FI84 9/96
Division of Finance

CONTRACT # 049112

STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following Agency of the State of Utah:

Dept. of Transportation (Agency Name) | 810 (Agency Code) | Proc./Statewide (Division) referred to as STATE and the following:

CONTRACTOR Hikiau Inc (Name)
1901 North 90 West (Address)
Orem (City) | UT (State) | 84057 (Zip Code)
Gerald H Peterson (Contact Person) | (801) 785-1779 (Phone Number)
870552178 (Federal ID#) | 100482A (Vendor Number) | 55043000000 (Commodity Code(s))

LEGAL STATUS OF CONTRACTOR
____ Sole Proprietor
____ Non-Profit Corporation
X For-Profit Corporation
____ Partnership
____ Government Agency

2. CONTRACT TYPE AND PURPOSE:

This is a requirements contract to provide the State with repair and replacement services of various crash cushions using UDOT materials as per attached specifications. A performance bond in the amount of $50,000.00 is required.

3. PROCUREMENT: This contract is entered into as a result of the Procurement process on bid JG4060-1, Requisition # 810 46000000058, FY 2004.

4. CONTRACT PERIOD: Effective date 01/07/04. Termination date 01/07/07, unless terminated early or extended in accordance with the terms of this contract. Renewal Options (if any) Two one- yr renewals.

5. CONTRACT COSTS: CONTRACTOR will be paid a maximum of $999,999,999.99 for costs authorized by this contract

6. ATTACHMENT A: Division of Purchasing's Standard Terms and Conditions.
ATTACHMENT B: Scope of Work.
ATTACHMENT C: Itemized Price List.
ATTACHMENT D: Special Terms and Conditions.
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.

7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
A. All other governmental laws, regulations or actions applicable to the goods and/or services authorized by this Contract.
B. Utah State Procurement Code, Procurement Rules and Contractor's responses to Bid # JG4060 dated 12/16/03.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR
SEE ATTACHED
Contractor's Signature
GERALD H PETERSON
Contractor's Name
PRESIDENT
Title

STATE OF UTAH
David K. Miles, Operations Engineer
Shirley Williams JAN 21 2004
for Director, Division of Purchasing
Director, Division of Finance

Debra Boulton	(801) 965-4070	(801) 965-4073	dboulton@utah.gov
Agency Contact Person	Phone Number	Fax Number	Email Address

ENT'D FEB 28 2005

049112

MAIL TO:

STATE OF UTAH
DIVISION OF PURCHASING
3150 STATE OFFICE BUILDING, CAPITOL HILL
P.O. BOX 141061
SALT LAKE CITY, UTAH 84114-1061
TELEPHONE (801) 538-3026
http://purchasing.utah.gov

Invitation to Bid

Solicitation Number: JG4060-1

Due Date: 12/16/03 @ 2:00 PM

Date Sent: November 26, 2003

Goods and services to be "IN-LIEU OF PREVIOUS BID" - REPAIR AND REPLACEMENT OF ATTENUATOR SYSTEMS

Please complete

Company Name: Hikiau Inc.		Federal Tax Identification Number: 87-0552178	
Ordering Address: 1901 N 90 W	City: Orem	State: UT	Zip Code: 84057
Remittance Address (if different from ordering address)	City	State	Zip Code
Type: ☒ Corporation ☐ Partnership ☐ Proprietorship ☐ Government	Company Contact Person: Gerald H. Peterson		
Telephone Number (include area code): (801) 785-1779	Fax Number (include area code): (801) 796-6012		
Company's Internet Web Address	Email Address: Hikiau@fiber.net		
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered)	Days Required for Delivery After Receipt of Order (see attached for any required minimums)		

The following documents are included in this solicitation: Solicitation forms, instructions and general provisions, and specifications. Please review all documents carefully before completing.

The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes_X_ No_____. If no, enter where produced, etc._____

Offeror's Authorized Representative's Signature	Date: 12-15-03
Type or Print Name: Gerald H. Peterson	Position or Title: President

ATTACHMENT A: STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.

2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.

4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.

6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.

7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.

8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.

10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.

11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.

12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.

14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.

15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract

unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. and Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.

18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.

19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card.

20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.

21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.

22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.

23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

24. **PROCUREMENT ETHICS**: The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-73, Utah Code Annotated, 1953, as amended).

25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. State Special Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: Nov 21, 2003)

ATTACHMENT B: SCOPE OF WORK
CRASH CUSHION REPAIR/REPLACEMENT SERVICES

1. The Offeror shall supply all manpower, equipment and traffic control, necessary to repair/replace or remove/replace crash cushions when requested by the State.

2. **Currently approved Systems**

   Type A: QuadGuard, wide systems, Energy Absorption Systems
   Type B: QuadGuard, narrow systems, Energy Absorption Systems
   Type C: BRAKEMASTER, Energy Absorption Systems, C.A.T. Trinity Industries, Inc
   Type D: QuadGuard Elite, QuadGuard LMC, REACT-350, Energy Absorption Systems
   Type E: Sand Barrels
   Type F: QuadTrend 350, Energy Absorption Systems
   Type G: ET-2000/ET PLUS, Trinity Industries, Inc, SKT-350, Road System, Inc
   Type H: FLEAT, Road System Inc., STR-350, SRT/HBA, Trinity Industries, Inc.

3. **Other Systems: Systems installed prior to currently approved systems, and acceptable for continued use.**
   GREAT SYSTEM, Energy Absorption Systems
   HEX FOAM SANDWICH SYSTEM, Energy Absorption Systems
   TREND-230 SYSTEM, Energy Absorption Systems
   SENTRE SYSTEM, Energy Absorption Systems
   TRACC, Trinicy Industries, Inc.
   'MEDIAN BULLNOSE", guardrail protection

4. **Replacement of the following system with an approved Type G System:**
   BEST, Road System Inc.

