

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

May 13, 2016

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: REQUEST APPROVAL TO ENTER INTO A RIGHT-OF-ENTRY AGREEMENT WITH THE DEPARTMENT OF HAWAIIAN HOME LANDS TO CONDUCT MANAGEMENT INCLUDING BUT NOT LIMITED TO INVASIVE SPECIES AND FIRE CONTROL, RESTORATION OR INTRODUCTION OF NATIVE SPECIES, INFRASTRUCTURE INSTALLATION AND MAINTENANCE, AND MONITORING AT KAHIKINUI, MAUI TMK (2) 1-9-001:003 (POR), 007 (POR) AND 011 (POR); AND TO AUTHORIZE THE CHAIRPERSON TO NEGOTIATE, APPROVE, EXECUTE, AMEND, AND EXTEND THE RIGHT-OF-ENTRY AGREEMENT

SUMMARY

The Division of Forestry and Wildlife (DOFAW) requests that the Board of Land and Natural Resources (BLNR) approve a Right-of-Entry Agreement (ROE) between DOFAW and the Department of Hawaiian Home Lands (DHHL) that will allow DOFAW to finalize construction of approximately 3.6 miles of ungulate –proof fence and conduct management activities for the protection and restoration of watershed forest at Kahikinui, Maui, identified by TMK (2) 1-9-001:003 (por), 007 (por) and 011 (por). A submittal recommending approval to issue the Right-of-Entry was approved by the Hawaiian Homes Commission (HHC) at its February 22-23, 2016 meeting.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

A Final Environmental Assessment (EA) for the Kahikinui Koa Forest Protection and Restoration was published on December 23, 2004 and determined that the proposed project will not have any significant effect in the context of Chapter 343, Hawaii Revised Statutes. A Finding of No Significant Impact (FONSI) was issued.

RECOMMENDATION: That the Board:

1. Approve the Department entering into a Right-of-Entry Agreement with the Department of Hawaiian Home Lands to conduct management including but not limited to invasive species and fire control, restoration or introduction of native species, infrastructure installation and maintenance, and monitoring, at Kahikinui Maui, TMK (2) 1-9-001:003 (POR), 007 (POR) AND 011 (POR); and to authorize the Chairperson to negotiate, approve, execute, amend, and extend the Right-of-Entry Agreement subject to review and approval by the Office of the Attorney General.

Respectfully Submitted,



David G. Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE., Chairperson
Department of Land and Natural Resources

Attachments:

1. Draft Right-of-Entry Agreement

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

RIGHT-OF-ENTRY NO. 666

This Right-of-Entry ("ROE") No. 666 is dated this ____ day of _____, 2016, by and between the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, whose place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii, 96707, and whose mailing address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter as "PERMITTOR," and State of Hawaii, Department of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter the "PERMITTEE."

PERMITTOR hereby grants to PERMITTEE a Right-of-Entry upon that certain parcel of Hawaiian home lands in Kahikinui, Island of Maui, for the non-exclusive, use of approximately 4500.0 Acres of Hawaiian home lands, identified as Tax Map Key No. (2) 1-9-001:03 (por.), 007 (por.) & 011 (por.) and further described in the site plan rendering attached hereto as Exhibit "A", subject to the following conditions:

1. TERM. The term of the ROE shall be month-to-month up to twelve (12) months, commencing upon execution of the ROE document. This ROE may be cancelled by PERMITTOR, at PERMITTOR'S sole discretion and for any reason whatsoever, at any time during the twelve month period, upon 30 days advance notice in writing to PERMITTEE;
2. PERMITTED USE. The Premises shall be used for the purpose of constructing approximately 3.6 miles (more or less) of 7 feet high ungulate-proof fence and to conduct feral ungulate control activities within the 4,500 acre fence enclosure. No other uses or sub-tenancy shall be permitted without the express written approval of PERMITTOR. PERMITTEE'S use shall comply with all applicable governmental laws, regulations, rules and permitting requirements, pertaining to such use;
3. FEE. The fee for the term of this ROE shall be gratis and the standard non-refundable processing and documentation fee of \$175.00 shall be waived;
4. CONSTRUCTION AND MAINTENANCE. During the period of the ROE, PERMITTEE shall keep the Premises and all improvements thereon in a strictly clean and sanitary and orderly



condition, and shall not make, permit nor suffer any waste, spoil, nuisance, nor any unlawful, improper or offensive use of the Premises. PERMITTEE shall comply with all rules, regulations, ordinances and/or laws of the State of Hawaii and any other municipal and/or Federal Government authority applicable to the Premises and improvements thereon;

5. RIGHT TO ENTER. PERMITTEE shall allow PERMITTOR, and the agents and representatives thereof, at all reasonable times, free access to the Premises for the purpose of examining the same and/or determining whether the covenants herein are being fully observed and performed, or for the performance of any public or official duties. In the exercise of such rights, PERMITTOR and government officials shall not interfere unreasonably with PERMITTEE and PERMITTEE'S use and enjoyment of the Premises;
6. NO TRANSFER, MORTGAGE, AND SUBLEASE. This ROE shall be non-transferable, and PERMITTEE may not in any manner transfer to, mortgage, pledge, sublease, sublet, or otherwise hold or agree so to do, for the benefit of any other person or persons or organization of any kind, its interest in this ROE, the premises and the improvements now or hereafter erected thereon;
7. EXPIRATION. Upon the expiration of the ROE, or its sooner termination as herein provided, PERMITTEE shall peaceably and quietly leave and surrender and deliver up to PERMITTOR possession of the premises. This includes the clean-up and removal of all property belonging to PERMITTEE;
8. TERMINATION/ABANDONMENT. Upon termination or abandonment of the specified purposes for which this ROE is granted, all interests granted by this ROE and any approved improvement constructed by PERMITTEE on the Premises shall revert to, and become the property of PERMITTOR;
9. PREMISES. The term "Premises", when it appears herein, includes and shall be deemed to include the lands described above and all improvements whenever and wherever erected or placed thereon;
10. INSURANCE. PERMITTEE'S contractors shall, at its own expense, effect, maintain and keep in force throughout the life of this ROE, a comprehensive public liability insurance policy, with limits of not less than \$1,000,000.00 for each



occurrence, including property damage and personal injury. Such insurance policy shall name the State of Hawaii, Department of Hawaiian Home Lands as additional insured;

11. Defense and Indemnity. The PERMITTEE shall be responsible for injury caused by the PERMITTEE'S officers and employees in the course and scope of their employment to the extent that the PERMITTEE'S liability for such damage or injury has been determined by a court or otherwise agreed to by the PERMITTEE. The PERMITTEE shall pay for such damage and injury to the extent permitted by law provided that an appropriation is enacted and funds have been encumbered and released for the purpose;
12. HAZARDOUS MATERIAL. PERMITTEE shall not cause or permit the escape, disposal, or release of any hazardous materials. PERMITTEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be bought onto the premises any such materials except to use in the ordinary course of PERMITTEE'S business, and then only after written notice is given to the PERMITTOR of the identity of such materials and upon PERMITTOR'S consent, which consent may be withheld at the PERMITTOR'S sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by PERMITTEE, then PERMITTEE shall be responsible for the costs thereof. In addition, PERMITTEE shall execute affidavits, representations and the like from time to time at PERMITTOR'S request concerning PERMITTEE'S best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by PERMITTEE.

For the purpose of this ROE, the term "hazardous material" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statutes, regulation or ordinance, such as the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Federal Clean Water Act, as amended from time to time, and also including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-biphenyls ("PCB"), formaldehyde, and also



including any substance designated by federal, state or local regulations, now or in the future, as presenting a risk to human health or the environment;

Prior to the termination of the ROE, PERMITTEE may be required to conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health and PERMITTOR;

13. PERMITTEE'S financial obligation and commitment to make payments or reimbursements of any kind under this ROE shall be contingent upon legislative appropriation and the availability and allotment by the Director of the Department of Budget and Finance of public funds to make such payment or reimbursement.

14. SPECIAL CONDITIONS.

- A. All Terms and Conditions of Contract for Goods and Services between PERMITTEE and Rock'N H Fencing, LLC, including the Scope of Services under B15001679, as attached as Exhibit "B" to remain in effect;
- B. PERMITTEE shall conduct activities to control feral ungulates, which may include aerial shooting or use of helicopters to spot feral ungulates and communicate that information to ground shooters;
- C. If aerial shooting is used, PERMITTEE will:
- i. Provide DLNR Division of Forestry and Wildlife (DOFAW) qualified staff person to conduct the shooting;
 - ii. In form PERMITTOR as to the date of the planned shoot at least three weeks in advance;
 - iii. Conduct all aerial shooting in accordance with the highest standards of safety to minimize all risk of harm to persons and property; and
 - iv. Follow current DOFAW policies relating to aerial shooting, firearms and helicopter use.
- D. PERMITTEE acknowledges that PERMITTOR has not made and will not make, any representation or warranty, implied or otherwise, with respect to the condition of the lands or their suitability for control activities of feral



ungulates, including aerial shooting activity. PERMITTEE accepts that entry upon the lands is with full assumption of all risks and consequences thereof;

- E. PERMITTEE acknowledges and agrees that feral ungulate control activities will not commence until after the development and implementation of the ungulate removal plan designed by PERMITTOR and PERMITTOR'S stakeholders (DHHL beneficiaries, represented by Ka Ohana o Kahikinui; the Kahikinui Game and Land Management Organization; and the Board of the Living Indigenous Forest Ecosystems);
- F. Entry under this ROE is limited to PERMITTEE' employees, agents, contractors and subcontractors solely for the purpose stated herein;
- G. PERMITTEE and its contractors shall exercise due care and diligence to prevent injury to persons and damages to our destruction of property belonging to the PERMITTOR;
- H. PERMITTEE shall be responsible for the security of the Premises and all of PERMITTEE'S personal property stored thereon;
- I. All associated material and construction cost under this ROE shall be borne solely by the PERMITTEE and shall not, in any case, be reimbursable by PERMITTOR;
- J. All archaeological/cultural sites noted on the Premises shall be respected, protected and preserved;
- K. This ROE is subject to other terms and conditions that may be deemed prudent by the Chairman of the Hawaiian Homes Commission.

