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

January 12, 2006

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

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL TO ENTER INTO A CONTRACT WITH HUI KU MAOLI OLA TO PLANT FOUR SPECIES OF NATIVE HAWAIIAN PLANTS ON 20 ACRES IN KANAHA POND WILDLIFE SANCTUARY, MAUI, FOR THE DIVISION OF FORESTRY & WILDLIFE

This Board Submittal approves a contractual relationship for the production and planting of four species of native Hawaiian plants on 20 acres in Kanaha Pond Wildlife Sanctuary, Maui.

BACKGROUND:

Kanaha Pond Wildlife Sanctuary, located on windward Maui, contains important habitat for rare and endangered native species of Hawaiian Waterbirds, and critical habitat for the Blackburn's Sphinx Moth. The Division of Forestry and Wildlife proposes to cut and chip on-site 20 acres of non-native trees annually - as part of a holistic ecosystem restoration project to enhance and restore the Sanctuary's wetland habitat for the Hawaiian stilt, Hawaiian coot, Hawaiian duck and the Blackburn's Sphinx moth. The four-year plan is to incrementally replant such lands, which have been cleared of non-native trees by cutting and chipping, with the appropriate native Hawaiian plant species which once dominated the site inside of the Kanaha Pond Wildlife Sanctuary.

Four species of native Hawaiian plants (as follows) will be produced and planted: *Lycium sandwicense* ('ohelo-kai) at 10% of cover, *Ipomoea pes-caprae* (pohuehue) at 10% cover, *Sida fallax* ('ilima-papa) at 10% cover, and *Sesuvium portulacastrum* (akulikuli) at 70% cover on 20 acres of land open and cleared of non-native trees. These four hardy native plant species will quickly cover the cut and chipped site, reducing weed re-growth, and providing for microhabitat conditions for inter-planting with other native species. Re-creation (to the best approximation) of the Sanctuary's original stable, biodiverse, and native wetland vegetation dominated ecosystem, which is best suited to support waterbird recovery needs, is the planned outcome

CONTRACT PROVISIONS:

The Invitation for Bids for this project was published on the State Procurement Office website on September 22, 2006 (IFB No. IFB-DOFAW-07-M2). Bids were opened on October 6, 2006 and Hui Ku Maoli Ola was identified as the lowest responsible and responsive bidder whose bid met the requirements and criteria set forth in the invitation, with a total estimated bid price of $49,384.96 and a cost of $ 2,419.25 per acre. Funding for this contract comes from a previously secured Federal grant. Upon approval by the Board, the Division will submit the contract for review and approval as to form by the Attorney General, and process the document for signature by the Chairperson.

RECOMMENDATION:

That the Board authorize the Chairperson to negotiate and execute a Contract for Goods and Services in the estimated amount of $49,384.96 with Hui Ku Maoli Ola, subject to availability of funds and approval as to form by the Attorney General's Office.

Respectfully submitted,

Paul J Conry

PAUL J. CONRY, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:

PETER T. YOUNG, Chairperson
Board of Land and Natural Resources

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 _____, _____, between Department of Land & Natural Resources (Insert name of state department, agency, board or commission), State of Hawaii ("STATE"), by its Chairman of the Board (Insert title of person signing for State), (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is Department of Land & Natural Resources Post Office Box 621, Honolulu, HI 96809 and Matt Schirmann,dba Hui Ku Maoli Ola, ("CONTRACTOR"), a Limited Liabilty Company (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: Hui Ku Maoli Ola, 41-888 Kakaina Street, Waimanalo, HI 96795 ; Federal Tax ID# 99-0342736

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 103-55 (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) _____ (Identify state sources)

or (2) USDA, Natural Resources Conservation Service-WRP Agreement 66-9251-6-719 (Identify federal sources)

or both, in the following amounts: State $ _____

Federal $ 109,350.00

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 07-M2 ("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

Fourty-nine thousand, three hundred eighty-four and 96/100 DOLLARS ($ 49,384.96), 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 _____ 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 and 00/100 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)

_____
(Print Name)

_____
(Print Title)

_____
(Date)

CONTRACTOR

CORPORATE SEAL
(If available)

Matt Schirmann, dba Hui Ku Maoli Ola, LLC
(Name of Contractor)

_____
(Signature)

Matt Schirmann
(Print Name)

_____ *
(Print Title)

_____
(Date)

APPROVED AS TO FORM:

_____
Deputy Attorney General

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

STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF Hawaii)
) **SS.**
_____ **COUNTY OF** _____)

On this _____ day of _____, _____ before me appeared Matthew Schirmann 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 _____ and _____ of Hui Ku Maoli Ola, 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.

(Notary Seal)

_____
(Signature)

_____
(Print Name)

Notary Public, State of _____

My commission expires: _____

Attachment - S1

STATE OF HAWAII

SCOPE OF SERVICES

The Contractor agrees to perform the following work: Plant Four Species of Native Plants on 20 Acres in Kanaha Pond Wildlife Sanctuary, Maui for the Department of Land and Natural Resources, Division of Forestry and Wildlife. It is understood that this Agreement includes, as a part hereof, the General Conditions and the IFB No. IFB-DOFAW-07-M2 including the Offer, Special Provisions, and Specifications contained therein which is attached as Exhibit 1. The total area to be planted under this Agreement is 20 acres.

Production of Plants and Planting

1. General

Four Species of native Hawaiian plants shall be produced for this project and planted on the 20 acre site. The make-up in percentages of plants required for the completed plantings are as follows: *Lycium sandwicense* ('ohelo-kai) at 10% of cover, *Ipomoea pes-caprae* (pohuehue) at 10% cover, *Sida fallax* ('ilima-papa) at 10% cover, and *Sesuvium portulacastrum* (akulikuli) at 70% cover, spaced each at 3.0 feet off-center from the next closest plant.

a) Number of plants.

