EXHIBIT 3
GENERAL TERMS AND CONDITIONS FOR GOODS AND SERVICES FOR THE CITY AND COUNTY OF HONOLULU
(01/18/2008)

SPECIAL PROVISIONS
REAL ESTATE PROFESSIONAL SERVICES CONTRACT

HONOLULU RAIL TRANSIT PROJECT

GENERAL TERMS AND CONDITIONS
FOR GOODS AND SERVICES
FOR THE CITY AND COUNTY OF HONOLULU

1. **DEFINITIONS.** Whenever used herein:

   a. **"CITY"** means the City and County of Honolulu.

   b. **"CHANGE ORDER"** means a written order signed by the Contracting Officer of the City directing the Contractor to make changes to the contract, without the consent of the Contractor.

   c. **"CHIEF PROCUREMENT OFFICER"** means the Director of Budget and Fiscal Services of the City.

   d. **"CONTRACT"** means the written agreement covering the specifications, scope of work, performance of the services or providing the goods required. The contract also includes the special provisions, and the general terms and conditions, any modifications of the contract in writing and written orders of the Director and Officer-in-Charge. It also includes any terms implied by law.

   e. **"CONTRACT MODIFICATION"** means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

   f. **"CONTRACTOR"** means the person, as defined in Section 103-41, Hawaii Revised Statutes, duly entering into the contract with the City in connection with these General Terms and Conditions.

   g. **"DAYS"** means calendar days unless otherwise specified.

   h. **"DIRECTOR"** means the Director of Budget and Fiscal Services of the City, who has been duly authorized to act as the Contracting Officer of the City.

   i. **"HAR"** refers to Hawaii Administrative Rules of the Procurement Policy Board of the State of Hawaii. Copies of the HAR are available for examination at the Purchasing Division and are available for purchase at the State of Hawaii, Department of Accounting and General Services.

   j. **"OFFICER IN CHARGE"** means the Director(s) of the Department of the City requesting or ordering the goods or services specified under this contract.

k. **"OFFICIAL COMMENCEMENT DATE"** means the commencement date for work or delivery designated in the written "Notice to Proceed" issued by the Officer in Charge, or the Director, after execution of the contract by the City. The term "OFFICIAL COMMENCEMENT DATE" applies to definite quantity goods or services contracts only, unless otherwise specified in the Special Provisions.

l. **"PURCHASING DIVISION"** means the Division of Purchasing, Department of Budget and Fiscal Services of the City.

m. **"SOLICITATION"** means an invitation for bids ("IFB"), used in the competitive sealed bidding process for the purpose of obtaining bids to perform a contract.

n. **"STATE"** means State of Hawaii, unless otherwise specified.

o. **"WORK"** means the furnishing by the Contractor of all labor, services, materials, equipment, and other incidentals necessary for the satisfactory performance of the contract.

2. **GENERAL TERMS AND CONDITIONS INTENDED TO COVER.** These General Terms and Conditions are intended to cover the furnishing and paying for goods and services called for, including delivery to the places designated, unless otherwise specified by any proposals, special provisions, requirements, specifications or plans referenced or attached hereto.

3. **SPECIAL PROVISIONS, REQUIREMENTS OR SPECIFICATIONS.** Whenever separate proposals, special provisions, requirements, specifications or plans are referenced or attached hereto, they shall be considered a part of the contract as if contained herein. Should any of the proposals, special provisions, requirements, specifications or plans conflict with these General Terms and Conditions, said proposals, special provisions, requirements, specifications or plans shall govern.

4. **CONSTRUCTION OF CONTRACT.** The masculine shall be deemed to embrace and include the feminine and the singular shall be deemed to embrace and include the plural, whenever required in the context of the contract.

5. **INTERPRETATION OF BID PROPOSAL, SPECIAL PROVISIONS, REQUIREMENTS, PLANS, SPECIFICATIONS, AND GENERAL TERMS AND CONDITIONS.** In case of any doubt as to the meaning of any proposal, special provisions, requirements, specifications, plans, and general terms and conditions, the interpretation by the Director shall control. All directions and explanations required or necessary to complete the contract shall be formulated by the Director or an authorized representative.

6. **EXECUTION OF CONTRACT.** This contract shall not be considered binding upon the City until the contract has been fully and properly executed by all the parties thereto.

7. **DELIVERY.** This clause shall apply to definite quantity goods or services contracts only. The number of calendar days for delivery of goods or completion of contract will be calculated from the official commencement date.