[REMAINDER OF PAGE BLANK -- SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, PERMITTOR and PERMITTEE have caused this ROE to be executed by the duly authorized officers/individuals as of the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON
February 23, 2016

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

By _____
Jobie M. K. Masagatani, Chairman
Hawaiian Homes Commission

PERMITTOR

APPROVED AS TO FORM:

State of Hawaii
DEPARTMENT OF LAND AND NATURAL
RESOURCES

Deputy Attorney General
State of Hawaii

By _____

PERMITTEE



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

On this _____ day of _____, ___, before
me appeared _____,
and _____, to me personally known,
who, being by me duly sworn, did say that they are the person
who executed the foregoing instrument and acknowledged to me
that they executed the same freely and voluntarily for the use
and purposes therein set forth.

Notary Public, State of Hawaii

Printed Name: _____
My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

Doc. Date: _____ or ☐ Undated at time of notarization

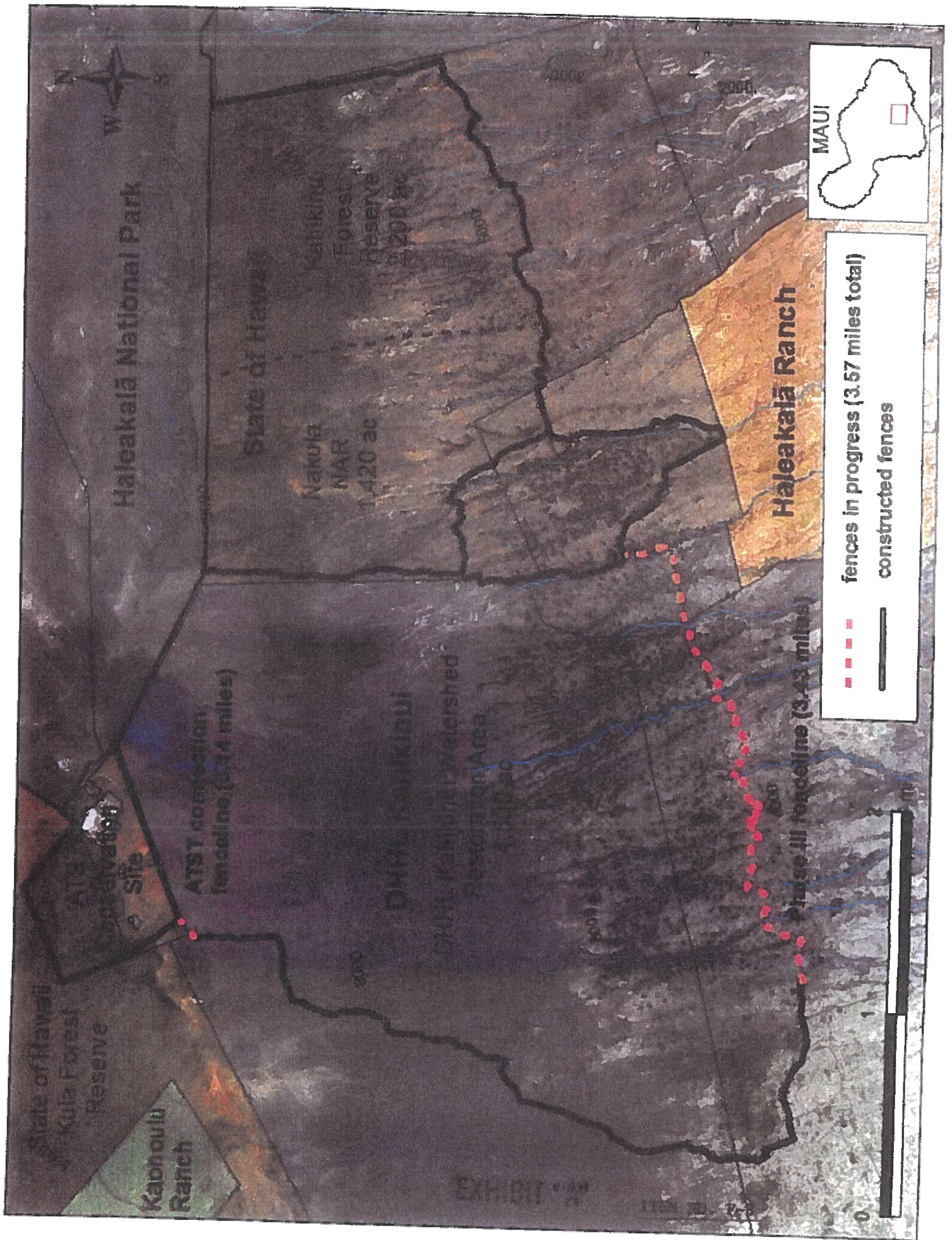
No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and
Certification Statement

Printed Name of Notary







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

This Contract, executed on the respective dates indicated below, is effective as of
January 12, 2016, between Department of Land and Natural Resources
(Insert name of state department, agency, board or commission)
State of Hawaii ("STATE"), by its Chairperson
(Insert title of person signing for State)
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")),
whose address is 1151 Punchbowl Street, Honolulu, HI 96813
and ROCK'N H FENCING LLC
("CONTRACTOR"), a Limited Liability Company, LLC
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)
under the laws of the State of Hawaii, whose business address and federal
and state taxpayer identification numbers are as follows. 18 Kaluhea PL, Haiku, HI 96708
FEIN: 27-4700711 Hawaii Tax # W60638693-01

RECITALS

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

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

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

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

E. Pursuant to ^{HRS Section 171-5}
(Legal authority to enter into this Contract), the STATE is authorized to enter into this Contract.

F. Money is available to fund this Contract pursuant to:
(1) To be determined by Maui DOFAW Program Managers on an as-needed basis
(Identify state sources)

or (2) To be determined by Maui DOFAW Program Managers on an as-needed basis
(Identify federal sources)

or both, in the following amounts: State \$ To be determined by Maui DOFAW Program Managers
Federal \$ To be determined by Maui DOFAW Program Managers

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

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the Invitation for Bids number B15001679 ("IFB") and the CONTRACTOR'S accepted bid ("Bid"), both of which, even if not physically attached to this Contract, are made a part of this Contract.

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

EXHIBIT "B"

Awards made on an individual item basis for the types of services specified _____ DOLLARS (\$ _____), including approved costs incurred and taxes, at the time and in the manner set forth in the IFB and CONTRACTOR'S Bid.

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

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

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

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

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of Twenty-Five _____ DOLLARS (\$ 25.00) per day, in accordance with the terms of paragraph 9 of the General Conditions.

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

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

STATE

(Signature)

Suzanne D. Case

(Print Name)

Chairperson, DLNR

(Print Title)

(Date)

1/12/16

CONTRACTOR

(Name of Contractor)

(Signature)

(Print Name)

(Print Title)

(Date)

9/3/15

CORPORATE SEAL

(If available)

APPROVED AS TO FORM:

Deputy Attorney General

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

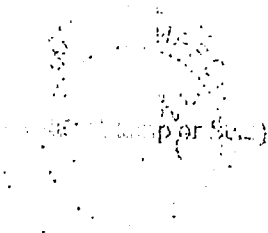


STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF Hawaii)
) SS.
)
COUNTY OF Maui)

On this 3rd day of September, 2015 before me appeared Sharon Ann Freitas and _____, to me known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are officer and _____ of ROCK'N H FENCING LLC, the CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument as the free act and deed of the CONTRACTOR.



Danny Simpson
(Signature)
Danny Simpson
(Print Name)

Notary Public, State of Hawaii
My commission expires 11-14-2018

Doc. Date: 9/3/2015 # Pages: 7
Notary Name: Danny Simpson 2nd Circuit

Doc. Description: Contractor's Acknowledgement -
Contract for Land or Services based upon Competitive Sealed Bids
Danny Simpson 9/3/2015
Notary Signature Date

NOTARY CERTIFICATION



STATE OF HAWAII
CONTRACTOR'S
STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

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

On behalf of ROCK'N H FENCING LLC, CONTRACTOR, the undersigned does declare as follows:

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

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

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

CONTRACTOR

By 
(Signature)
Print Name Sharon Ann Freitas
Print Title Officer
Name of Contractor ROCK'N H FENCING LLC
Date 9/3/15



Attachment – S3

STATE OF HAWAII
TIME OF PERFORMANCE

Contract period will be 24 months beginning with the date of the Notice to Proceed. Work to begin with approved State of Hawaii Purchase Order (PO) after execution of contract.