The contractor must provide: 9,680 *Lycium sandwicense* ('ohelo-kai); 9,680 *Ipomoea pes-caprae* (pohuehue); 9,680 *Sida fallax* ('ilima-papa); and 33,880 *Sesuvium portulacastrum* (akulikuli) rooted plants in good health.[NOTE: This is 65% of the total plants to be planted on the 20 acre site at 3' apart (off-center from their nearest plant neighbor); the remainder 35% of the plants required on the site will be produced and planted by the State.]

2. Planting

All plants are to be well-rooted, in good condition, and completely free from weeds and any and all plant-pests or insects, frogs, snails, etc. The plants may be produced as individual plants from seed, or from well established, well-rooted cuttings. If cuttings are sources of the plants for the project, then these must be from diverse cutting-stock from no less than 50 individual and unrelated plants. All plants will be planted in holes prepared by the contractor and the plants properly situated and watered–in* (*water for this watering will be coordinated and assisted by the State).

STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

1. SCOPE OF PAYMENT: In full consideration of services to be performed under this contract, the STATE agrees to pay the CONTRACTOR a total sum not to exceed FOURTY-NINE THOUSAND THREE HUNDRED EIGHTY-FOUR AND 96/100 DOLLARS ($49,384.96). All funds shall be paid by the STATE to the CONTRACTOR. The CONTRACTOR may receive compensation per completion of each 10 acre segment, with billing not to exceed monthly. Payments shall be made for completion of each 10 acres segment subject to inspection and acceptance by the State's DOFAW representative. Billing shall be made on a monthly basis and shall not exceed 90% of the total estimated contract. The final payment of 10% shall be made production and planting work is completed in accordance with the specifications listed herein, and accepted by the State's DOFAW representative.

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

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

2. REIMBURSEMENT BASIS: The total sum paid to the CONTRACTOR shall be based on a reimbursement basis of allowable costs not to exceed $49,384.96.

3. PAYMENTS: All payments are subject to the availability of federal funds and the annual appropriation and release of funds. Due to limited funding, the STATE reserves the right to purchase larger or smaller quantities of services at the per acre price quoted in the Offer Form page OF-2. In the event that the estimated requirements do not materialize in exact quantities listed in the invitation, such failure shall not constitute grounds for equitable adjustment under this contract.

4. INITIATING WORK: All work completed by the CONTRACTOR prior to receipt of a fully-executed copy of this AGREEMENT, and prior to STATE and BOARD approval of funding, shall be done at the CONTRACTOR'S own volition and risk, including work performed during the period of any deliberations by the BOARD or DEPARTMENT in anticipation of approval; provided however, that if funding and/or amendments applicable to such work are subsequently approved, the CONTRACTOR may be paid for such work even if performed prior to such approval.

Attachment – S3

STATE OF HAWAII

TIME OF PERFORMANCE

The CONTRACTOR agrees to perform all work prior to March 31, 2007 and commencing from the official date on the Notice to Proceed, all in strict accordance with the terms and conditions of this Agreement. It is understood that this Agreement includes as part hereof, the General Conditions and IFB No. IFB-DOFAW-07-M2 including the Offer, Special Provisions and Specifications contained therein which is attached as Exhibit 1.

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) (Date)

Peter T. Young
(Print Name)

DLNR Chairperson
(Print Title)

* 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)

Attachment – S5

STATE OF HAWAII

SPECIAL CONDITIONS

1. Consultation with the DOFAW representative shall occur prior to any planting work occurring due to environmental constraints and the potential for conflict with on-going management activities on-site.

2. The CONTRACTOR will implement precautions to prevent the introduction of alien plants, animals and insects to the Kanaha Pond Wildlife Sanctuary. Boots, equipment, and all plants and associated materials (pots, tubes, plug trays, soils, etc.) will be inspected by the CONTRACTOR for alien plants, animals, and insects including seeds, eggs, larvae, etc., prior to delivery and entry to the project site. All such boots, equipment, and associated materials must be cleaned as necessary or refused entry.

3. Work shall commence and end if at all possible between Oct. 16, 2006 and March 17, 2007 to allow for non-disturbance of Endangered Hawaiian Waterbird breeding season. If other arrangements become necessary, close coordination with the DOFAW representative or his designee must take place and a Contract Amendment executed.

4. All access gates used shall be secured and at no time shall be left open.

5. The CONTRACTOR will remove all food and other refuse daily and tools and gear and other equipment upon completion of work. No fires, smoking, pets, or placement of food and drink remains or other rubbish shall be permitted inside the Sanctuary nor will the removal of any established native plant or native animal be allowed from the site.

6. NONDISCRIMINATION: It is expressly understood and agreed to by the CONTRACTOR that it is subject to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and Title IX of the Education Amendments of 1972; and offers all persons the opportunity to participate in public programs regardless of race, color, national origin, age, sex, or disability. The CONTRACTOR agrees that no individual will be turned away from, or otherwise denied access to or benefit from any program it sponsors that is directly associated with a program of the contractor on the basis of race, color, national origin, age, sex, or disability. A violation of this assurance may become reason to nullify this contract.

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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, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.

   f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

3. Personnel Requirements.

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

b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

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

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

(1) The Assignee assumes all of the CONTRACTOR'S obligations;

(2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and

(3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.

d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing

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

7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.

8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.

9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.

10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.

11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.

12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

(1) Cancel the stop performance order; or

(2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

(1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and

(2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

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

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement

officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.