After the contract is signed by the Director, the Officer in Charge or the Director will issue to the Contractor a written "Notice to Proceed" establishing the official commencement date.

Should the Contractor begin work or make delivery in advance of the official commencement date, such work or delivery shall be considered as having been done at the bidder's own risk and expense as a volunteer and no payment will be owed to the Contractor for such advance work or delivery.

The service, material or goods shall be performed, completed or delivered on or before the due date specified by the City in its "Notice to Proceed." Should job completion or delivery of goods or services be delayed on account of any act or omission on the part of the City, extraordinary weather, fire, other extraordinary reasons for which the Contractor is not responsible, or by any other circumstances for which the Contractor has not control, the due date for such performance may be extended by the Director. The Director shall be the final judge for extending the due date of any contract, provided that written application for an extension of time is filed by the Contractor with the Director before the expiration of the due date or before the expiration of any extended time limit. The request for extension shall be in writing and include documents such as Contractor's Purchase Order, manufacturers' acknowledgment, shipping manifest and any other documents substantiating the causes of such delay. Such extension, if granted, shall not be deemed a waiver of the right to terminate the contract for other or additional delays not covered by the specific terms of such extensions(s).

The Contractor shall deliver the materials or goods and furnish the services at such particular location designated and in the manner directed by the Director.

8. **CONTRACT ADMINISTRATION.** It is expressly understood and agreed that the Contractor is an independent Contractor, with the authority to control and direct the performance and details of the work and services herein contemplated; however, the City retains the general right of inspection by a designated representative in order to judge, whether in the City's opinion, such work is being performed by the Contractor in accordance with the terms of this agreement.

9. **COMPLIANCE WITH CONTRACT TERMS, ETC.** The work shall be completed in conformity with the specifications and each and every requirement of the general terms and conditions and other provisions forming a part of the contract. In the event the Contractor fails to so perform, the chief procurement officer, in addition to any other recourse, reserves the right to suspend the Contractor from bidding on any or all contracts of the City, State of Hawaii, or other counties of the State, pursuant to Chapter 3-126, HAR.

10. **TAXES.** Unless otherwise specified in the Special Provisions or other section of the solicitation document or contract, the bidder or Contractor shall include and be responsible for paying all taxes which shall be applicable to the goods or services or the furnishing or sale thereof.

11. **CHANGE ORDERS AND MODIFICATIONS.** The Contractor will not undertake to perform any portion of the contract work affected by changes until authorized by the Director or an authorized representative in writing or until a change order or modification has been approved and issued.

12. **STANDARD EQUIPMENT.** Whenever the word "standard" is used in these specifications to describe any item, piece of equipment, or parts assembly, it shall be construed to mean that the items or assemblies so described shall be the newest, regular, and current product of the manufacturer thereof. Such product shall be identified by a model or other designation without modification or omission of any of its usual parts, or the substitution of others, except as hereinafter specified, and the details, capacities and ratings must conform in every respect to the said manufacturer's catalog or other printed matter describing the items or assemblies. Standard sub-assemblies, accessories, fittings and finishes shall be construed to be those which are regularly furnished as a part of the principal unit or assembly and shall be included in the selling price thereof.

13. **QUALITY OF GOODS.** Unless otherwise specified, any goods required by the bid solicitation or contract shall be new and the best quality of its kind, and shall be goods of recognized manufacturers, unless otherwise specified in the Special Provisions, Specifications, or other section of the contract.

14. **INSURANCE REQUIREMENTS.** Whenever insurance coverages are required of the Contractor under this contract, the Contractor shall keep in force the insurance policy(s) for the duration of the contract period, unless otherwise specified. Failure to comply shall be regarded as material default under this contract, entitling the City to exercise any or all of the remedies provided in this contract for a default of the Contractor.

15. **INDEMNITY.** The Contractor shall indemnify, hold harmless and defend the City and its officers, employees, agents, and representatives from all suits, actions, claims, damages, and judgments of any character that may be brought against the City by whomsoever, on account of any injuries or damages sustained by any person and property, due to the negligent acts or omissions by the Contractor, or any of its officers, employees, subcontractors, assignees, or representatives, in the performance of the contract. In the event the City and the Contractor are found to be joint tortfeasors with respect to any such injuries or damages, the Contractor's obligations to indemnify the City under this section shall extend only to the Contractor's pro rata share of negligence as determined in accordance with Section 663-12, Hawaii Revised Statutes as amended.