STATE OF HAWAII

CERTIFICATE OF EXEMPTION
FROM CIVIL SERVICE

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development ("DHRD").*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature)

Suzanne D. Case

(Print Name)

(Date)

1/12/16

(Print Title)

Director, Dept. of Land & Natural Resources

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16 HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions.

- (1) It involves the delivery of completed work or product by or during a specific time.
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, HRS.

(Signature)

(Date)

(Print Name)

(Print Title, if designee of the Director of DHRD)



STATE OF HAWAII
SPECIAL CONDITIONS

Performance and Payment Bonds Required: A performance and a payment bond will be required as per conditions of the solicitation.

One (1) performance and one (1) payment bond will be submitted by the Contractor for the full project price as determined by available funds and line item prices in this contract. Bonds to be submitted with draft State of Hawaii Purchase Order (PO) to the DOFAW Fiscal Office for processing. Approved PO will serve as notice that work may begin.

12/22/2011 12:01:59

12/22/2011 09:26 8882422965

ROBERT BECK

PAGE 02/02

www.BusinessRegistrations.com

FORM LLC-1
7/2010

FILED 12/07/2011 09:26 AM
Business Registration Division
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
State of Hawaii

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
335 Merchant Street
Mailing Address: P.O. Box 40, Honolulu, Hawaii 96810
Phone No. (808) 586-2727



ARTICLES OF ORGANIZATION FOR LIMITED LIABILITY COMPANY
(Section 428-202, Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned, for the purpose of forming a limited liability company under the laws of the State of Hawaii, do hereby make and execute these Articles of Organization:

The name of the company shall be:

Rock'N H Fencing, LLC

(The name must contain the words "Limited Liability Company" or its abbreviation "LLC" or "L.L.C.")

The mailing address of the initial principal office is:

18 Kaluhua Place, Haiku, HI. 96708

The company shall have and continuously maintain in the State of Hawaii a registered agent who shall have a business address in this State. The agent may be an individual who resides in this State, a domestic entity or a foreign entity authorized to transact business in this State.

a. The name (and state or country of incorporation, formation or organization, if applicable) of the company's registered agent in the State of Hawaii is:

Sharon Freitas

(Name of Registered Agent)

(State or Country)

b. The street address of the place of business of the person in State of Hawaii to which service of process and other notice and documents being served on or sent to this entity represented by it may be delivered to is:

18 Kaluhua Place, Haiku, HI. 96708

IV

The name and address of each organizer is:

Sharon Freitas

Marc J. Wierich

18 Kaluhua Pl., Haiku, HI. 96708

18 Kaluhua Pl., Haiku, HI. 96708

12/22/2011 12:01:59

The period of duration is (check one):

V

☒ At-will☐ For a specified term to expire on:

(Month)

Day

Year)

The company is (check one):

VI

- a. ☐ Manager-managed, and the names and addresses of the initial managers are listed in paragraph "c", and the number of initial members are: _____
- b. ☒ Member-managed, and the names and addresses of the initial members are listed in paragraph "c".
- c. List the names and addresses of the initial managers if the company is Manager-managed, or
List the names and addresses of the initial members if the company is Member-managed.

SHARON FREITAS

18 KALUHEA PL., HAIKU, HI. 96708

MARC J. WIEFERICH

18 KALUHIA PL., HAIKU, HI. 96708

VII

The members of the company (check one):

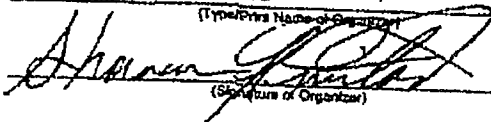
- ☒ Shall not be liable for the debts, obligations and liabilities of the company.
- ☐ Shall be liable for all debts, obligations and liabilities of the company.
- ☐ Shall be liable for specified debts, obligations and liabilities of the company *as stated below*, and have consented in writing to the adoption of this provision or to be bound by this provision.

We certify, under the penalties set forth in the Hawaii Uniform Limited Liability Company Act, that we have read the above statements, I am authorized to sign this Articles of Organization, and that the above statements are true and correct to the best of our knowledge and belief.

Signed this 05TH day of DECEMBER, 2011

SHARON FREITAS

(Type/Print Name of Organizer)



(Signature of Organizer)

(Type/Print Name of Organizer)

(Signature of Organizer)

SEE INSTRUCTIONS PAGE. The articles must be signed and certified by at least one organizer of the company.



CERTIFICATE OF LIABILITY INSURANCE

ROCKHFE-01

LWON

DATE (MM/DD/YYYY)

8/12/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Insurance Factors 745 Fort Street Suite 1000 Honolulu, HI 96813	CONTACT NAME: PHONE (A/C No, Ext): (808) 546-7469 FAX (A/C No): (808) 521-5484 E-MAIL ADDRESS:
INSURED Rock'N H Fencing LLC 18 Kaluhea Pl Haleku, HI 96708	INSURER(S) AFFORDING COVERAGE INSURER A: National Interstate Ins Co INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURANCE	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY					
	CLAIMS-MADE ☒ OCCUR		CG-10005451-05	08/15/2015	08/15/2016	EACH OCCURRENCE \$ 1,000,0 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 50,0 MED EXP (Any one person) \$ 5,0 PERSONAL & ADV INJURY \$ 1,000,0 GENERAL AGGREGATE \$ 2,000,0 PRODUCTS COMPOUND AGG \$ 2,000,0
	GEN'L AGGREGATE LIMIT/APPLICABLE					
	☒ POLICY PROTECT					
	OTHER					
	AUTOMOBILE LIABILITY					
	ANY AUTO					COMBINED SINGLE LIMIT (Per accident) \$
	ALL OWNED AUTOS	☐ SCHEDULED AUTOS				BODILY INJURY (Per person) \$
	HIRED AUTOS	☐ NON-OWNED AUTOS				BODILY INJURY (Per accident) \$
	UMBRELLA LIAB	☐ OCCUR				PROPERTY DAMAGE (Per accident) \$
	EXCESS LIAB	☐ CLAIMS-MADE				\$
	DED	RETENTION \$				EACH OCCURRENCE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					AGGREGATE \$
	ANY PROPRIETOR/PARTNER/EX-CLTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	☐ Y/N	N/A			PER STATUTE \$
	If yes, describe under DESCRIPTION OF OPERATIONS below					OTH-ER \$
						E.L. EACH ACCIDENT \$
						E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project: Fencing

The certificate holder is an additional insured but only to the extent set forth in the General Liability policy provision.

CERTIFICATE HOLDER

State of Hawaii Dept of Land & Natural Resources
1151 Punchbowl St, rm #432
Honolulu, HI 96813

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

[Signature]



CERTIFICATE OF LIABILITY INSURANCE

ROCKHFE-01

LWO

DATE (MM/DD/YYYY)

8/12/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Insurance Factors 745 Fort Street Suite 1000 Honolulu, HI 96813	CONTACT NAME: PHONE (AC, No, Ext): (808) 546-7469 FAX (AC, No): (808) 521-5484 E-MAIL ADDRESS:
INSURED Rock'N H Fencing Sharon A Freitas dba 18 Kaluhea Pl Haiku, HI 96708	INSURER(S) AFFORDING COVERAGE INSURER A: National Interstate Ins Co INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD 3990	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR		GGH0005451-05	08/15/2015	08/15/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE-RELATED PREMISES (Per occurrence) \$ 50,000 MED EXP (Per person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMBOP AGG \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PROJECT ☐ LOC					
	OTHER					
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Per accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	☐ UMBRELLA LIAB ☐ OCCUR					
	☐ EXCESS LIAB ☐ CLAIMS-MADE					EACH OCCURRENCE \$ AGGREGATE \$
	DED RETENTIONS					
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐ Y ☒ N	WCH0005388-01	08/15/2015	08/15/2016	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOC / TIGHS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Proof of Insurance

FCT-31031

CERTIFICATE HOLDER

State of Hawaii, DCCA
Contractors License Board
P O Box 3469
Honolulu, HI 96801

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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.

13. Termination for Default.

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

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
 - d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
 - e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
 - f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.
14. Termination for Convenience.
- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
 - b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

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

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

- d. Compensation.

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

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

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

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

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

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

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

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, 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. Head of the purchasing agency 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 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
 - 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 11-355, 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.

e. 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.



