TABLE OF CONTENTS

ARTICLE I – TERMS, ABBREVIATIONS, AND DEFINITIONS

Section 1.1 Specified Publications
Section 1.2 Abbreviations
Section 1.3 Definitions

ARTICLE II – STANDARD PROVISIONS FOR COMPETITIVE SEALED BIDS AND AWARDS

Section 2.1 Purpose
Section 2.2 Contractor’s License
Section 2.3 Qualification of Bidders
Section 2.4 Contents of Invitations for Bids
Section 2.5 Estimated Quantities
Section 2.6 Examination of Plans, Specifications, and Site of Work; Patent Ambiguities; Requests for Clarification
Section 2.7 Request for Substitution of Specified Materials and Equipment Before Bid Opening
Section 2.8 Preparation and Delivery of Bid
Section 2.9 Irregular Bids
Section 2.10 Disqualification of Bidders
Section 2.11 Bid Security
Section 2.12 Pre-Opening Modification or Withdrawal of Bids
Section 2.13 Cancellation of Invitation for Bids Before Bid Opening
Section 2.14 Public Opening of Bids
Section 2.15 Acceptance of Bids; Correction of Mistakes
Section 2.16 Preferences
Section 2.17 Certification for Safety and Health Program for Bids in Excess of $100,000

Section 2.18 Certification of Employment of State of Hawaii Residents

Section 2.19 Cancellation of Invitation for Bids After Bid Opening

Section 2.20 Bid Evaluation and Award

Section 2.21 Waiver to Competitive Sealed Bid

Section 2.22 Cancellation of Award

Section 2.23 Return of Bid Security

Section 2.24 Requirements of Contract Bonds

Section 2.25 Execution of Contract

ARTICLE III – (Reserved)

ARTICLE IV – SCOPE OF WORK

Section 4.1 Intent of Contract, Duty of Contractor

Section 4.2 Changes

Section 4.3 Field Orders

Section 4.4 Duty of Contractor to Provide Change Proposals

Section 4.5 Contract Change Orders

Section 4.6 Methods of Price Adjustment

Section 4.7 Variations in Estimated Quantities

Section 4.8 Differing Site Conditions

Section 4.9 Maintenance of Traffic

Section 4.10 Construction and Maintenance of Detours

Section 4.11 Use of Explosives

Section 4.12 Utilities and Services

Section 4.13 Illumination of Work
Article V – CONTROL OF WORK

Section 5.1 Authority ...........................................................................................................

Section 5.2 Submittals ...........................................................................................................

Section 5.3 Shop Drawings ...................................................................................................

Section 5.4 Review and Acceptance Process ...........................................................................

Section 5.5 Interpretations of the Contract Documents; Conflicts and Ambiguity ......................

Section 5.6 (Reserved)

Section 5.7 Examination of Contract Documents and Project Site ........................................

Section 5.8 Coordination Between the Contractor and the State ...........................................

Section 5.9 Coordination Between Contractors; Impacts .....................................................

Section 5.10 Construction Stakes, Lines, and Grades ............................................................

Section 5.11 Inspection of the Work and Materials ................................................................

Section 5.12 Removal of Non-Conforming and Unauthorized Work: Performance of Corrective or Remedial Work............................................................

Section 5.13 Maintenance ......................................................................................................

Section 5.14 Storage and Handling of Materials and Equipment ............................................

Section 5.15 Value Engineering Incentive Proposal ..............................................................

Section 5.16 Subcontracts ......................................................................................................

Section 5.17 Dimensions, Performance Standards, and Other Values Required by the Contract ............................................................

ARTICLE VI – CONTROL OF MATERIAL

Section 6.1 Source of Supply and Quality Requirements ......................................................

Section 6.2 Material Sources ................................................................................................

Section 6.3 Unauthorized Excavation .....................................................................................
Section 6.4  Material Sample and Testing .................................................................
Section 6.5  Sample Submittals ............................................................................
Section 6.6  Notice of Change ..............................................................................
Section 6.7  Certificate of Compliance .................................................................
Section 6.8  Non-Conforming Materials ...............................................................  
Section 6.9  State-Furnished Material .................................................................
Section 6.10 Payment for Deleted Materials ..........................................................
Section 6.11 (Reserved)
Section 6.12 Assignment of Antitrust Claims for Overcharges for Goods and Materials Purchased ........................................................................
Section 6.13 Substitution of Materials and Equipment After Bid Opening............