16. **PATENTED ARTICLE.** The Contractor shall hold the City and all its officers, agents, servants and employees harmless against all claims arising from the use of any patented article, patented process, or patented appliance used in connection with the contract. Any royalties due or becoming due for the use of any patented article or process shall be paid by the Contractor and considered to be originally included within the proposal and contract price.

17. **CHANGE ORDERS.**

a. Change order. By written order, at any time, and without notice to any surety, the Director may, unilaterally, order of the Contractor: 1) Changes in the work within the general scope of the contract; and 2) Changes in the time of performance of the contract that do not alter the scope of the contract work.

b. Adjustments of price or performance time. 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, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this section shall be determined, where applicable, in accordance with the Price Adjustment clause of the General Terms and Conditions or as negotiated. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the contract as changed, provided that the Director or an authorized City representative promptly and duly makes the provisional adjustments in payment or time for the direct costs of the work as the City deems reasonable. The right of the Contractor to dispute the contract price or time or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the contract or these terms.

c. Time period for claim. Within ten (10) days after receipt of a written change order unless the period is extended by the Director or an authorized City representative in writing, the Contractor shall respond with a claim for an adjustment. The requirement for a timely written response shall not be waived and shall be a condition precedent to the assertion of a claim.

d. Claim barred after final payment. No claim by the Contractor for an adjustment hereunder shall be allowed if written response is not given prior to final payment under this contract.

e. Claims not barred. In the absence of a change order, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim under the contract or for breach of contract.

18. **MODIFICATIONS TO CONTRACT.**

a. Contract modification. By a written order, at any time, and without notice to any surety, the Director or an authorized representative, subject to mutual agreement of the parties to the contract and subject to all appropriate adjustments, may make modifications within the general scope of this contract to include any one or more of the following:

1. Drawings, designs, or specifications, for the goods to be furnished;
2. Method of shipment or packing;
   a. Place of delivery;
   b. Description of services to be performed;
   c. Time of performance (i.e., hours of the day, days of the week, etc.);
   d. Place of performance of the services; or
   e. Other provisions of the contract accomplished by mutual action of the parties to the contract.

b. 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 the 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.

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

d. Claims not barred. In the absence of a contract modification, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim under the contract or for a breach of contract.

19. **PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS.**

a. Prompt payment. Any money, other than retainage, paid to a Contractor shall be dispersed 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

b. 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.

20. **STOP WORK ORDERS.**

a. Order to stop work. The Director, 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 work 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 work order issued pursuant to this paragraph. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Director shall either: (1) Cancel the stop work order; or (2) Terminate the work covered by such order as provided in the "termination for default clause" or the "termination for convenience clause" of this contract.

b. Cancellation or expiration of the order. If a stop work order issued under this section is canceled 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 work. 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 work 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 work stoppage; provided that, if the Director 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 work. If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowable by adjustment or otherwise.

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

21. **PRICE ADJUSTMENT.** Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:

a. Price adjustment.

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

By unit prices specified in the contract or subsequently agreed upon;

By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;

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

In the absence of agreement between the parties, by a unilateral determination by the Director of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Director in accordance with generally accepted accounting principles and applicable sections of Chapters 3-123 and 3-126, Hawaii Administrative Rules (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, Subchapter 15, HAR.

22. **PAYMENTS**. Payments will be authorized by the Director after completion of performance or delivery and acceptance by the Director of all materials, goods, and services stipulated in the contract or Purchase Order and after the invoices, in triplicate, are received by the ordering agency, Attention: Fiscal Officer. The invoices must list the following information: contract and confirmation purchase order numbers (if any), item numbers, description of items, quantities, unit prices, and extended totals. Further, in the event that the Contractor is providing equipment under the contract or Purchase Order, the Contractor must also provide the following information with the submittal of its invoices: equipment make, model, serial number, and the specific equipment delivery or installation location, including delivery address and building facility room number, if such information is made available to the Contractor. Various equipment that make up a system shall be listed individually. Providing the aforementioned equipment information is required before payment is made to the Contractor. Attached is a SAMPLE OF EQUIPMENT LISTING showing how a Contractor shall provide the equipment information required. Payments will be computed in accordance with any applicable unit prices bid.

Payments will be made as soon thereafter as the regular course of business will allow; provided, however, that payments shall be made no later than thirty (30) calendar days following receipt of the statement for goods received and services completed.