Abstract Report

HlePRO - State of Hawaii eProcurement

Department of Land and Natural Resources

<http://hlepro.hawaii.gov>

Ungulate Fencing in Maui County

Method of Procurement: Competitive Sealed Bidding
(IFB)

Solicitation Number: B15001679

Release Date: 06/17/2015

Submittal Due Date: 07/06/2015 02:00 PM

Line Items

Ln item #	Item Title	UoM	Quantity	Line Item Description
1	Pig Fence	FOOT	1	See attached...
2	Deer Fence	FOOT	1	see attached
3	Corral Panel Fence (short)	FOOT	1	see attached
4	Corral Panel Fence (tall)	FOOT	1	see attached

Line Item Responses:

Line Item: 1; Title: Pig Fence;
UoM: FOOT; Quantity: 1;

Vendor Name	Unit Price	Extended Price	Vendor Comments
Pono Pacific Land Management, LLC	\$40.00	\$40.00	

Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
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Vendor Name	Unit Price	Extended Price	Vendor Comments
F.A.R.E. Feral Animal Removal Experts	\$25.32	\$25.32	

Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
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ABSTRACT REPORT

HawaiiProc -- State of Hawaii eProcurement

Vendor Name	Unit Price	Extended Price	Vendor Comments
Rock'N H Fencing LLC	\$24.80	\$24.80	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
--	--	--	--

Vendor Name	Unit Price	Extended Price	Vendor Comments
Harlan T. Langi	\$65.00	\$65.00	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
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Vendor Name	Unit Price	Extended Price	Vendor Comments
JBH, Ltd.	\$27.37	\$27.37	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
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Line Item: 2; Title: Deer Fence;
 UoM: FOOT; Quantity: 1;

Vendor Name	Unit Price	Extended Price	Vendor Comments
Pono Pacific Land Management, LLC	\$45.50	\$45.50	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
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Vendor Name	Unit Price	Extended Price	Vendor Comments
F.A.R.E. Feral Animal Removal Experts	\$28.85	\$28.85	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
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Vendor Name	Unit Price	Extended Price	Vendor Comments
JBH, Ltd.	\$41.85	\$41.85	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
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Vendor Name	Unit Price	Extended Price	Vendor Comments
Rock'N H Fencing LLC	\$27.50	\$27.50	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
--	--	--	--

Vendor Name	Unit Price	Extended Price	Vendor Comments
Harlan T. Langi	\$85.00	\$85.00	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
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Line Item: 3; Title: Corral Panel Fence (short);
 UoM: FOOT; Quantity: 1;

Vendor Name	Unit Price	Extended Price	Vendor Comments
Pono Pacific Land Management, LLC	\$26.75	\$26.75	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
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Vendor Name	Unit Price	Extended Price	Vendor Comments
F.A.R.E. Feral Animal Removal Experts	\$25.32	\$25.32	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
--	--	--	--

Vendor Name	Unit Price	Extended Price	Vendor Comments
JBH, Ltd.	\$25.63	\$25.63	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
--	--	--	--

Vendor Name	Unit Price	Extended Price	Vendor Comments
Rock'N H Fencing LLC	\$23.00	\$23.00	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
--	--	--	--

Vendor Name	Unit Price	Extended Price	Vendor Comments
Harlan T. Langi	\$48.00	\$48.00	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
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Line Item: 4; Title: Corral Panel Fence (tall);
 UoM: FOOT; Quantity: 1;

Vendor Name	Unit Price	Extended Price	Vendor Comments
Pono Pacific Land Management, LLC	\$27.15	\$27.15	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
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Vendor Name	Unit Price	Extended Price	Vendor Comments
F.A.R.E. Feral Animal Removal Experts	\$27.34	\$27.34	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
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Vendor Name	Unit Price	Extended Price	Vendor Comments
JBH, Ltd.	\$38.20	\$38.20	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
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Vendor Name	Unit Price	Extended Price	Vendor Comments
Rock'N H Fencing LLC	\$25.50	\$25.50	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
--	--	--	--
Vendor Name	Unit Price	Extended Price	Vendor Comments
Harlan T. Langi	\$72.00	\$72.00	
Manufacturer Name	Manufacturer ID	Manufacturer Part #	Manufacturer URL
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Sum of All Line Items by Vendor:

Vendor Name	Ln Item #(s)	Unit Price Sum	Extended Price Sum	Vendor Compliance in HCE
Rock'N H Fencing LLC	1, 2, 3, 4	\$100.80	\$100.80	yes (07/27/2015 07:25 AM)
F.A.R.E. Feral Animal Removal Experts	1, 2, 3, 4	\$106.83	\$106.83	yes (07/27/2015 07:25 AM)
JBH, Ltd.	1, 2, 3, 4	\$133.05	\$133.05	yes (07/27/2015 07:25 AM)
Pono Pacific Land Management, LLC	1, 2, 3, 4	\$139.40	\$139.40	yes (07/27/2015 07:25 AM)
Harlan T. Langi	1, 2, 3, 4	\$270.00	\$270.00	yes (07/27/2015 07:25 AM)



Solicitation Summary

HlePRO - State of Hawaii eProcurement

Department of Land and Natural Resources
<http://hiepro.hawaii.gov>

Ungulate Fencing in Maui County

General Information

Solicitation Number: B15001679	Procurement Method: Competitive Sealed Bidding (IFB)
Release Date: 06/17/2015	Offer Due Date: 07/06/2015 02:00 PM
Status: Closed	Solicitation Type: Construction
Solicitation Description: The Department of Land and Natural Resources Division of Forestry and Wildlife Maui is seeking bids for fencing specifications to complete projects in Maui County on the islands of Maui and Molokai.	

See attached document for full specifications, terms and conditions.

Department: Department of Land and Natural Resources	Division: Division of Forestry and Wildlife
Pre-Offer Conference? Yes	Pre-Offer Conference Date: 06/29/2015 01:00
Show to Hawaii vendors only? No	Allow for submission of questions? No
Question Due Date: --	Answer Publish Date: --
Contract Start Date: 08/17/2015	Contract End/Delivery Date: 08/17/2017
Vendors are allowed to submit by line item? No	Procurement Officer: Suzanne D. Case
General Comments:	

Pre-Offer Conference

Date: 06/29/2015 01:00 PM
Address: DLNR Maui Baseyard Conference Room
Address 2: 685 Haleakala HWY
City: Kahului
State: HI
Zip Code: 96732
Comments: Pre-Bid Conference attendance is suggested but not required for bid. Conference focus will be to discuss fence specs and contract terms and conditions as appropriate.

Pre-Offer Conference Registration	# of Attendees
Rock'N H Fencing LLC	2
Total Number of Attendees: 2	

Buyer Information

Contact Person	Email	Phone
Landon, Peter	peter.landon@hawaii.gov	808-268-8699

Specifications Contact Information

☒ Same as Buyer

Billing Information

Name:	Landon, Peter	Email:	peter.landon@hawaii.gov
Address:	1955 Main Street	Address 2:	301
City:	Wailuku	State:	HI
		Zip Code:	96793

Line Item Details

Title	Description	Commodity Code	Description	UoM	Quantity	Est. Price Per Unit	Est. Total Price
Pig Fence	See attached...	33058	Fencing, Wire	FOOT	1	\$23.00	\$23.00
Deer Fence	see attached	33058	Fencing, Wire	FOOT	1	\$25.00	\$25.00
Corral Panel Fence (short)	see attached	33058	Fencing, Wire	FOOT	1	\$23.00	\$23.00
Corral Panel Fence (tall)	see attached	33058	Fencing, Wire	FOOT	1	\$23.00	\$23.00

Instructions

QUESTIONS ABOUT THIS SOLICITATION: Unless otherwise indicated, questions regarding this solicitation must be directed to the Buyer listed.

RESPONSE TO THIS SOLICITATION: Only responses submitted through HlePRO shall be considered for award.

COMPLIANCE, DOCUMENTATION AND HAWAII COMPLIANCE EXPRESS: Vendors are required to be compliant with all appropriate state and federal statutes. Proof of compliance (compliance documentation) is required.

VENDOR REGISTRATION IN HAWAII COMPLIANCE EXPRESS (HCE)

Proof of compliance/documentation is obtained through Hawaii Compliance Express (HCE). Vendors may register in Hawaii Compliance Express (HCE), a program separate from HlePRO. The annual subscription fee to utilize the HCE service is currently \$12.00. Allow 2 weeks to obtain complete compliance status after initial registration. It is highly recommended that vendors subscribe to HCE prior to responding to a solicitation. The vendor is responsible for maintaining compliance. If the vendor does not maintain timely compliance in HCE, an offer otherwise deemed responsive and responsible may not be awarded.

NOTE: State agencies may check HCE for compliance at any time. Non-compliance may result in a vendor not receiving an award, delay of payment, or cancellation of award. Register online for HCE at <https://vendors.ehawaii.gov/hce/>. For more information about HCE click the FAQ link in the upper left.

TRANSACTION FEES: The Awarded Vendor shall pay a Transaction Fee of 0.75% (.0075) of the award or estimated award, not to exceed \$5,000 for each award. This transaction fee shall be based on the initial award amount or estimated amount, and Contractor shall be responsible for payment of the fee to Hawaii Information Consortium, LLC (HIC), the vendor administering the HlePRO. Payment must be made to Hawaii Information Consortium, LLC (HIC) within thirty (30) days of receipt of invoice.

HAWAII GENERAL EXCISE TAX (GET): Unless otherwise stated in this solicitation, vendors shall include all applicable taxes in the price submitted. The Hawaii General Excise Tax (GET) shall not exceed 4.712% for the island of Oahu and 4.166% for the islands of Maui, Kauai, and Hawaii.

OFFER DEEMED FIRM/AUTHORITY TO SUBMIT OFFER: Submission of an electronic response to the State of Hawaii constitutes and shall be deemed an offer to sell the specified goods and/or services to the State of Hawaii at the price shown in the response and under the State's Terms and Conditions.

The electronic response submitter certifies that he/she is authorized to sign the response for the submitting vendor and that the response is made without connection with any person, firm, or corporation making a response for the same goods and/or services and is in all respects fair and without collusion or fraud.

Solicitation Addenda

Addendum Number	Date Issued	Reason
B15001679-01	06/17/2015	Adding requirement to provide proof of bonding capacity prior to award at the time of bid close. See attached document for specific terms and conditions.

Invitation for Bid

Ungulate fencing for the Division of Forestry and Wildlife in Maui County

B15001679

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OVERVIEW

The Division of Forestry and Wildlife (DOFAW) is seeking bids for per foot cost of different ungulate fence specifications. The successful bidder will enter into a contract with the State of Hawaii from which multiple fence projects will be executed with a State of Hawaii Purchase Order (PO).