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

f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.

b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

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

(1) Any completed goods or work product; and

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

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

d. Compensation.

(1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.

(2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.

(3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:

(A) Contract prices for goods or services accepted under the Contract;

(B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);

(D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

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

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

a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such

officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

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

(A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

(B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

(C) Within such further time as may be allowed by the Agency procurement officer in writing.

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

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

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

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

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

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

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

b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.

c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.

b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.

c. Prompt payment.

(1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and

(2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.

b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

(A) Changes in the work within the scope of the Contract; and

(B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.

d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

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

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

g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least $25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.

h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.

i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.

20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:

(1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;

(2) Method of delivery; or

(3) Place of delivery.

a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.

c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.

d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(2) By unit prices specified in the Contract or subsequently agreed upon;

(3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;

(4) In such other manner as the parties may mutually agree; or

(5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.

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

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

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

a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:

(1) Description of performance (Attachment 1);

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

(3) Place of performance of services;

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;

(5) Method of shipment or packing of supplies; or

(6) Place of delivery.

b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.

c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.

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

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

24. Confidentiality of Material.

a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.

b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

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

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

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

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

a. The cost or pricing data, and

b. A state contract, including subcontracts, other than a firm fixed-price contract.

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

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit

or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

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

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

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

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

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

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.

36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.

37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.

38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.

39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one

provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.

40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.

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

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

LEGAL AD DATE: September 22, 2006

INVITATION FOR BIDS
No. IFB-DOFAW-07-M2

SEALED OFFERS
TO
PLANT FOUR SPECIES OF NATIVE PLANTS ON 20 ACRES IN KANAHA POND WILDLIFE SANCTUARY, MAUI
FOR DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

WILL BE RECEIVED UP TO AND OPENED AT 2:00 P.M. (HST) ON
October 6, 2006

IN THE STATE OFFICE BUILDING, 54 SOUTH HIGH STREET, ROOM101, WAILUKU, HAWAII 96793. DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO DR. FERN P. DUVALL II, TELEPHONE (808) 873-3502, FACSIMILE (808) 873-3505 OR E-MAIL AT Fern.P.Duvall@hawaii.gov.

Peter T. Young
Procurement Officer, Department of Land and Natural Resources

PRODUCE AND PLANT FOUR SPECIES OF NATIVE HAWAIIAN PLANTS ON 20 ACRES AT KANAHA POND WILDLIFE SANCTUARY, MAUI
DLNR, DIVISION OF FORESTRY & WILDLIFE
IFB-DOFAW-07-M2

Procurement Officer
Department of Land and Natural Resources
Division of Forestry and Wildlife
State of Hawaii
54 South High Street, Room 101
Wailuku, Hawaii 96793

Dear Sir:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Terms and Conditions developed by the Attorney General's office (Form AG2-GC (12/04)), by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

The undersigned represents: **(Check √ one only)**

☐ A **Hawaii business** incorporated or organized under the laws of the State of Hawaii;
OR
☐ A **Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii, but registered at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (DCCA-BREG) to do business in the State of Hawaii.

State of incorporation: _____

Offeror is:
☐ Sole Proprietor ☐ Partnership ☐ Corporation ☐ Joint Venture ☐ Other_____
Federal I.D. No.:_____
Hawaii General Excise Tax License I.D. No.:_____
Payment address (other than street address below):_____
City, State, Zip Code: _____
Business address (street address): _____
City, State, Zip Code: _____

Date: _____

Telephone No.: _____

Fax No.: _____
E-mail Address:
_____

Respectfully submitted:
(x) _____
Authorized (Original) Signature

_____
Name and Title (Please Type or Print)

* _____
Exact Legal Name of Company (Offeror)

*If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:

The following bid is hereby submitted to Produce and Plant Four Species of Native Hawaiian Plants on 20 acres in the Kanaha Pond Wildlife Sanctuary, Maui as specified herein, for the Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW).

Description	**Estimated Quantity**	**Unit Bid Price/ acre**	**Estimated Total Bid Price**
(1)Produce and Plant four species of Native Hawaiian plants on 20 acres at Kanaha Pond Wildlife Sanctuary	(2)20 acres	$_____	$_____
(3)Production and planting Cost per acre:	$_____ /acre		

(1) All-inclusive cost to Produce and Plant four species of native Hawaiian plants per acre. See SPECIAL PROVISIONS for details.
(2).Estimated quantity based on GIS (Geographic Information System) mapping.
(3) This unit price shall be the all-inclusive cost per acre to Produce and Plant four species of native Hawaiian plants.

OFFEROR SHALL FURNISH THE FOLLOWING INFORMATION:

Company Name: _____
Company Address: _____
Telephone Number: _____ Fax Number: _____
E-Mail Address: _____
Contact Person: _____
Contractor's License No. _____

Years of Experience (Producing and planting native Hawaiian Plants): _____

Producing and Planting native Hawaiian Plants - Experience/References: Offeror shall provide a minimum of one (1) project of similar size and complexity in the State of Hawaii. The name of the project contact person and his/her contact number shall also be provided.

1. Project Name/Location/Description:_____
_____
_____

Contact Person:_____ Contact No.:_____

2. Project Name/Location/Description:_____
_____
_____

Contact Person:_____ Contact No.:_____

Commercial General Liability Insurance:

Insurance Agent (Company Name): _____

Contact Person: _____ Contact No.: _____

Insurance Underwriter: _____

Policy No.: _____

Subcontractors: If Offeror is using subcontractors for this project, Offeror shall provide the following information for each subcontractor:

1) _____
Name Address

_____
Contact Name Contact Phone Number

2) _____
Name Address

_____
Contact Name Contact Phone Number

3) _____
Name Address

_____
Contact Name Contact Phone Number

Offeror_____
Name of Company

WAGE CERTIFICATE

FOR SERVICE CONTRACTS

(See Special Provisions)

Subject: IFB/RFP No.: _____

Title of IFB/RFP: Produce and Plant Four Species of Native Hawaiian Plants on 20 Acres at Kanaha Pond Wildlife Sanctuary, Maui.