ARTICLE VII – LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC
Section 7.1  Insurance Requirements ...................................................................
Section 7.2  Employment of State of Hawaii Residents ........................................
Section 7.3  Permits and Licenses ........................................................................
Section 7.4  Working Hours; Night Work ..............................................................
Section 7.5  Overtime and Night Work ................................................................
Section 7.6  Overtime and Night Payment for State Inspection Service ..............
Section 7.7  Contractor Duty Regarding Public Convenience .............................
Section 7.8  Assignment or Change of Name .......................................................  
Section 7.9  Laws to be Observed; Indemnity .......................................................
Section 7.10 Patented Devices, Materials, and Processes ...................................
Section 7.11 Furnishing Right-Of-Way .................................................................
Section 7.12 Safety: Accident Prevention ..............................................................
Section 7.13 Protection of Persons and Property ................................................
Section 7.14  Pollution Control and Protection Of Archeological, Historical, and Burial Sites ..............................................................

Section 7.15  Responsibility for Damage Claims; Indemnity ..............................................................

Section 7.16  Disputes and Claims ..............................................................

Section 7.17  Contaminated or Hazardous Items and Material; Regulated Items and Material; Waste ..............................................................

Section 7.18  Right to Audit Records, Records Maintenance, Retention, and Access ..............................................................

Section 7.19  Conflicts of Interest ..............................................................................................................

Section 7.20  Sanitation Provisions ..............................................................................................................

ARTICLE VIII – PROSECUTION AND PROGRESS

Section 8.1  Notice to Proceed (NTP) ..............................................................................................................

Section 8.2  Prosecution of Work ..............................................................................................................

Section 8.3  Preconstruction Data Submittal ..............................................................................................................

Section 8.4  Character and Proficiency of Workers ..............................................................................................................

Section 8.5  Contract Time ..............................................................................................................

Section 8.6  Progress Schedules ..............................................................................................................

Section 8.7  Weekly Meeting ..............................................................................................................

Section 8.8  Liquidated Damages for Failure to Complete the Work or Portions of the Work on Time ..............................................................................................................

Section 8.9  Fines and Other Penalties ..............................................................................................................

Section 8.10  Suspension of Work ..............................................................................................................

Section 8.11  Termination of Contract for Cause ..............................................................................................................

Section 8.12  Termination for Convenience ..............................................................................................................

Section 8.13  Pre-Final and Final Inspections ..............................................................................................................

Section 8.14  Final Acceptance ..............................................................................................................
Section 8.15 Use of Structure or Improvement

Section 8.16 Contractor’s Responsibility for Work; Risk of Loss or Damage

Section 8.17 Guarantee of Work

Section 8.18 No Waiver of Contract Obligations

Section 8.19 Final Settlement of Contract

ARTICLE IX – MEASUREMENT AND PAYMENT

Section 9.1 Schedule of Values

Section 9.2 Payment is not Acceptance

Section 9.3 Measurement of Quantities

Section 9.4 Full Compensation; Changes

Section 9.5 Allowances for Overhead and Profit

Section 9.6 Force Account Provisions and Compensation

Section 9.7 Assignment of Payments

Section 9.8 Progress Payments

Section 9.9 Prompt Payment

Section 9.10 Retainage; Withholding of Payment for Unsatisfactory Progress

Section 9.11 Final Payment

Section 9.12 Records, Accounts, And Documents
ARTICLE I - TERMS, ABBREVIATIONS, AND DEFINITIONS

1.1 Specified Publications. When a publication is specified, it refers to the most recent date of issue, including interim publications, before the bid opening date for the project, unless a specific date or year of issue is provided.

1.2 Abbreviations. Meanings of abbreviations used in the specifications, on the plans, or in other contract documents are as follows:

- AASHTO: American Association of State Highway and Transportation Officials
- ACI: American Concrete Institute
- ADA: Americans with Disabilities Act
- AGC: Associated General Contractors of America
- AIA: American Institute of Architects
- AISC: American Institute of Steel Construction
- AISI: American Iron and Steel Institute
- ANSI: American National Standards Institute
- ASA: American Standards Association
- ASTM: American Society for Testing and Materials
- AWG: American Wire Gauge
- AWS: American Welding Society
- AWWA: American Water Works Association
- BMP: Best Management Practice
- CFR: Code of Federal Regulations
- CRSI: Concrete Reinforcing Steel Institute
- DCAB: Disability and Communication Access Board, Department of Health, State of Hawaii
- DOT–A: Hawaii Department of Transportation, Airports Division
- DOT-HAR: Hawaii Department of Transportation, Harbors Division
1.3 Definitions. Whenever the following words and terms are used in the contract documents, unless otherwise prescribed therein and without regards to the use or omission of uppercase letters, the meaning and intent shall be as follows:
**Addendum (plural - Addenda)** - A written or graphic document, including drawings and specifications, issued by the Director during the bidding period. This document modifies or interprets the bidding documents by additions, deletions, clarifications, or corrections. An addendum supersedes all prior conflicting documents.