For each fence project DOFAW will map the fence route and provide GPS locations of the major corners and stream crossings. DOFAW will also supply the majority of the materials to complete the fence. The bidder is responsible for transporting all materials to the site(s), labor to construct the fence(s), and any necessary clearing of vegetation along the fence corridor(s).

The bidder will also provide a performance bond and a payment bond for each project to ensure completion of all projects to the specifications herein and payment of any materials, or labor debts.

SCOPE OF WORK

The intent of this contract is to provide a means for the State to use multiple sources of funds to build multiple fence lines in different conservation units to exclude ungulates from these areas on the Islands of Maui and Molokai. This will also facilitate the removal of existing animals from within the fenced units so that forest restoration activities can take place. The fences will cross a variety of terrain types, and different fence specifications will be required for each area. The project areas are owned by the State of Hawaii and/or managed by DOFAW.

Access: Majority of the project sites are located in remote backcountry forests and will require helicopter access. Contractor will be required to obtain Special Use Permits from DOFAW for all helicopter landing operations. A helicopter flight plan must be approved by DOFAW Branch Manager or delegated authority prior to any flights with planned landings or material drops on State owned property. DOFAW will provide locations of Landing Zones (LZ), camps, and trail networks to be used by the contractor within each area. The Contractor shall not establish any LZ, camp, material stockpile, or trail other than the fence line corridor and service trail without the approval of the DOFAW Branch Manager.

Terrain: The terrain varies but is generally steep, crosses multiple drainages, and is covered by dense vegetation.

Weather: Weather conditions at the site(s) can be extreme and may change rapidly making work schedules weather contingent. The Contractor must have the flexibility to take advantage of favorable weather windows.

Materials: DOFAW will procure the majority of the necessary materials for each project. Materials will be stockpiled by DOFAW and distributed to the Contractor as needed.

Materials to be supplied by DOFAW

DOFAW will provide the following materials and will maintain ownership of any unused materials. The contractor will be responsible for supplying any materials above and beyond those listed below which are necessary to construct the fence as specified.

1. Hog wire mesh fencing, 13-49-6-12.5, 15-61-6-12.5, 17-75-6-12.5, 20-96-6-12.5
"Bezinal" brand galvanized coating, "Tight-grip" knot, 100m/roll
2. Hog wire mesh fencing, 8-32-6-12.5, galvanized coating, hinge joint, 100m/roll
3. T-Post, T-133, galvanized coating, 8 ft. or 10 ft.
4. T-Post, T-133, galvanized coating, 24" "dead-man anchor"
5. Fence Clips, galvanized coating

6. Hog ring fasteners, 9 gauge, galvanized coating
7. Smooth Wire, galvanized coating, 9 gauge, low tensile, 50lb roll
8. Schedule 40 galvanized steel pipe, 2" ID {2 3/8" OD}; 10' lengths
9. Galvanized bolt-on hardware for constructing pipe corner braces
10. Trailer mat (8' x 4')
11. Stream curtain (canvas type material)

******Material Substitutions may be made at the discretion of the State should items above become unavailable, or due to change in contract prices or supplier. Substitutions, additions, and subtractions may also be made at the discretion of the State due to site conditions or to, as close as possible, match previous fencing projects adjacent to the site******

Equipment: The contractor is responsible for all tools, and equipment needed to build the fences as well as the cost to transport them to and from the site. DOFAW will provide a forklift for loading of fence materials at the DLNR Baseyard. DOFAW will not provide any communications equipment or personal protective equipment.

Labor, Supplies, and Transportation Costs: The Contractor will be responsible for providing the necessary equipment, supplies, tools, and labor required to construct fence per the specifications contained herein. The Contractor will be also be responsible for transporting all equipment, materials, personnel, and supplies to and from each project site.

The majority of the materials needed for the construction of the fence are stockpiled at the Kahului DOFAW Baseyard, located at 685 Haleakala Highway in Kahului, and will be available during normal working hours [M-F 7:00-3:30], subject to advance coordination with DOFAW staff. The Contractor is solely responsible for transport of the materials (via truck and helicopter) from the Baseyard to the project site. At the Contractor's discretion, "bulk" material stockpiles may be established along the fence alignment for later distribution. These stockpile locations must be approved by DOFAW in advance.

Materials for projects on Molokai will be located at the Molokai DOFAW Baseyard, Olo olo Avenue Kaunakakai, HI 96748

Site preparation: Preliminary fence alignments will be marked with flagging in the field. GPS locations for major corners, drainage crossings, possible helicopter landing areas, etc. will also be provided to the Contractor. Fence alignments will generally be chosen such that it will be possible to hike from one end to the other; however the terrain may be extremely rugged

and require that the fence "tie-off" on the edges of cliffs, or waterfalls. The location of these terminal points will be determined by DOFAW.

DOFAW will conduct a survey for rare/endangered plants and historic features prior to start of construction. Any areas of special concern will be conspicuously flagged, and must not be disturbed or damaged. If human remains, historic or prehistoric artifacts are found during construction, work should cease in the vicinity of the find and DOFAW staff should be notified immediately.

The Contractor will be responsible for any vegetation clearing required for fence construction. Project sites are mostly in rain forests with dense fern and shrub understory; extensive brushing will be required. Any clearing will be done by hand or with small power tools only. The Contractor may clear a corridor no more than eight feet (8') in width. Debris must be scattered away from the fence so as not to impede foot traffic along the fence line or interfere with installation of apron wire. No standing trees greater than four (4) inches DBH shall be cut. When the fence is completed, vegetation clearing shall be sufficient to establish a service trail along the uphill side of the fence for the entire distance, allowing maintenance workers to hike along the fence without having to cross over.

The specific location of corner posts along the fence line will be left to the Contractor's discretion however major deviations [more than 50'] from the original flagged alignment must be approved by DOFAW staff prior to any work taking place.

Camping: The locations of the project areas are remote. Construction Camps will be permitted in accordance with DLNR rules regarding Forest and Natural Area Reserves. Areas near the fence line that are suitable for location of safe helicopter landing zones, camping areas, and material stockpiles are scarce, as the terrain is very steep. DOFAW staff will provide the Contractor with GPS locations of known sites that may be acceptable for these purposes. Use of any location for camps or material stockpiles requires prior authorization from DOFAW.

Hunting: In accordance with DLNR rules regulating the area.

Storage: It is up to the contractor to provide any offsite storage for materials and equipment.

Fire prevention: Wildfire risk in the project area is high due to low humidity at high elevations. The Contractor will be required to have at least two 4.5 kg (10 lb.) fire extinguishers for suppression and control of type A and B fires on the job site at all times. These extinguishers must be readily accessible at any time that a potential ignition source such as a power tool, generator, or spark emitter (such as a pipe saw or grinder) is in use. All gasoline powered equipment must have a functioning spark arrestor. Absolutely NO WELDING is permitted on the project site(s).

Native and Alien Plants and Animals: The purpose of this project is to protect habitat with a high conservation value. Plants or animals may not be removed from the area. The Contractor will also implement precautions to prevent the introduction of alien plants, insects, and amphibians (e.g., coqui frogs [*Eleutherodactylus coqui*]; see below). Equipment and materials will be inspected for seeds, eggs, larvae, etc., prior to delivery to the site and cleaned as necessary. The Contractor will take precautions to prevent spreading alien plants already at the fencing sites. The on-island point of contact will ensure that the contractor complies with this requirement.

Preventing the Introduction of Alien Species: Control of non-native plants and animals is a high priority in Hawaii. A large amount of personnel time and resources are expended annually to control alien species. Inspect field gear and equipment before going into the field. Dirt or mud can hide alien weeds and insects. It is necessary to inspect and clean: footwear; clothes, gear and material. Appropriate methods to clean gear include: water and hose, brush, clean rag, knife edge, or insecticide. Cleaning should be done in a designated area with a nearby receptacle for disposal. Natural Area Reserve and Forest Reserve Administrative Rules prohibit the introduction of alien organisms; violators can be held liable for the cost of control or eradication.

Pack out trash and unused foodstuffs: Do not bury trash in the field. Avoid taking in any fruits that have seeds with the potential to naturalize (e.g. cherry tomatoes, chili peppers, berries, and guava). Organic trash (e.g. orange and banana skins) should be treated as other garbage and packed out. Garbage that is discarded in the field has the potential to spread insects, fungi, and other plant pathogens and may provide food for alien vertebrates.

Project Completion: The Contractor will remove all scrap (e.g., wire mesh, smooth wire, damaged posts, and discarded spades), tools, and trash. Surplus materials such as fence posts or pipe will be arranged neatly near the fence line (or in stockpiles) and an inventory with their location(s) provided to DOFAW.

SPECIFICATIONS

General: The purpose of these types of fence is to exclude deer, feral goats, and pigs from protected watershed areas. The terrain of the project areas ensures that these specs will be difficult to build, and it is important that the contractor communicate regularly with DOFAW staff to resolve difficulties and or clarify/interpret specifications. The following specifications are necessary to ensure that the fence excludes ungulates and that long-term fence maintenance needs are minimal. The fence will be carefully inspected prior to final payment to ensure that the following specifications are met.

Four (4) different construction specifications are included in this contract. This is because of varying terrain/soil conditions, and because different animal species are of concern in certain areas. Combinations of these specs may be used at one site; therefore the bidder is required to provide a price for each line item to qualify for the award.