Department of Land and Natural Resources, Division of Forestry and Wildlife

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

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

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

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

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

Offeror _____

Signature _____

Title _____

Date _____

CERTIFICATION OF COMPLIANCE FOR FINAL PAYMENT
(Reference §3-122-112, HAR)

Reference: _____ _____
(Contract Number) (IFB/RFP Number)

_____ affirms it is in
(Company Name)
compliance with all laws, as applicable, governing doing business in the State of Hawaii to include the following:

1. Chapter 383, HRS, Hawaii Employment Security Law – Unemployment Insurance;
2. Chapter 386, HRS, Worker's Compensation Law;
3. Chapter 392, HRS, Temporary Disability Insurance;
4. Chapter 393, HRS, Prepaid Health Care Act; and

maintains a "Certificate of Good Standing" from the Department of Commerce and Consumer Affairs, Business Registration Division.

Moreover, _____
(Company Name)
acknowledges that making a false statement shall cause its suspension and may cause its debarment from future awards of contracts.

Signature: _____

Print Name: _____

Title: _____

Date: _____

SPECIFICATIONS

PRODUCE AND PLANT FOUR SPECIES OF NATIVE HAWAIIAN PLANTS ON 20 ACRES AT KANAHA POND WILDLIFE SANCTUARY, MAUI

I. Summary of Work

Kanaha Pond Wildlife Sanctuary, located on windward Maui, contains important habitat for rare and endangered native species of Hawaiian Waterbirds, and critical habitat for the endangered Blackburn's Sphinx Moth. The Division of Forestry and Wildlife proposes to have cut and chipped on-site 20 acres of non-native trees as part of a larger ecosystem restoration project to enhance the Sanctuary's wetland habitat for the Hawaiian stilt, Hawaiian coot, Hawaiian duck and the Blackburn's Sphinx moth. Pursuant to the cutting and clearing of these 20 acres of non-native trees restoration planting with appropriate native plants is necessary. The four-year plan is to cut, chip and subsequently replant, with appropriate native plants, the 80 acres of non-native tree cover inside of the Kanaha Pond Wildlife Sanctuary that currently degrades the Sanctuary's habitat value for these endangered species.

Bids are solicited for the Production and Planting of four species of native Hawaiian plants as follows: *Lycium sandwicense* ('ohelo-kai) at 10% of cover, *Ipomoea pes-caprae* (pohuehue) at 10% cover, *Sida fallax* ('ilima-papa) at 10% cover, and *Sesuvium portulacastrum* (akulikuli) at 70%cover spaced each at 3.0 feet off-center on 20 acres of land open and cleared of non-native trees at Kanaha pond Wildlife Sanctuary on the island of Maui (see attached map). A Contractor is sought to provide plants and equipment for planting the plants as specified. The area to be planted will be delineated by the State of Hawaii Department of Land and Natural Resources (DLNR). All of the area can be accessed from the Sanctuary's internal and existing roads, but certain work will be on soft and unstable, sandy and partially saturated, wet soils. The contractor will be responsible for transport of all necessary plants and planting equipment and transfer of any additional equipment or materials needed to produce and plant the plants as specified.

II. Description of the Terrain and Vegetation

The project area is within the Kanaha Pond Wildlife Sanctuary, on the north coast of Maui situated between the Kahului industrial areas on the west and south, the Kahului Airport on the east, and the Kahului Sewage Treatment plant and the Pacific Ocean to the north. The area is hot, dry and windy, with annual rainfall less than 16 inches per year. Expected daily temperatures are between 70 and 90 degrees. The terrain consists of 237 acres of marshes, wetlands, and low-lying land with small sandy knolls and dunes at elevations that range from 3 to 8 feet above mean sea level. There are twenty five ponds that are permanent or ephemeral and situated on a Jaucas Sand (JcC) type substrate. The water table is near the soil surface near the ocean, and the more inland area support grasslands and wetland wildlife habitat with stands of non-native invasive mesquite, ironwood, Christmas-berry and date palms in the highest driest areas.

III. Access to Installation Site

Access to the work site is through the Amala Road Beach Access gate and will require coordination with the Sanctuary Manager (Dr. Fern P. Duvall) or other DOFAW staff (808-873-3983). Access to the work site will be during daylight hours only, Monday – Friday 0700 a.m. - 0300 pm unless other arrangements are approved by the Sanctuary Manager.

This work must be completed between October 15, 2006 and March 31, 2007, and will need to be scheduled with the completion of the cutting and chipping of non-native trees on the 20 acre site that is to receive the native Hawaiian plants.

Gates: All gates used to access the work site must not be left open or unlocked at any time.

Prohibited Items: No fires, smoking, pets, or placement of food and drink remains, or other rubbish is permitted inside the Sanctuary.

IV. Equipment, Supplies, Transportation, and Labor-Contractor's Responsibilities

The Contractor shall be responsible for providing all necessary equipment, supplies, tools, transportation, and labor to produce and plant four species of native Hawaiian plants on 20 acres as specified herein. All work will be performed under a single contract.

The Contractor may not use the DOFAW baseyard as an office or staging area; for storage of tools, supplies, equipment, or other materials; or for overnight vehicle parking.