Unless otherwise specified, partial payment(s) for any item or portion of any item under the contract may be permitted. Said partial payment(s) may be authorized by the Officer in Charge or an authorized representative, provided that delivery and acceptance of the item is made before the contract delivery date and upon submittal of proper invoices and substantiating documents by the Contractor. Said authorization by the Officer in Charge or an authorized representative shall be by endorsement on the submitted invoice; no other action will be required to effect the partial payment(s).

Also, in accordance with Sections 103-53 and 103D, HRS as amended, final payment under any contract of $25,000 or more shall be withheld until the Contractor secures and the City receives tax clearances from the Director of Taxation of the State of Hawaii and the Internal Revenue Service to the effect that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued, under Title 14 that are administered by the Department of Taxation of the State of Hawaii and under the Internal Revenue Code against the Contractor have been paid. The 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 a 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. These requirements do not apply to contracts less than $25,000, or any small purchase contract; nor do they apply to price or vendor list purchases.

23. **VARIATION IN QUANTITY FOR DEFINITE QUANTITY CONTRACT.** This clause shall apply to definite quantity goods or services contracts only. Upon the agreement of the parties, the quantity of goods or services or both specified in the contract may be increased by a maximum of twenty percent (20%) provided: the unit prices will remain the same except for any price adjustments otherwise applicable; and the Director or an authorized representative 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.

24. **SUBLETTING.** The Contractor shall not sublet any of the work to be performed without written permission from the Director. The subcontracting shall not, under any circumstances, relieve the Contractor of the Contractor's obligation and liability under the contract with the City. All persons engaged in performing the work covered by the contract shall be considered as agents of the Contractor, and shall be subject to the provisions thereof.

25. **ASSIGNMENT OF MONEY DUE OR PAYABLE.** No assignment of money due or to become due to a Contractor on any City contract shall be made without prior written consent of the Director. Such consent shall be given and such an assignment shall be accepted only if the assignment meets the following requirements:

a. The assignment must be money due or to become due on a formal contract. A formal contract is a contract in writing which has been approved as to form and legality by the Corporation Counsel, and certified as to availability of funds by the Director of Budget and Fiscal Services. A formal contract does not include a Purchase Order or letter contract.

b. The assignment must be the entire amount due or to become due on the contract and the amount due or to become due must be not less than one thousand dollars ($1,000).

26. **CONTRACT NOT BINDING UNLESS FUNDS AVAILABLE.** No contract awarded shall be binding or of any force and effect unless the Director has, in accordance with Section 103D-309, HRS, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby, the Director shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract; provided further that this section shall not apply to any contract in which the total amount payable to the Contractor cannot be accurately estimated at the time the contract is to be awarded.

In any contract involving not only City funds but supplemental funds from the federal government, this section shall be applicable only to that portion of the contract price as is payable out of City funds. As to the portion of the contract price as is expressed in the contract to be 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. This paragraph shall be liberally construed so as not to hinder or impede the City in contracting for any project involving financial aid from the federal government.

27. **NOVATION OR CHANGE OF NAME.**

a. No assignment of contract. No City contract is transferable, or otherwise assignable, without the written consent of the Director provided, that a Contractor may assign monies receivable under a contract after due notice to the City, subject to the assignment of money due or payable clause specified under this contract.

b. Recognition of a successor in interest; assignment. When in the best interest of the City, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that: the transferee assumes all of the transferor's obligations; the transferor remains liable for all obligations under the contract but waives all rights under the contract as against the City; and unless the transferor guarantees performance of the contract by the transferee, the transferee shall furnish all required bonds.

c. Change of name. When a Contractor requests to change the name in which it holds a contract with the City, the Director shall, upon receipt of a document indicating such change of name (for example an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting Contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.

d. Reports. All change of name or novation agreements effected hereunder shall be reported to the Director within thirty (30) days of the date that the agreement becomes effective.

e. Actions affecting more than one purchasing agency. Notwithstanding the provisions of paragraphs a through c, when a Contractor holds contracts with more than one purchasing agency of the City, the novation or change of name agreements herein authorized shall be processed only through the Office of the Director.

28. **CLAIMS BASED ON CITY'S ACTIONS OR OMISSIONS.**

a. Notice of Claim. If any action or omission on the part of the Director or designee of such officer, 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:

The Contractor shall have given written notice to the Director or designee of such officer: (a) Prior to the commencement of the work involved, if at that time the Contractor knows of the occurrence of such action or omission; or (b) Within thirty (30) days after the Contractor knows of such action or omission if the Contractor did not have such knowledge prior to the commencement of the work; or (c) Within such further time as may be allowed by the Director in writing.