Briefly, the specifications are:

[1] Pig Fence

Constructed of 49" tall hog wire mesh clipped to 8' T-posts. Corners will be braced with T-post[s] and tensioned smooth wire. An "apron" of 32" wire mesh will be laid horizontally at the base of the upright wire, and attached with hog rings for the entire length of the fence. The apron will be pinned to the ground with 24" deadman anchors to prevent animals from tunneling under the fence.

[2] Deer Fence

Constructed of 96" tall wire mesh clipped to 10' T-posts. All corner posts will be made of 2" Schedule 40 galvanized pipe (2.5" may be requested in some projects); Braces at major corners will be constructed of 2" Schedule 40 galvanized pipe (1.5" may be requested in some projects) & bolt-on hardware. Minor corners (less than 15 degree change in angle) may be braced with guide wires attached to T-post anchors. An "apron" of 32" wire mesh will be laid horizontally at the base of the upright wire, and attached with hog rings for the entire length of the fence. The apron will be pinned to the ground with 24" deadman anchors to prevent animals from tunneling under the fence.

[3] Corral Panel Fence (short)

Will be installed in locations where steep terrain precludes the use of wire mesh fencing in Specifications number [1] or [2]. Welded wire panels measuring 5' x 16' will be attached to T-posts. T-post height will be either 8' Specification [3] or 10' Specification [4].

Specification [3] will be one corral panel tall (5'), but Specification [4] must also be deer-proof, so an additional half-width of panel must be installed at the top to give the fence an effective height of 7.5'. Pipe corner braces will not be necessary on most projects as the wire panels are not under tension. Projects using Specification [2] Deer Fence, may be requested to use pipe bracing for uniformity of the project and aesthetics. An "apron" of 32" wire mesh will be laid horizontally at the base of the upright panel, and attached with hog rings for the entire length of the fence. The apron will be pinned to the ground with 24" deadman anchors to prevent animals from tunneling under the fence.

[4] Corral Panel Fence (tall)

See Specification [3]. Corral Panel Fence (tall) will use same general specifications for Specification [3], but require 1.5 corral panels for an effective height of 7.5'.

Posts (pipe and t-posts)-General: Pipe and t-posts will be driven into the soil or holes drilled into rock securely enough to withstand the uplift force created when the fence wire is tensioned, and also resist horizontal force without being uprooted. All posts will be installed within 5 degrees of plumb (except for very steep terrain as described below). All posts will be placed within three (3") inches of a center-line drawn between the corner posts to either side. Trees or other natural features may not be used in place of fence posts or otherwise incorporated into the fence (with staples, tie wire, etc.) T-Posts will be installed no farther apart than the specified maximum spacing, but may be spaced closer in order to properly support the fence wire as it crosses high and low points in the terrain. All vertical pipe posts will be capped. Pipe "line bosses" may be used where needed at the discretion of the contractor and may be requested by the State where conditions require it.

Corner Bracing: A brace will be attached to the corner post at any point the fence makes a change in direction to prevent the corner post from leaning out of plumb. Unless unavoidably prevented by terrain, braces will be installed such that they do not block the service trail along one side of the fence.

T-Post Braces [Pig Fence specification]: Braces will be constructed by driving a T-post at an angle such that it can be attached to the corner post and secured with 9 gauge galvanized wire so that the force exerted by the hog wire mesh is countered. Corner braces may be constructed as either "push" or "pull" braces depending on the terrain and orientation of the corner. As noted above, corner braces must not create a tripping hazard on the access trail side of the fence. The preferred location of all brace posts will be on the downhill or "apron" side of the fence, or oriented parallel to the fence wire (in-line bracing). Depending on the terrain, soil

conditions, and geometry of the corner, more than one T-post may be needed to adequately brace the corner.

A T-post brace will also be installed at any terminal point of the fence line; for example at the point where the fence ties into a natural barrier such as a waterfall.

T-Posts: T-posts will be installed at no more than twelve foot (12') distance from each other, and additionally so that a post is placed at ALL significant high and low points along the fence line. T-posts will be oriented so that the "knuckle-side" faces out from the area to be enclosed, except where corner geometry requires the post to face the opposite direction. T-posts will be driven to a minimum depth of twenty (20") inches; completely burying the spade anchors, in a manner that will prevent damage to the posts and the galvanized coating. Where posts are to be installed in rock, the spade anchors may be removed so that posts fit into drilled holes. Posts in drilled holes need not be driven the full twenty (20") inches, but must be secure enough to resist the force of the tensioned wire mesh.

T-posts at low points will be driven deep enough to prevent them from being pulled up when tension is applied to the mesh wire. If this requires driving the post so deep that the top strand of the fence wire will be above the top of the post, a SECOND post must be installed next to the first with enough height exposed to clip the top of the fence. If a post does pull out, hanging rocks or other weights from the wire is NOT an acceptable means of re-anchoring posts.

T-posts shall be installed plumb; the exception being on steep slopes, where they may be angled to compensate. Posts which are bent, split, mushroomed, cracked, twisted or have cracked, chipped, or scratched coatings will not be used.

Pipe Braces [Deer Fence Spec] A pipe post will be placed at any point the fence makes a change in direction, and the appropriate bracing installed to support the corner post. Minor changes in angle (less than 15 degrees) may be supported by a guy wire and angled T-post as described above. Unless prevented by terrain, all braces at corners of >15 degree change in angle will be "H-braces" consisting of one or more vertical anchor posts located near the corner post and connected to it by brace rails and tensioned wire. To provide a solid brace, the anchor and corner posts shall be placed no closer to each other than eight (8') feet.

In addition to corner bracing, pipe posts must also be installed as in-line brace structures sufficient to maintain the maximum allowed spacing between pipes [150 feet] and maintain adequate tension of the fence wire.

Brace rails will be attached to the anchor and corner posts by the supplied bolt-on hardware. The brace rails will be oriented such that they adequately reinforce corner posts and prevent shifting when tension is applied to the wire mesh. A pipe brace rail will be installed between each vertical post, oriented parallel to the ground surface. In addition, diagonal wires will be

incorporated into the brace and tension applied in an approved manner. The tensioning wire will be 9 gauge; two complete wraps of wire diagonally around the brace frame are required.

In cases where the fence makes a change in direction of less than 30 degrees a 2-point or "single H" brace will be installed. This will consist of two vertical posts (one of which is the corner post) installed so that the brace rails bisect the concave angle of the turn. The 2-point brace may also be installed "in-line" to provide an anchoring point for properly tensioning the fence wire on long straight-line runs.

For changes in direction between 30 and 60 degrees a 3-point or "double H" brace will be installed to support the corner post. This will consist of two vertical anchors with connecting brace rails, parallel to the wire mesh, along the fence line on either side of the corner post. Alternatively, the 3-point brace can be constructed "in-line" so that it bisects the concave angle of the turn, similar to the 2-point brace. The "in-line" 3-point brace will also be installed at all locations where the hog wire mesh fence terminates (cliff edges, etc.)

At points where the fence changes direction by 60 degrees or more, a 5-point brace will be required so that a "double H" brace supports the corner post in each direction.

Where terrain prevents the use of an H-brace a "post and deadman" type brace consisting of one or more anchors and tensioned 9 gauge wires may be used; provided that the anchor is seated firmly enough to resist the tension of the fence without being uprooted. This anchor type may not be used for changes of direction greater than 30 degrees.

In-line Braces [Deer Fence Spec]: Two-point, in-line braces are used to provide anchoring points for properly tensioning the fence wire wherever the fence makes long, straight runs, ideally near the middle of the run. In-line braces shall also be installed at abrupt changes in slope along the fence line to allow the wire mesh to be cut and oriented to better conform to the topography.

Frames for Pedestrian Gates [Deer Fence Spec]: At various locations along the fence line, (Exact locations to be marked in the field by DOFAW) frames for walk-through gates will be required. The contractor shall assemble and install the gate frame, but is not required to build the actual swinging gate panel. Each frame shall be constructed of welded 2" Schedule 40 galvanized pipe. Opening shall be 36" wide by 60" tall and between 24" and 30" from the ground. The frames will be installed securely enough (concrete maybe necessary) that they can serve as an in-line brace, or be incorporated as part of a larger corner brace structure. The contractor shall pull the fence wire tight past each frame, then cut and tie-off the wires (maintaining correct wire tension) such that the walk-through opening is usable.

Wire Mesh: Wire mesh is to be installed as part of the Pig Fence (49" tall), and Deer Fence (96" tall) specifications. The mesh will be fastened to T-posts with wire clips at the top and bottom strand, and at interior wire strands at approximately a 10" spacing (5 clips per post for

49" wire, ~9 clips for 96"). For pipes used in the Deer Fence spec, mesh will be attached using 9 gauge galvanized wire (minimum 7 ties per pipe). Wire mesh will be fastened to the outside of t-posts and pipes, on the side where animals will be pushing from. Woven wire will be unrolled and installed in a way that minimizes damage to the galvanized coating. As practical, crews will avoid stepping on wire and climbing on erected mesh. Sufficient tension is to be applied to the wire so that a sideways pull of 20 lbs applied midway between two posts will not displace the wire more than six (6") inches.

The bottom strand of mesh wire will be fastened to each post so that it is no more than one (1") inch above the ground at posts and no more than four (4") inches at any point between posts. The ground surface is the mineral soil surface and not the overlying grass, vegetation, or duff. Vegetation and loose matter must be cleared to ensure that the above specification is met.