V. Site Preparation

DOFAW staff will provide a map showing the alignment of the 20 acres to be planted, the roads, location of gates, etc. The boundary line demarking the 20 acres to be planted will also be marked in the field with blue flagging tape. Existing Hawaiian native plant species and/or archeological sites in, or near, the project area will be marked with pink flagging and are not to be disturbed.

The Contractor must notify DOFAW before any planting work occurs due to environmental constraints, including critical habitat for the Blackburn's Sphinx Moth, and the potential for conflict with on-going management activities on-site.

VI. Production of Plants and Planting

1. General

Four species of native Hawaiian plants shall be produced for this project and planted on the 20 acre site. The make-up in percentages of plants required for the completed plantings are as follows: *Lycium sandwicense* ('ohelo-kai) at 10% of cover, *Ipomoea pes-caprae* (pohuehue) at 10% cover, *Sida fallax* ('ilima-papa) at 10% cover, and *Sesuvium portulacastrum* (akulikuli) at 70% cover, spaced each at 3.0 feet off-center from the next closest plant.

a) Number of plants.

The contractor must provide: 9,680 *Lycium sandwicense* ('ohelo-kai); 9,680 *Ipomoea pes-caprae* (pohuehue); 9,680 *Sida fallax* ('ilima-papa); and 33,880 *Sesuvium portulacastrum* (akulikuli) rooted plants in good health.[NOTE: This is 65% of the total plants to be planted on the 20 acre site at 3' apart (off-center from their nearest plant neighbor); the remainder 35% of the plants required on the site will be produced and planted by the State.]

2. Planting

All plants are to be well-rooted, in good condition, and completely free from weeds and any and all plant-pests or insects, frogs, snails, etc. The plants may be produced as individual plants from seed, or from well established, well-rooted cuttings. If cuttings are sources of the plants for the project, then these must be from diverse cutting-stock from no less than 50 individual and

unrelated plants. All plants will be planted in holes prepared by the contractor and the plants properly situated and watered–in* (*water for this watering will be coordinated and assisted by the State).

VII. Pre-bid On-Site Inspection

Although not mandatory, bidders are strongly advised to inspect the project area prior to submitting a bid. Maps can be obtained from the Department of Land and Natural Resource office in Kahului or Wailuku, Maui and a guided site visit may be arranged by contacting Dr. Fern P. Duvall II, Sanctuary Manager, at (808) 873-3502 or 873-3983. Alternately, similar habitat, to that of the project site, inside the Sanctuary, can be viewed from Amala Place, or along Keolani Place heading east towards the airport. Failure to visit the general work area will in no way relieve the successful bidder from completion of the work in accordance with the specifications, terms and conditions herein to the satisfaction of the Contracting Officer's Representative.

VIII. Contractor Activities

1. Camps

Construction of camps will not be permitted.

2. Native and Alien Plants and Animals

The Contractor will implement precautions to prevent the introduction of alien plants, animals and insects. Boots, equipment and all plants and associated materials (pots, tubes, plug-trays, soils, etc.) will be inspected by the Contractor for alien plants, animals, and insects including seeds, eggs, larvae, etc., prior to delivery and entry to the project site. All such boots, equipment, and associated materials must be cleaned as necessary or refused entry. The Contractor will remove all food and other refuse daily, and tools, gear, and other equipment upon completion of work. No native plants and/or animals may be removed from the site.

IX. Pre-start-up Conference

Contractor shall meet with staff from DOFAW soon after the award, if any. Topics to be included at the meeting will be:

- Designation of responsible officials
- Correspondence procedures
- Labor standard provisions
- Changes in specs
- Payments to the Contractor
- Safety program
- Communication
- Plant production techniques
- Planting techniques
- Fire prevention
- Alien plants and animals precautions
- Disturbance prevention for resident endangered Waterbirds
- Miscellaneous

X. Contract Supervision

Mr. Christopher Alexander, Forest & Wildlife Management Technician IV, and Dr. Fern P. Duvall II, Wildlife Biologist and Sanctuary Manager, will handle contract supervision for this project at the local level. These individuals will handle all on-the-ground coordination between the contractor and DOFAW.

XI. Timing

All work should be completed by March 31, 2007

XII. Measurement and Payment

1. Measurement
Measurement of the area marked off for the project site will be encompass the previously cleared 20 acre area cut and chipped of non-native trees.

2. Payment
Payment in full will be made upon satisfactory completion of the planting in accordance with the specifications listed herein. DOFAW must complete a final inspection of the area to be planted to certify that the project is completed according to the specifications listed herein before final payment is approved. The Contractor may request a partial completion payment schedule. A partial payment plan may be negotiated between the Contract Supervisor and the Contractor if necessary. The minimum partial payment plan that will be considered is payment per10 acres of planting completed. Each section will need to be certified that it meets specifications before partial payment can be made. Payment will be made at the contract unit price per acre in accordance with the specifications herein.

XIII. Bids

Bids should include costs per acre of plants produced and planted on-site including labor costs for crew, equipment, materials transport, and any additional materials the Contractor believes are necessary to produce and plant the four native Hawaiian plant species on 20 acres in accordance with the specifications listed herein.

Bids should be submitted for materials and labor costs per acre as indicated on the Offer Form. Bids should include an estimated minimum time that the contractor would require between the bid being awarded and commencement of work.

