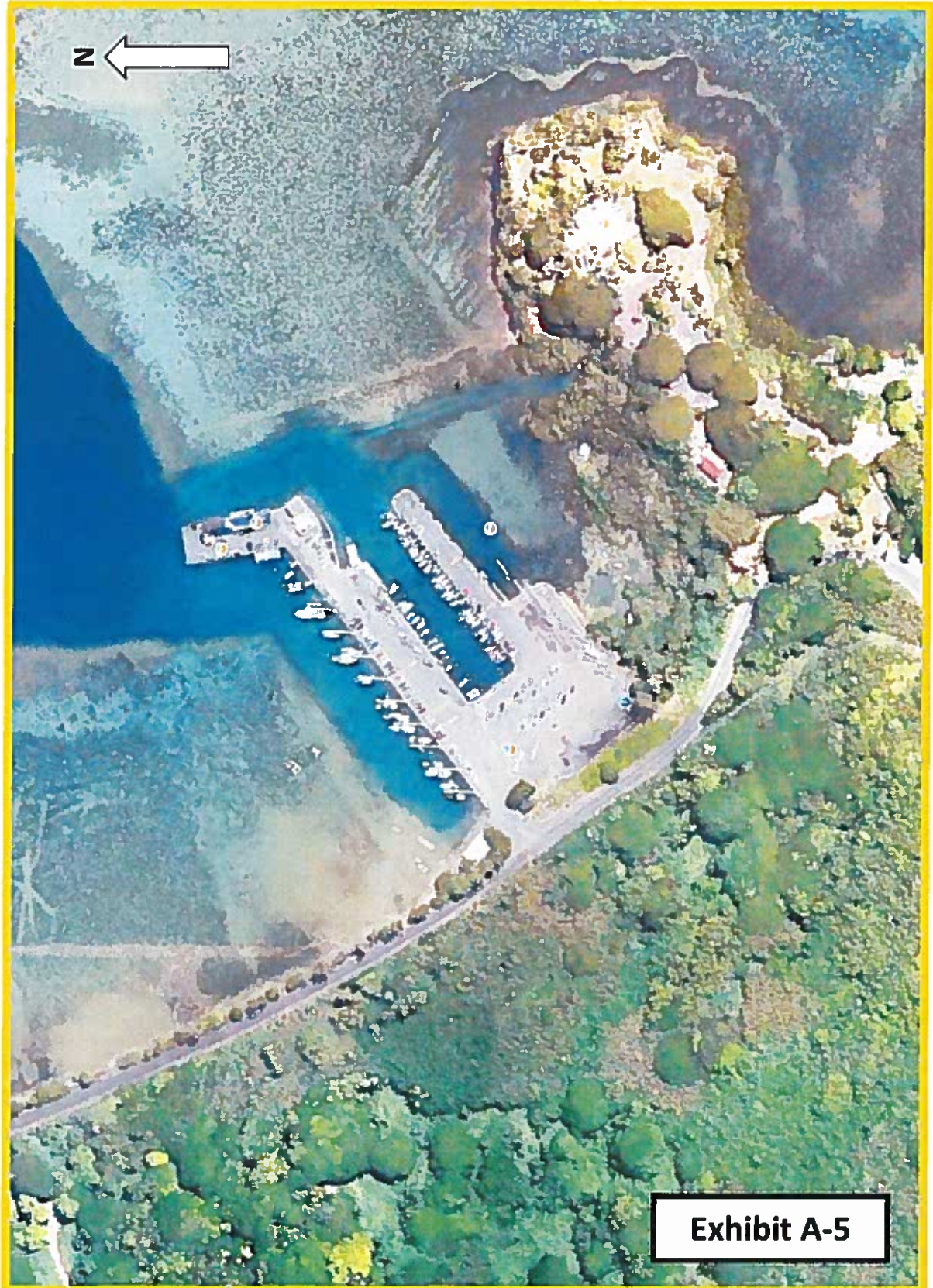


Exhibit A-4



**He'eia-Kea Small Boat Harbor**

**Exhibit A-5**



**Exhibit A-5**



Exhibit A-6

Kahana Bay Launch Ramp

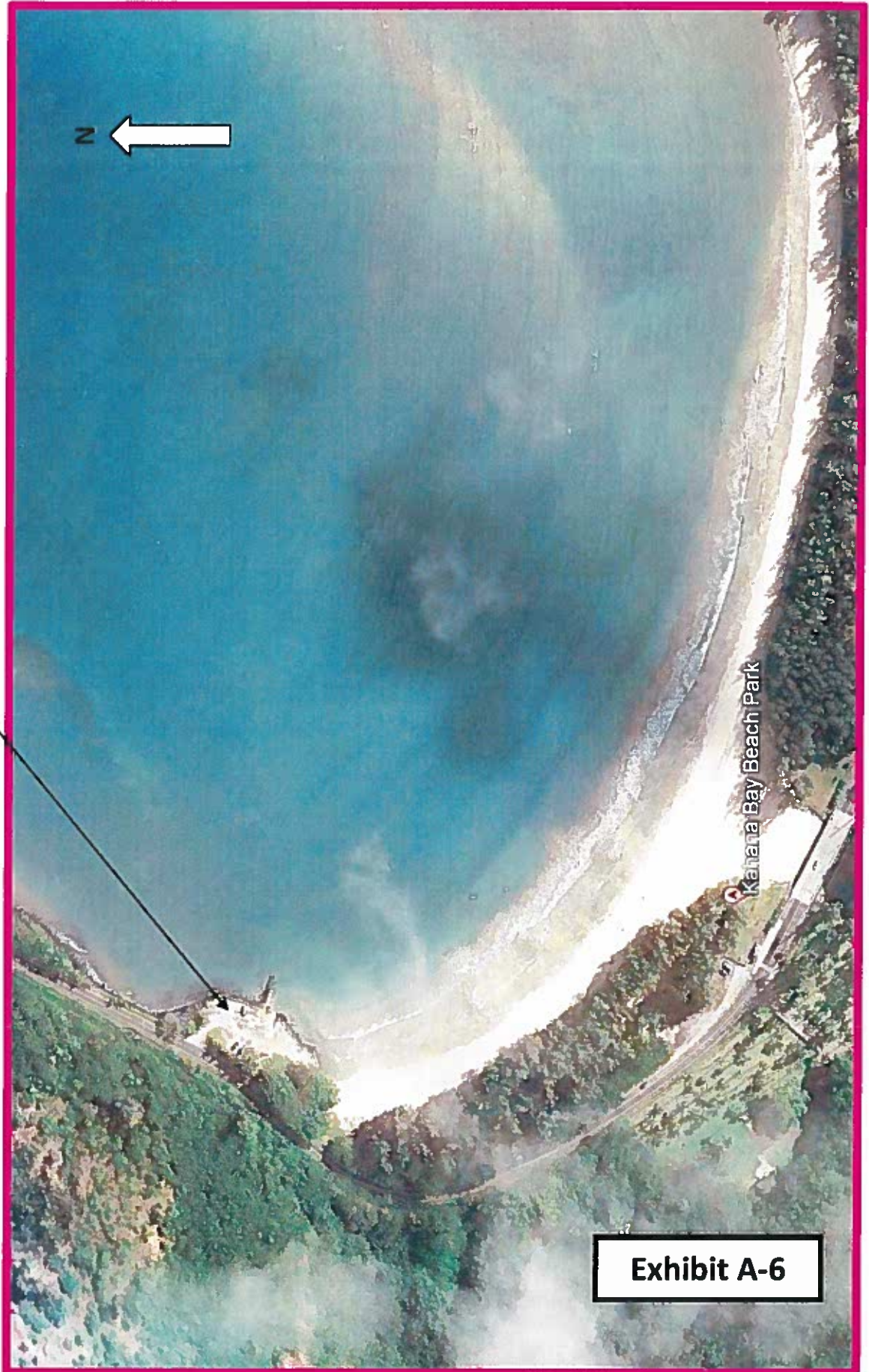


Exhibit A-6



Exhibit A-7

Maunalua Bay Launch Ramp



Exhibit A-7




Exhibit A-8

South Keehi Lagoon Launch Ramp



Exhibit A-8

**Ed Underwood**

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

**Email:** [ed.r.underwood@hawaii.gov](mailto:ed.r.underwood@hawaii.gov)