******For the Deer Fence Specification [2]; 75" wire mesh may be requested as substitute. Two (2) pieces of smaller wire (49"-61") may also be requested to achieve the desired effective height but lessen the corridor needed to be opened in the forest to un-roll wire.******

Apron: All four (4) fence specifications require a 32" wide hog wire apron to be attached at the base of the fence and staked down to prevent animals from tunneling beneath it. The apron will be attached so that the "small box" side of the wire overlaps the vertical fence by two (2) "boxes". The apron will be attached with hog ring fasteners along the length of the fence, alternating between the top and bottom strand of overlapping fence, with no more than 24" distance between hog rings. Loose material such as rocks or branches will be removed from the apron corridor before the wire is laid out, so that the apron lays flat on the ground surface. Deadmen or other anchors as described below will be used to stake the apron firmly to the ground, such that the outer edge of the apron cannot be lifted. Maximum distance between anchors is 20'; closer spacing may be necessary. Where available, rocks or logs should be used to help hold the apron down, but not as substitutes for the required anchors.

Adaptions to Terrain: The rugged nature of the project area will likely cause difficulty in properly orienting the fence wire mesh. Where radical changes in slope occur, wire will be cut and tied off so that each section lies at an angle matching the terrain. This may require the use of in-line bracing as described above. "Bellying" of the wire at high points is unacceptable. A fence post must be installed at any locations where this occurs, and the wire raised to remove the "belly".

Corral panel specs will require that the panel be cut to shape in order to fit the contour of the land such that there is no more than four (4") inch gap between the ground and bottom of panel.

Anchors: If a full length post is not used to draw the fence wire down into low spots between fence posts, anchors must be used to ensure that the gap between the bottom strand

of wire mesh and the ground is never more than the four (4") inch maximum allowed. Anchors may be 24" T-posts ("deadmen"), concrete forming pins, hot-dipped galvanized eyebolts, or galvanized tie-wire anchors, depending on the substrate and contractor preference. DOFAW will provide deadman anchors; purchase of any of the other types of anchor is the contractor's responsibility.

T-post anchors or "deadmen" will be driven at a 30 to 45 degree angle relative to the direction of tension such that the tops are no more than two (2") inches off the centerline and no more than three (3") inches protrudes from the ground surface. The anchor will be tied to at least two (2) of the bottom strands of woven wire with 9 gauge wire and driven such that the wire is pulled tight and within four (4") inches of the ground surface. T-post anchors are preferred for areas with deep soil.

Concrete forming pin anchors will be driven at a 30 to 45 degree angle relative to the direction of tension such that tops are no more than four (4") inches off the centerline and no more than three (3") inches protrudes from the surface. Pins will be attached to at least two (2) of the bottom strands of woven wire with 9 gauge wire. Pins will be driven so as to pull the wire tight and within four (4") inches of the ground. To prevent corrosion, steel pins must not contact the galvanized woven wire. Form pins are preferred for areas with cracked or blocky rock on the surface.

Eye-bolt anchors will be galvanized and of no less than 5/16 inch diameter x 4 inches in length. Holes will be drilled at 30 to 45 degree angle relative to the direction of tension, and deep enough that the entire shaft of the bolt is buried when emplaced. Epoxy may be used to secure the bolt in the hole. Woven wire will be pulled down to within four (4") inches of ground level and tied off with 9 gauge wire that is attached to at least two (2) of the bottom strands of woven wire. Eye bolts are preferred for areas with solid bedrock exposed at the surface.

Tie-wire anchors will be galvanized and installed per manufacturer specification. Simpson Strong Tie part TWD25112 is an acceptable example. Fence wire will be pulled down to within four (4") inches of ground level and tied off at the anchor with 9 gauge wire that is attached to at least two (2) of the bottom strands of the woven wire. Tie wire anchors are preferred for areas with solid bedrock exposed at the surface.

Clips: Both sides of each fence clip are to be wrapped at least one complete turn around the fence wire strand. The tool/method used to wrap the fence clips shall not damage the galvanized coating of the clip or fence wire. The number of clips to be used at each post is specified under "WIRE MESH" above.

Splices: Where cut ends of fence wire need to be tied off or joined, a knot appropriate for high-tensile wire shall be used. Swage-on fittings, such as Nicopress Swage-it or equivalent, may be incorporated in the splice. All loose wire ends will be spliced or tied off neatly.

Stream Crossings: Anywhere the fence alignment must cross a stream, the preferred location will be at a natural barrier such as a waterfall sufficient to block animals without needing to construct anything in the actual stream channel. In these places, the fence will end and be equipped with a terminal brace on either side of the stream.

However, if the stream crossing is narrow enough, and oriented such that the fence wire can be stretched across the drainage channel with sufficient space for flood waters to pass beneath, no bracing will be necessary.

At locations where the fence must cross drainage channels or small streams and a natural barrier is not available, a stream curtain/mat constructed of rubber matting or fabric material must be installed in such a way that water and debris can flow beneath the fence, but animals cannot lift the curtain/mat and pass. In this case, if the stream crossing is approximately eight (8') foot wide or narrower, a rubber trailer mat (8' x 4') will be attached to the bottom of the fence. Trailer mats will have one grommet per foot (horizontally) and attached to bottom of fence with 9 gauge wire. Mats will also have one grommet per two (2') feet (vertical sides) and attached to apron with 9 gauge wire. Stream crossings that are eight (8') foot or wider, will require stream curtains to be installed and attached to bottom of fence and side aprons in the same manner as the trailer mats.

Detailed Specifications for "Corral Panel" Fence [3], [4]: Steep terrain typically found near gulch crossings or cliff edges will prevent the use of tensioned wire mesh. Instead, the fence will be constructed from pieces of rigid welded wire "Corral Panel", wired to T-posts.

Maximum distance between T-posts will be eight (8') feet, in contrast to the other two fence specifications that allow twelve (12') foot spacing. Each section of corral panel is to be attached to at least three (3) different T-posts.

Full size corral panel sections will be oriented (and cut if needed) to conform as closely as possible to the underlying ground surface as possible. The maximum gap allowed between the bottom of the panel and the ground at any location is four (4") inches.

Corral panel sections will overlap each other by a minimum of one "box" for the entire extent of each "seam".

Panels will be attached to T-posts with 9 gauge wire, used in the same manner as T-post clips (minimum 5 wires per post), and to each other with 9 gauge hog ring fasteners spaced no more than 18" apart at each "seam".

Locations where Corral Panel specification is required may be extremely steep and require specialized equipment (rappelling) for the fence to be installed.

Fence built to Specification [3] will be one corral panel in height (5'), but Specification [4] must also be deer-proof, so an additional half-width of panel must be installed at the top to give the

fence an effective height of 7.5'. The cut side of panel will be installed so that any sharp wire ends are pointing down, in order to avoid injury to persons climbing the fence.

TERMS AND CONDITIONS

Authority of the State: The State shall decide all questions that may arise as to the work performed hereunder, as to the manner of such performance, as to the interpretation of any law, rule or regulation, policies and procedures, as to compensation, and as to any other matter that may arise under the Contract. The decision of the State in such matters shall be final as long as not in violation of law and not arbitrary, capricious or characterized by abuse of discretion.

Offer Form: Bidder is requested to submit its offer using the exact legal name of the business as registered with the Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate space on Offer Form. Failure to do so may delay proper execution of the contract.

The authorized signature on the first page of the Offer Form shall be an original signature in ink, which shall be required before an award, if any, can be made. The signed Offer Form shall indicate bidder's intent to be bound. Please upload a copy when submitting bid on HiePRO. Retain the original to submit if selected for award.

Contract Administrator (CA): For the purposes of this contract the designated CA is Peter Landon, telephone (808) 268-8699, facsimile (808) 873-3051 or emailed: peter.landon@hawaii.gov. Each project will have a Project Manager identified by the CA. The role of the Project Manager will be to show the contractor the line; approve LZs, campsites, and stockpiles; check out materials, and inspect the final product. All material substitutions will be approved through the CA. Original bond documents, invoices, and certified payrolls must be turned in directly to the CA. The CA will maintain all contract files.

Method of Award: At the close of this solicitation the bids will be reviewed by the Contract Administrator. Award will be made to the lowest responsive responsible bid. The bidder must provide a bid for all line items in the solicitation to qualify for award. The State may not award all line items in this solicitation.

Contract: The successful bidder will enter into a contract with the State for the line item prices identified by this solicitation. The term of the contract will be for 24 months from the date on the Notice to Proceed. One extension may be permitted up to an additional 24 months.

Notice to Proceed: Upon execution of the contract the Contract Administrator will issue a written Notice to Proceed. However no work shall commence. This will be notification that the contract has been successfully executed.

Fence Projects: After Notice to Proceed has been issued DOFAW will work with the contractor to execute each fence line with a State of Hawaii Purchase Order (PO). DOFAW has

determined and prioritized several fence lines in Maui County. For each fence line the contractor will be required to submit both (two (2) bonds) a performance and payment bond for 100% of the PO price. The State will draft the PO for the desired quantities of each line item and forward to the Contractor. The Contractor will return the draft with the required performance and payment bonding and DOFAW will submit for processing. After the PO has been approved work may begin.