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 Director or designee of such 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 Director or designee of such officer;

The notice required by subparagraph (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

The Contractor maintains and, upon request, makes available to the Director within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

b. Limitation of clause. Nothing herein contained, however, shall excuse the Contractor from compliance with any rules of law precluding any City officers and any Contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

c. Adjustments of price. Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of the contract.

29. **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 Director 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 Director, 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 other breach of contract.

Should the Contractor commit the same or similar substantial breaches of the contract on multiple occasions, the first correction, if any, by the Contractor of such breaches may be considered to be only a temporary correction, and not a cure. In such event the contract may be terminated.

In the event of termination in whole or in part, the Director may procure similar goods or services in a manner and upon terms deemed appropriate by the Director. 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 Director, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the City has an interest.

c. Compensation. Payment for completed goods delivered and accepted by the City shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Director; if the parties fail to agree, the Director shall set an amount subject to the Contractor's rights under Chapter 3-126, HAR. The City may withhold from amounts due the Contractor such sums as the Director deems to be necessary to protect the City against loss because of outstanding liens or claims of former lien holders and to reimburse the City for the excess costs incurred in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms, if the Contractor has notified the Director within fifteen (15) days after the cause of the delay and the failure arises out of causes, including but not limited to the following: acts of God; acts of the public enemy; acts of the State of Hawaii 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 the failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the contract requirements.

Upon request of the Contractor, the Director shall ascertain the facts and extent of the failure, and, if the 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 City under the clause entitled in fixed-price contracts, "Termination for Convenience" and in cost-reimbursement contract, "Termination". As used in this paragraph of this clause, the term "subcontractor" means subcontractor at any tier.

e. Additional rights and remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

30. **TERMINATION FOR CONVENIENCE.**

a. Termination for convenience. When the interests of the City so require, the Director may terminate this contract, in whole or in part, for the convenience of the City. The Director 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 work and on the dates set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the City's approval. The Director may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the City. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

c. Right to goods. The Director may require the Contractor to transfer title and deliver to the City in the manner and to the extent directed by the Director: any completed goods; and 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 Director, protect and preserve property in the possession of the Contractor in which the City has an interest. If the Director does not exercise this right, the Contractor shall use the Contractor's best efforts to sell such goods and manufacturing materials. Use of this section in no way implies that the City has breached the contract by exercise of the termination for convenience clause.

d. Compensation:

(1) The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by Chapter 3-122, Subchapter 15, HAR, bearing on such claim. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Director may pay the Contractor, if at all, an amount set in accordance with Subparagraph (3) below.

(2) The Director and the Contractor may agree to settlement provided the Contractor has filed a termination claim supported by cost or pricing data to the extent required by Chapter 3-122, Subchapter 15, HAR, and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the City, the proceeds of any sales of goods and manufacturing materials under Paragraph c. of this clause, and the contract price of the work not terminated.

(3) Absent complete agreement under Subparagraph (2), the Director shall pay the Contractor the following amounts, provided payments agreed to under Subparagraph (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 work plus a five percent (5%) markup on actual direct costs on such portion of the work, such markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided that, if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(c) Subject to the prior approval of the procurement office, the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph b. of this clause. Subcontractors shall be entitled to a markup of no more than ten percent (10%) on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with Subparagraph (3)(b).

(d) The total sum to be paid the Contractor under this subparagraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (2), and the contract price of work not terminated.

(4) Cost claimed, agreed to, or established under Subparagraphs (2) and (3) shall be in accordance with Chapter 3-123, HAR.

31. **DISPUTES.**

a. All controversies between the City and the Contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the Director, in writing, within one hundred twenty (120) calendar days after a written request by the Contractor for a final decision concerning the controversy; provided that, if the Director does not issue a written decision, within one hundred twenty (120) calendar days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if an adverse decision had been received.

b. The Director shall immediately furnish a copy of the decision to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

c. Any such decision shall be final and conclusive, unless fraudulent, or the Contractor brings an action seeking judicial review of the decision in the Circuit Court of the State of Hawaii within the six (6) months from the date of receipt of the decision.

d. The Contractor shall comply with any decision of the Director and proceed diligently with performance of this contract pending final resolution by the circuit court of the State of Hawaii of any controversy arising under, or by virtue of, this contract, except where there has been a material breach of contract by the City; provided that, in any event the Contractor shall proceed diligently with the performance of the contract where the Director has made a written determination that continuation of work under the contract is essential to the public health and safety.