SPECIAL PROVISIONS

TERMS AND ACRONYMS USED HEREIN

Procurement Officer	=	The contracting officer for the State of Hawaii Department of Land and Natural Resources.
State	=	All agencies, including schools, participating in this agreement.
DLNR	=	Department of Land and Natural Resources of the State of Hawaii, located at 1151 Punchbowl Street, Honolulu, Hawaii 96813
DOFAW	=	Division of Forestry and Wildlife of the Department of Land and Natural Resources of the State of Hawaii located at 54 South High Street, Room 101, Wailuku, Hawaii 96783.
Bidder or Offeror	=	Any individual, partnership, firm, corporation, joint venture, or other entity submitting directly or through a duly authorized representative or agent, a bid for the good, service, or construction contemplated.
HRS	=	Hawaii Revised Statutes
HAR	=	Hawaii Administrative Rules
IFB	=	Invitation for Bids
RFP	=	Request for Proposals
GET	=	General Excise Tax
GIS	=	Geographic Information System

SCOPE

The production and planting of four species of Native Hawaiian plants on a 20 acre site at Kanaha Pond Wildlife Sanctuary on the island of Maui for the Division of Forestry and Wildlife, Department of Land and Natural Resources, shall be in accordance with these Special Provisions, the attached Specifications, and the General Terms and Conditions developed by the Attorney General's office (Form AG2-GC(1/01)), included by reference and available from DOFAW or on-line at http://www2.hawaii.gov/bidfiles/generalconditions1.pdf.

RESPONSIBILITY OF OFFERORS

Offeror is advised that if awarded a contract under this solicitation, Offeror shall, upon award of the contract, furnish proof of compliance with the requirements of §103D-310(c), HRS:

1. Chapter 237, tax clearance;
2. Chapter 383, unemployment insurance;
3. Chapter 386, workers' compensation;
4. Chapter 392, temporary disability insurance;
5. Chapter 393, prepaid health care; and
6. One of the following:
   a. Be registered and incorporated or organized under the laws of the State (hereinafter referred to as a "Hawaii business"); **or**
   b. Be registered to do business in the State. (hereinafter referred to as a "compliant non-Hawaii business").

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

CONTRACT ADMINISTRATOR

For the purpose of this contract, Dr. Fern Duvall II, (808) 873-3502, of the Division of Forestry and Wildlife, Maui, is the designated Contract Administrator.

DOFAW PROJECT REPRESENTATIVE

For purpose of this contract, Dr. Fern Duvall II, (808) 873-3502, of the Division of Forestry and Wildlife, Maui, is the designated project representative.

TERM OF CONTRACT

The successful offeror shall enter into a contract for a period of 6 months to commence from the date indicated on the Notice to Proceed. Prior to the issuance of the Notice to Proceed the successful offeror and the State shall mutually agree to the official commencement date.

Contract extension(s) shall be permitted for reasons beyond the control of the Contractor and as confirmed by the State. Contract extension(s) shall be done through DOFAW in the form of modifications to the contract.

FEDERAL FUNDS AS RECEIVED (PARTIAL)

It is understood and agreed by all bidders that as to the portion of the obligation under the contract resulting from this IFB payable out of federal funds, the contract shall be construed to be an agreement to pay the portion to the contractor only out of federal funds to be received from the federal government when the federal funds are so received and shall not be construed as a general agreement to pay the portion at all events out of any funds other than those which are received from the federal government.

The Contractor is responsible for compliance of all federal laws and regulations required for the use of federal funds.

OFFEROR QUALIFICATIONS

1. Offeror shall have an established place of business in the State of Hawaii with reasonable inventory of supplies, tools, and equipment for providing for the production and planting of four species of native Hawaiian plants as specified herein, and shall furnish the name and address of this facility in the space provided on the appropriate OFFER FORM page.

   The State reserves the right to inspect Offeror's facility to determine acceptability under this requirement.

2. Offeror shall have performed at least one (1) plant production and planting project in the State of Hawaii of similar size and complexity as specified herein.

   For verification purposes, bidder shall provide on the appropriate OFFER FORM pages the name or description of the project and the contact person who coordinated the project including his/her contact number.

WRITTEN INQUIRIES

Inquiries regarding this solicitation are due on or before 4:00 p.m., Monday, October 2, 2006. Inquiries shall be made in writing, either via U.S. Postal Service, facsimile (808) 873-3505, or e-mail to Fern.P.Duvall@hawaii.gov.

Responses to written inquires shall be made by way of Addendum. Addendum shall be issued at least two (2) working days prior to bid opening date.

PRE-BID ON-SITE INSPECTION

Although not mandatory, bidders are strongly advised to inspect the project area prior to submitting a bid. Maps can be obtained from the Department of Land and Natural Resource office in Kahului or Wailuku, and a site visit may be arranged by contacting Dr. Fern P. Duvall II, Sanctuary Manager, at (808) 873-3502 or 873-3983. Alternately, similar habitat, to that of the project site inside the Sanctuary can be viewed from Amala Place, or along Keolani Place heading east towards the airport. Failure to visit the work area/installation site will in no way relieve the successful bidder from completion of the work in accordance with conditions and specifications to the satisfaction of the Contracting Officer's Representative.

SUBMISSION OF OFFER

Offers shall be received at the DLNR, Division of Forestry and Wildlife Maui District office, 54 South High Street, Room 101, Wailuku, Hawaii 96793, no later than the date and time stated on the cover page of the IFB. Timely receipt of offers shall be evidenced by the date and time registered by the DOFAW time stamp clock. Offers received after the deadline shall be returned unopened.

All offers must be submitted in sealed envelopes marked on the outside with IFB Number IFB-DOFAW-O7-M2. An Offeror may submit only one offer in response to a solicitation. If an Offeror submits more than one offer in response to a solicitation, then all such offers shall be rejected. Similarly, an Offeror may submit only one offer for each line item (if any) of a solicitation. If an Offeror submits more than one offer per line item, then all offers for that line item shall be rejected.