Payment: Payment will be made with a State of Hawaii Purchase Order (PO). Partial payments may be invoiced every 30 days, at the completion of a line item, or at the completion of a project. Completed fence will be measured on site by DOFAW staff and inspected for compliance with specifications before payment.

Extensions: Contract may be extended one time for up to an additional 24 months.

General Conditions: The Department of Land and Natural Resources Interim General Conditions dated October 1994, as amended, shall be made a part of these contract specifications and are referred to hereafter as the General Conditions.

Chapter 104, HRS, Wages and Hours of Employees on Public Works: Bidder is advised that Chapter 104, HRS shall apply to this solicitation. The Bidder may access this Chapter on the State's website: www.ehawaii.gov.org/government/html/index.html.

****Awarded contractor will provide weekly certified payroll to the Contract administrator.****

Contractor's License Required: The Board will reject all bids received from contractors who have not been licensed by the State Contractors License Board in accordance with Chapter 444, HRS; Title 16, Chapter 77, Hawaii Administrative Rules; and statutes amendatory thereto. Due to the nature of work contemplated, bidders must possess a valid State Contractor's license, classification C-32 and/or A.

Subcontractors: Bidder shall provide the name and contact information for any subcontractor to be used on the project. Failure to provide this information shall be grounds for bid rejection.

Insurance: Bidder shall provide proof of insurance including: the insurance agent (company name), contact person and phone number, the insurance underwriter, and the policy number. Failure to provide such information shall be grounds for bid rejection.

LIABILITY INSURANCE

The Contractor shall maintain in full force and effect during the life of this contract, liability and property damage insurance to protect the Contractor and his subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by himself or by a

subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the contract, the insurance policy or policies shall name the subcontractor as additional insured.

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

The following minimum insurance coverage(s) and limit(s) shall be provided by the Contractor, Including its subcontractor(s) where appropriate.

<u>Coverage</u>	<u>Limits</u>
Commercial General Liability (Occurrence form)	\$2,000,000 combined single limit per occurrence for bodily injury and property damage
Basic Motor Vehicle Insurance and Liability Policies	BI: \$1,000,000 per person \$1,000,000 per accident PD: \$1,000,000 per accident

Each insurance policy required by this contract, including a subcontractor's policy, shall contain the following clauses:

1. "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife, 1151 Punchbowl Street, Room 325, Honolulu, Hawaii 96813."
2. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
3. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

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

Upon Contractor's execution of the contract, the Contractor agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of this contract,

including those of its subcontractor(s), where appropriate. Upon request by the State, the Contractor shall be responsible for furnishing a copy of the policy or policies.

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

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

Irregular Bids: No irregular bids or propositions for doing the work will be considered by the Board.

Withdrawal of Bid: No bidder may withdraw his bid between the time of the opening thereof and the award of contract.

Successful Bidder to file Performance and Payment Bonds: The successful bidder will be required to file performance and payment bonds each for the total amount of each project price.

Change Orders: No work of any kind in connection with the work covered by the plans and specifications shall be considered as change order work, or entitle the Contractor to extra compensation, except when the work has been ordered in writing by the Contract Administrator and in accordance with sub-section 4.2 of the General Conditions.

The Contractor shall clearly identify and inform the Contract Administrator in writing of any deviations from the contract documents at the time of submission and shall obtain the Contract Administrator's written approval to the specified deviation prior to proceeding with any work.

Wages and Hours: In accordance with sub-sections 7.3 to 7.9 of the General Conditions relative to hours of labor, minimum wages and overtime pay, the current minimum wage rates promulgated by the Department of Labor and Industrial Relations (DLIR) shall be paid to the various classes of laborers and mechanics engaged in the performance of this contract on the job site. The minimum wages shall be increased during the performance of the contract in an amount equal to the increase in the prevailing wages for those kinds of work as periodically determined by the DLIR.

The Department of Land and Natural Resources will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the said minimum wage rates. The possibility of wage increase is one of the elements to be considered

by the Contractor in determining his Bid, and will not, under any circumstances, be considered as the basis of a claim against the Department under this Contract.

No work shall be done on Saturdays, Sundays, legal State holidays, and/or in excess of eight (8) hours each day without the written consent of the Contract Administrator. Should permission be granted to work at such times, the Contractor shall pay for all inspection administrative costs thereof. No work shall be done at night unless authorized by the Contract Administrator. This project is located in a remote region that may require work on Saturdays, Sundays, legal State holidays, and/or in excess of eight (8) hours each day, and/or at night. Work during these times will be permitted subject to approval by the Contract Administrator.

Property Damage: It shall be the responsibility of the contractor to respect State property and to prevent damage to existing improvements. The Contractor will be responsible for damages resulting from construction operations. Immediately upon discovery, the Contractor shall repair such damage to the satisfaction of the Contract Administrator.

All trees and shrubbery outside the excavation, embankment or construction limits shall be fully protected from injury.

Bidder's Responsibility to Provide Proper Superintendence: The successful low bidder shall designate in writing to the Contract Administrator the name of its authorized superintendent (Superintendent), who will be present at the job site whenever any work is in progress. The Superintendent shall be responsible for all work, receiving and implementing instructions from the Contract Administrator in a timely manner. The cost for superintendence shall be considered incidental to the project.

If the Superintendent is not present at the site of work, the Contract Administrator shall have the right to suspend the work as described under sub-section 5.5 c. and 7.20 - Suspension of Work of the General Conditions.

Hiring of Hawaii Residents: The Contractor shall comply with Act 68, SLH 2010, in the performance of; and for the duration of this contract. The Contractor shall ensure that Hawaii residents compose not less than eighty percent of the workforce employed to perform the contract work on the project. The eighty percent requirement shall be determined by dividing the total number of hours worked on the contract by Hawaii residents, by the total number of hours worked on the contract by all employees of the Contractor in the performance of the contract. The hours worked by any Subcontractor of the Contractor shall count towards the calculation for this section. The hours worked by employees with shortage trades, as determined by the Department of Labor and Industrial Relations (DLIR), shall not be included in the calculation for this section.

The requirements shall apply to any subcontract of \$50,000 or more in connection with the Contractor, that is, such Subcontractors must also ensure that Hawaii residents compose not less than eighty percent of the Subcontractor's workforce used to perform the subcontract.

Public Convenience and Safety: The Contractor shall conduct construction operations with due regard to the convenience and safety of the public at all times. No materials or equipment shall be stored where it will interfere with the safe passage of public traffic. The Contract Administrator shall have the right to suspend the performance of the work in accordance with sub-section 7.20 - Suspension of Work of the General Conditions.

Worker Safety: The Contractor shall provide, install and maintain in satisfactory condition all necessary protective facilities and shall take all necessary precautions for the protection and safety of its workers in accordance with the Occupational Safety and Health Standards for the State of Hawaii. The Contract Administrator shall have the right to suspend the performance of the work in accordance with sub-section 7.20 - Suspension of Work of the General Conditions.

Other Health Measures: Forms of work site exposure or conditions which may be detrimental to the health or welfare of workers or of the general public shall be eliminated or reduced to safe levels as required by the DOH codes, standards, and regulations. Suitable first aid kits and a person qualified to render first aid, as specified in the DOH regulations, shall be provided at all times when work is scheduled.

Hawaii Business or Compliant Non-Hawaii Business Requirement: Bidders (Contractors) shall be incorporated or organized under the laws of the State or be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract, as stipulated in §3-122-112 HAR.

Compliance with §3-122-112 HAR: As a condition for award of the contract and as proof of compliance with the requirements of 103D-310(c) HRS, the selected bidder shall furnish the required documents to the Department. If the valid required certificates are not submitted on a timely basis for award of a contract, a bidder otherwise responsive and responsible may not receive the award. Bidder is responsible to apply for and submit the following documents to the Department.

A. **TAX CLEARANCE REQUIREMENTS (HRS Chapter 237):** Bidder shall obtain a tax clearance certificate from the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate is valid for six months from the most recently approved stamp date on the certificate; the certificate must be valid on the date received by the Department.

B. Department of Labor (DLIR) "Certificate of Compliance". (HRS Chapter 383 - Unemployment Insurance, Chapter 386 - Workers' Compensation, Chapter 392 - Temporary Disability Insurance, and 393 - Prepaid Health Care): Bidder shall obtain a certificate of compliance from the Hawaii State Department of Labor and Industrial relations (DLIR). The certificate is valid for six months from the date of issue; certificates must be valid on the date received by the Department.

C. Department of Commerce and Consumer Affairs (DCCA), Business Registration Division (BREG) "Certificate of Good Standing". Bidder shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs (DCCA), Business Registration Division (BREG). The certificate of good standing is valid for six months from the date of issue; certificates must be valid on the date received by the Department.

Preferably, instead of separately applying for these certificates at the various state agencies, bidder may choose to use the Hawaii Compliance Express (HCE), which allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance" indicating the bidder's status is compliant with the requirements of §103D-310(c), HRS, and shall be accepted for contracting and final payment purposes. Bidders that elect to use the new HCE services will be required to pay an annual fee of \$15.00 to the Hawaii Information Consortium, LLC (HIC).

Campaign Contributions: Contractors are hereby notified of the applicability of Section 11-355, HRS, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body.

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

Any protest pursuant to §103D-701, HRS, and Section 3-126-3, HAR, shall be submitted in writing to the Chair of the Department of Land and Natural Resources, 1151 Punchbowl Street, Honolulu, Hawaii 96813 or P. O. Box 621, Honolulu, Hawaii 96810-0119.