5. **Replacement of the following systems with an approved Type H System:**
   Eccentric Loader Terminal (ELT)
   Modified Eccentric Loader Terminal (MELT)
   "TEXAS" turndown guardrail end sections

6. Repair/replace systems listed above to meet the manufacturer's and UDOT's minimum specification for proper operation, or supply systems and/or parts to be used by State Forces.

7. Materials used for repair and/or replacement will be produced by the manufacturer of the system. Materials shall be ordered by the State, and installed by the Contractor.

8. Mobilization will be paid for work performed greater than 100 miles from the Contractor's main place of business located in the state of Utah.

9. Repairs will be scheduled and completed within 72 hours of notification. Time does not include holidays and weekends.

10. Working hours will be specified by UDOT Region Representatives, so that the work does not interfere with normal peak hour traffic, in the metropolitan areas.

11. Contractor is responsible to have General Contractors License.

12. One of the Contractor's or Contractor/Supplier employees, on site and doing the installation or repair of the contracted crash cushion systems will have a UDOT or manufacturers certification indicating they have attended and passed an examination for the installation, maintenance and repair of contracted crash cushion systems. Certification to be obtained at no cost to the State.

13. One of the Contractor's or Contractor/Supplier employees on site and doing the installation or repair of the contracted crash cushion systems will have a Traffic Control Maintainer Certification as required under UDOT Standard Specifications, Section 01554, Part 1, Article 1.7. Certification to be obtained at no cost to the State.

14. Contractor or Contractor/Supplier will supply required traffic control. The Traffic Control Maintainer will be responsible for the Traffic Control Plan, setup and maintenance of all traffic control devices. Traffic Control Plan will be on site prior to traffic control setup and remain on site until completion of work. Traffic control will comply with the requirements of UDOT Standard Specification Section 01554, UDOT Standard Drawings TC Series, available on the web or from the Division of Traffic & Safety, and the Manual of Uniform Traffic Control Device, Part VI. When Flaggers are required they will be certified.

15. Contractor will supply a properly rated construction zone crash cushion or Truck Mounted Attenuator (TMA) to protect the hazard no later than 12 hours after notification of incident if repairs cannot be completed within 12 hours of notification.

16. All repairs will be inspected and quantities verified by UDOT region representatives.

ATTACHMENT C: ITEMIZED PRICE LIST
CRASH CUSHION REPAIR/REPLACEMENT SERVICES

Description	Price
Attenuator Truck	$100.00/per day
Boom Truck	$45.00/per hour
Auger Truck	$55.00/per hour
Guardrail Truck	$55.00/per hour
Pickup Truck	$10.00/per hour
10 Ton Trailer	$10.00/per hour
Misc. Tools	$5.00/per hour
Arrow Board	$30.00/per day
Shoulder Closure Sign	$6.00/per day
Barrel	$1.00/per day
Message Board	$110.00/per day
Skidsteer Rental	$40.00/per hour
Equipment Operator	$55.00/per hour
Laborer	$45.00/per hour

ATTACHMENT D: SPECIAL TERMS AND CONDITIONS
CRASH CUSHION REPAIR/REPLACEMENT SERVICES

1. **CONTRACT ACCEPTANCE**: At the time the bid is signed by the Bidder, the signature of that Bidder will be used as a legally binding signature if awarded this contract. When signed by the Division of Purchasing and a Utah Department of Transportation representative and assigned a contract number, this document will become a legally binding contract with the Bidder for the contract period specified.

2. **QUANTITY OR AMOUNT ESTIMATES**: The State does not guarantee specific purchase amount.

3. **WAGES**: The Contractor shall be responsible for all applicable company wages in accordance with the Federal, State and local laws and ordinances.

4. **INSURANCE**: The Contractor shall maintain, during the life of this contract, complete Owner's Protective Liability Insurance in the following amounts:

   $250,000 for bodily injury

   $500,000 for each accident occurrence

   $100,000 for property damage

   If the Contractor cannot obtain this insurance, the Contractor shall provide a policy with a minimum of $1,000,000 in the aggregate.

2 This certificate shall state that no cancellation or decrease in coverage shall be made with out giving the State at least 30 days prior written notice.

5. **PRICING**: The Contractor, Supplier, or Contractor/Supplier agrees that the prices bid on services in this contract will be guaranteed for a period of three years.

   ANY CHANGE REQUEST ON PRICES MUST GUARANTEE THE PRICE FOR THE SAME LENGTH OF TIME AS INDICATED ABOVE AND MUST BE MADE AT LEAST THIRTY (30) DAYS PRIOR TO THE REQUESTED EFFECTIVE DATE. ANY REQUEST FOR CHANGE ON PRICES OR SPECIFICATIONS MUST INCLUDE SUFFICIENT DOCUMENTATION SUPPORTING THE REQUEST. REQUESTS FOR CHANGE ON PRICES OR SPECIFICATIONS SHALL NOT BE EFFECTIVE UNTIL IT IS APPROVED BY THE PROCUREMENT SUPERVISOR OR THE PROCUREMENT MANAGER OF TRANSPORTATION.

6. **INVOICING** The Contractor shall submit invoices to the appropriate Region/District ordering the services.

7. **COMPLETE CONTRACT** This contract is intended by the parties as a final expression of their agreement, and supersedes all prior communications, representations and agreement, oral and written, between the parties with respect to the subject matter contained herein. The parties also intend this contract to be a complete and exclusive statement of the terms of their agreement. This contract may not be modified or terminated orally, and no claimed modification, remission or waiver shall be binding on the STATE unless in writing, signed by a duly authorized representative of the STATE.