BID PREPARATION

Offer Form, Page OF-1. Offeror is requested to submit its offer using Offeror's exact legal name 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, page OF-1. Failure to do so may delay proper execution of the contract.

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

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

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

Bid Quotation. The Unit Bid Price shall be per acre and shall include but not be limited to the following:

- All costs incurred to prepare and respond to this solicitation;
- The transportation of work crew, equipment, materials, and tools to the installation site;
- The tools and equipment necessary to produce the named plants in the quantities requested and to plant them on-site as specified herein;
- The labor to produce and plant the four species of native Hawaiian plants as specified herein;
- The labor and whatever related costs to remove materials, supplies, equipment and tools from the installation sites during and at the completion of the contract;
- All costs necessary to attend project meetings;
- All communications costs, including equipment;
- All applicable taxes, including the GET; and
- Any other related costs to perform this contract as specified.

Experience. Offeror shall provide a minimum of one (1) plant production and planting project in Hawaii of similar size and complexity. The name of each project contact person and his/her contact number shall also be provided. Failure to provide this information shall be grounds for bid rejection.

Insurance. Offeror 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.

Subcontractors. Offeror 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.

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

Wage Certificate. The Offeror shall complete and submit a Wage Certificate by which the Offeror certifies that services required will be performed pursuant to §103-55, HRS.

Tax Liability. Work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS, and if applicable, taxable under Chapter 238, HRS. Vendors are advised that they are liable for the Hawaii GET at the current 4% rate and the applicable use tax at the current 1/2% rate. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

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

Offer Guaranty. An offer guaranty is NOT required for this solicitation.

CANCELLATION OF IFB

The State reserves the right to cancel this IFB and to reject any and all bids in whole or in part when it is determined to be in the best interest of the State.

The State shall not be liable for any costs, expenses, loss of profits or damages whatsoever, incurred by an Offeror in the event this IFP is cancelled or a Bid is rejected.

ACCEPTANCE OF OFFER

Acceptance of offer, if any, will be made within sixty (60) calendar days after the opening of offers, and the prices quoted by the offeror shall remain firm for the sixty days period.

AWARD OF CONTRACT

Method of Award. Award, if made, shall be to the responsive, responsible Offeror submitting the lowest Estimated Total Bid Price.

Responsibility of Lowest Responsive Bidder. Reference §3-122-112, HAR, Responsibility of Offerors. If compliance documents have not been submitted to DOFAW prior to award, the lowest responsive offeror shall produce documents to DOFAW to demonstrate compliance with this section.

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

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

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX *TAX CLEARANCE APPLICATION* Form A-6 (Rev. 2003) which is available at the DOTAX and IRS offices in the State of Hawaii, or the DOTAX website, and by mail or fax:

DOTAX Website (Forms & Information): http://www.state.hi.us/tax/alphalist.html#a
DOTAX Forms by Fax/Mail: (808) 587-7572
1-800-222-7572

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

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

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

** Tax clearance may take several weeks to obtain. Offerors are encouraged to apply for tax clearance as soon as possible to prevent delay in executing a contract and issuing a Notice to Proceed. **

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

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

The certificate of compliance shall be obtained on the State of Hawaii, DLIR *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR*, Form LIR#27 which is available at www.dlir.state.hi.us/forms/ApplicationforCertificateofCompliance.pdf or at the neighbor island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to DOFAW.

The application for the certificate is the responsibility of the offeror, and must be submitted directly to the DLIR and not to DOFAW. However, the certificate shall be submitted to DLNR-DOFAW.

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

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

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

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

Final Payment Requirements. Contractor is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to the tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22), attached, will be required for final payment. A copy of the Form is also available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" from the Chapter 103D, HRS, pop-up menu.

NOTICE TO PROCEED

No work is to be undertaken by the Contractor prior to the Commencement Date specified on the official Notice to Proceed. The State of Hawaii will not be liable for any work, contract, cost, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official start date.

EXECUTION OF CONTRACT

No performance and payment bonds are required.

The State shall forward to the successful Offeror a formal contract to be signed by the Contractor and returned within ten (10) days. No work is to be undertaken by the Contractor prior to the commencement date specified on the Notice to Proceed issued by the State upon execution of the contract by both parties. The State of Hawaii is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official commencement date.

Should it become necessary to extend the contract, a Contract Modification shall be executed for the extended period.

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.

Coverage	Limits
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 Maui Branch, 54 South High Street, Room 101, Wailuku, Hawaii 96783.

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 nor 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.

INVOICING

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

Department of Land and Natural Resources
Division of Forestry and Wildlife
Maui Branch
54 South High Street, Room 101
Wailuku, Hawaii 96793
Attention: Dr. Fern P. Duvall II

Invoices shall reference the contract number assigned to this contract and shall be signed and dated by the State's DOFAW representative, verifying incremental acres of plants produced and planted on-site.

A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract. In addition to the tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22), attached, will be required for final payment. A copy of the Form is also available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" from the Chapter 103D, HRS, pop-up menu.

PAYMENT SCHEDULE

Contractor may receive compensation per completion of each 10 acre segment, with billing not to exceed monthly. Payments shall be made for completion of each 10 acres subject to inspection and acceptance by the State's DOFAW representative, not to exceed monthly billing, up to 90% of the total estimated contract. The final payment of 10% shall be made after final plant production and on-site planting work is completed and accepted by the State's DOFAW representative. The total payment shall not exceed the cost of the total acreage at the unit bid price per acre.

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

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

LIQUIDATED DAMAGES

Liquidated damages is fixed at the sum of TWENTY-FIVE DOLLARS ($25.00) per scheduled calendar day, for each and every calendar day the Contractor delays in the completion of any item of this contract after the required date of said completion.