32. **STATUTORY OR ORDINANCE REQUIREMENTS.** The applicable provisions of Chapter 103, 103D Hawaii Revised Statutes, as amended, Title 3, Department of Accounting and General Services of the State of Hawaii Administrative Rules (HAR), and the City Charter and the City Ordinances shall be deemed to be a part of the contract as though fully set forth therein.

The Contractor shall at all times observe, perform, and comply with all federal, state and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the performance of the work, the manufacture and sale of materials and equipment required under the contract, and the conduct of the work. The Contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the Contractor shall forthwith report the same to the Officer in Charge in writing.

33. **REMEDIES.** Any dispute arising under or out of this contract is subject to Chapter 3-126, HAR.

34. **INTEREST.** Interest on amounts ultimately determined to be due to a Contractor or the City shall be payable at the statutory rate applicable to judgments against the City under Chapter 662, HRS, from the date the claim arose through the date of decision or judgment, whichever is later.

35. **SEXUAL HARASSMENT POLICY FOR EMPLOYER HAVING A CONTRACT WITH THE CITY.** All City Contractors must comply with City Ordinance 93-84 on sexual harassment. All Contractors shall have and enforce a policy prohibiting sexual harassment. The Contractor's sexual harassment policy must set forth the same or greater protection than those contained or required by the ordinance. The ordinance is applicable to the employer's business and includes the following:

a. Prohibitions against an officer's or employee's sexual harassment of the following:

(1) Another officer or employee of the employer;

(2) An individual under consideration for employment with the employer; or

(3) An individual doing business with the employer;

b. A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under Subdivision a;

c. A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;

d. A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;

e. Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;

f. Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;

g. A provision requiring the use of the "reasonable person of the same gender standard," to determine if sexual harassment has occurred. Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the same gender as the alleged victim. If the alleged victim is a woman, the "reasonable person of the same gender standard" shall be equivalent to and may be called the "reasonable woman standard;"

h. Disciplinary actions which may be imposed on an officer or employee who committed a prohibited act; and

i. For an employer with at least five (5) employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

The policy required under this section shall be in effect for at least the duration of the employer's contract with the City.

The action of the bidder or proposer in submitting its bid, proposal or signing of the contract shall constitute its pledge and acceptance of the provisions for the sexual harassment policy as required by City Ordinance 93-84.

City Ordinance 93-84 is on file and available for viewing in the Purchasing Division. Bidders or Contractors needing a copy must pick up the copy from the Office of the City Clerk, Room 203, City Hall, 530 S. King Street, Honolulu.

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

Signature: _____ Date: _____

Print Name: _____

Title: _____

SAMPLE OF EQUIPMENT LISTING

The following is a sample of the detailed list of equipment that is required by Section 22, Payments, of the General Terms and Conditions herein. *To request an electronic copy of this Word software table: Contact the Property Management & Disposal Section, Purchasing Division, BFS, 808-523-4781 .*

DETAILED LIST OF EQUIPMENT

Date _____ Contract No. _____ Purchase Order No. _____ Invoice No. _____

Proposal No. _____ City Department _____ City Department Requisitioner (if known) _____

City Requisitioner Phone No. (if known) _____ Contractor Name _____

Project Description _____

SAMPLE

	DESCRIPTION	MAKE	MODEL NUMBER	SERIAL NUMBER	QTY	UNIT PRICE	TOTAL PRICE	SPECIFIC LOCATION (i.e. Room No.)
1	Portable lift	American Equipment Company	ABC123	1234567890 1 67890123456 98765432101	3	40,000.00	120,000.00	Mechanic Shop Room 3
2	Hand Truck 55 gallon	International Sales Inc	DEF45678	2345678912	1	4,000.00	4,000.00	Tire Shop, Work Station A
3	CPU 5.0 GHZ Pent6 700MB SDRAM 60GB HD with keyboard, mouse	The Computer Place	GHI876	C0001234 C0001235	2	900.00	1,800.00	Administration Room 5
4	Monitor Flat Panel 21"	The Computer Place	JKL543	M0001236 M0001237	2	500.00	1,000.00	Administration Room 5
				TOTAL	8		126,800.00	

I certify that the following information is correct.

Page _____ of _____

Contractor or Representative _____ (Print name) _____ (Signature) Phone _____

(6/3/04)
Misc/Procurement.Equipment list sample .doc