DOCUMENTS SUBMITTAL FOR FINAL PAYMENT

The following document shall be submitted for all contracts and/or purchase orders resulting from this bid in order for the State to process final payment:

Guarantee of workmanship, equipment, etc., as designated in the Special Provisions.

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, as to road condition or additional reason to service, 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.

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.

The notice of award letter(s), if any, resulting from this solicitation shall be posted on the bulletin board in Room101, 54 South High Street, Wailuku, Hawaii 96783.

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.

ADDITIONAL CONDITIONS

Approvals. Any agreement arising out of this offer may be subject to the approval of the Department of the Attorney General as to form, and is subject to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive.

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

Confidentiality of Material. 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.

All information, data, or other material provided by the Offeror or the Contractor to the State shall be subject to the Uniform Information Practices Act, chapter 92F, HRS. The Offeror shall designate, in writing, those portions of its unpriced offer or any subsequent submittal that are trade secrets or other proprietary data that the Offeror desires to remain confidential, subject to

§3-122-58, HAR, in the case of an RFP, or §3-122-30, HAR, in the case of an IFB. The Offeror shall state in its written communication to the DOFAW project representative, the reason(s) for designating the material as confidential, for example trade secrets. The Offeror shall submit the material designated as confidential in such manner that the material is readily separable from the offer in order to facilitate inspection of the non-confidential portion of the offer.

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

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

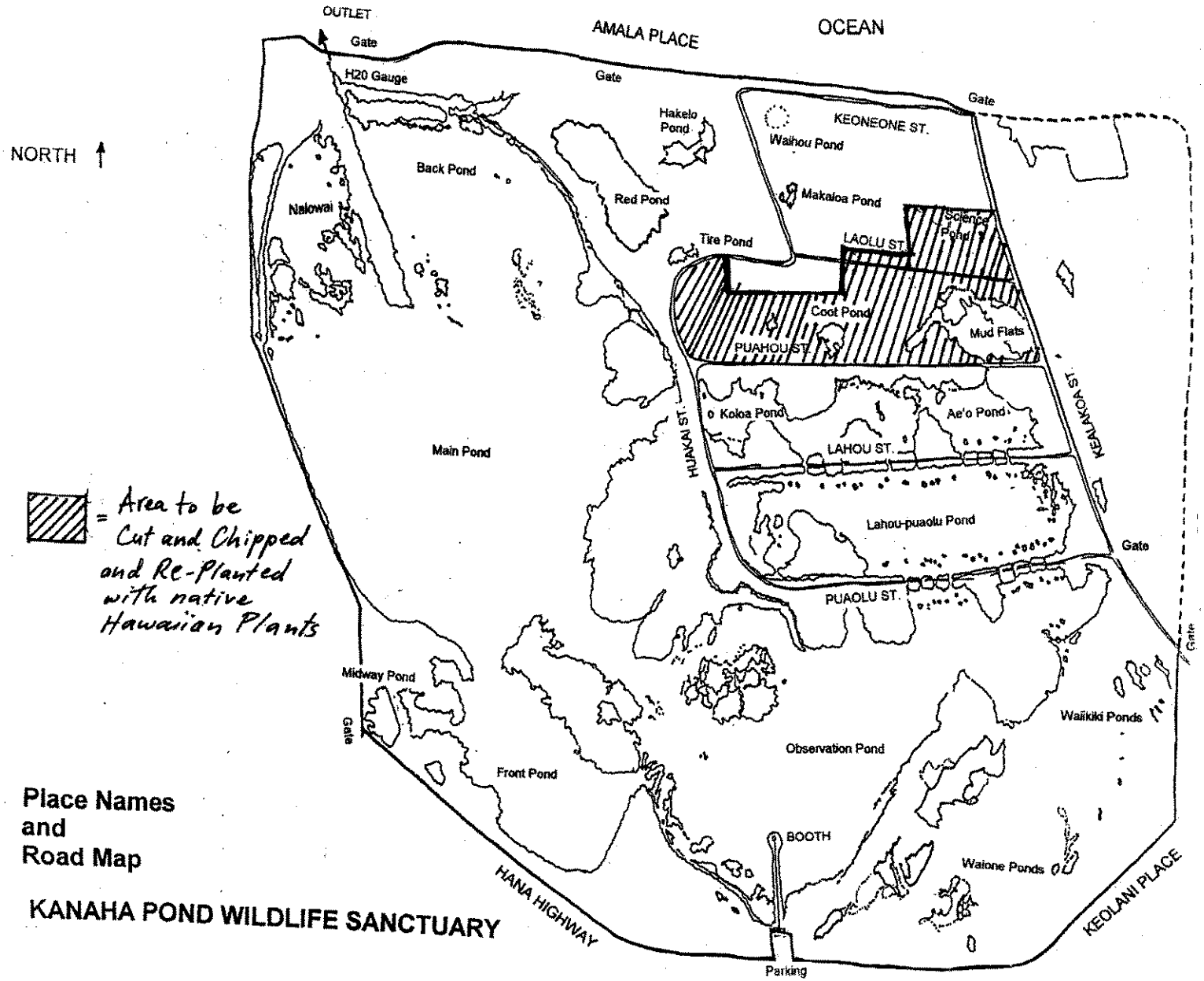
Nondiscrimination. No person performing work under this Agreement, including any subcontractor, employee, or agency of the Contractor, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

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

Year 2000 Compliance. All appropriate hardware, software, and systems utilized for the work specified herein shall be year 2000 compliant.

Figure 1

Figure 1 Site Map Kanaha Pond



Place Names and Road Map

KANAHA POND WILDLIFE SANCTUARY

Figure 2