**Advertisement** - A public announcement inviting bids for work to be performed or materials to be furnished.

**Airport** - Any area of land or water which is used or intended for use for the landing and takeoff of aircraft, and any appurtenant areas which are used or intended for use for airport buildings or other airport facilities.

**Award** - Written notification to the bidder that the State intends to enter a contract with the bidder but does not create any contractual rights.

**Bad Weather Day (or Unworkable Day)** - A day when weather or other conditions prevent a minimum of four hours of work with the Contractor’s normal work force on critical path work at the site.

**Bid** - The executed document submitted by a bidder, in response to an invitation for bids or other solicitation request, to perform the work required by the proposed contract documents, for the price quoted, and within the time allotted.

**Bidder** - An individual, partnership, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, a bid for the work or construction contemplated.

**Bid Security** - The security, in conformity with the bidding documents, furnished by bidders from which the State may recover its damages in the event the selected bidder breaches its promise to enter into a contract with the State.

Calendar Day - See Day.

Change Order (or Contract Change Order) - A written order signed by the Engineer, issued with or without the consent of the Contractor, directing changes in all or any portion of the work for i) the work to be performed and/or ii) contract time and/or iii) contract price. The purposes of a change order include, but are not limited to (i) establishing a price or time adjustment for changes in the work; (ii) establishing full payment for direct, indirect, and consequential costs, including costs of delay; (iii) establishing a price or time adjustment for work covered and affected by one or more field orders; or (iv) settling Contractor’s claims for direct, indirect, and consequential costs or for additional contract time, in whole or in part.

Completion Date - The date specified by the contract for the substantial completion of all work on the project or of a designated portion of the project.

Construction – the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term includes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

Contract - The written agreement between the State and the Contractor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the work, the furnishing of labor and materials, the completion date, and the basis of payment. The contract comes into existence only upon delivery to the Contractor of the written agreement containing all necessary signatures and certifications of the State and the Contractor. The contract includes the notice to bidders; instructions to bidders; addenda; proposal
(including wage schedule, list of subcontractors, and other documentations accompanying the bid); contract form and contract bond(s); specifications; general and special provisions; general and detailed plans; field orders, orders for minor changes, and change orders; all approved or accepted submittals; notice to proceed; written operational instructions; and restrictions and limitations on the Contractor, including, but not limited to, those described in the Contractor’s Training Guide and FAA Advisory Circulars.

**Contract Bond(s)** - The approved form of security, executed by the Contractor and his Surety or Sureties, guaranteeing the completion of the work in accordance with the terms of the contract (Performance Bond) and guaranteeing full payment of all claims for labor, materials, and supplies used or incorporated in the work (Payment Bond).

**Contract Item (Pay Item)** - A specific unit of work for which there is a price in the contract.

**Contract Price** - The amount designated on the face of the contract base bid amount for the performance of work.

**Contract Time (or Contract Duration)** - The number of calendar or working days provided for completion of the contract, or any portion of the work for which there is a separate completion date, inclusive of authorized time extensions. The number of days shall commence on the effective date in the notice to proceed. If, in lieu of providing a number of calendar or working days, the contract requires completion by a certain date, the work shall be completed by that date.

**Contracting Officer** - See Engineer.

**Contractor** - Any individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of the work under the terms of the contract with the State and acting directly or through its agents or employees.
Critical Path - Longest logical sequence of activities that must be completed on schedule for the entire project to be completed on schedule.

Day - Any day shown on the calendar, beginning at midnight and ending at midnight the following day. If no designation of calendar or working day is made, "day" shall mean calendar day.

Department - The Department of Transportation of the State of Hawaii (abbreviated HDOT).

Director - The Director of the HDOT acting directly or through duly authorized representatives.

Drawings - The contract documents in graphic or pictorial form, including the notes, tables, and other notations thereon indicating the design, location, character, dimensions, and details of the work, in printed or electronic format.

Effective Date - The date the Contractor receives the contract that has been fully and properly executed by all parties thereto and endorsed by the Comptroller with a certificate that there is available unexpended appropriations, over and above all outstanding contracts sufficient to cover the amount required by the contract.

Engineer - The Engineering Program Manager or the authorized person delegated to act on the Engineering Program Manager's behalf.

Equipment - All machinery, tools, and apparatus, together with the supplies necessary for their upkeep and maintenance, needed to perform and/or required to complete the contract.
Field Order - A written order issued by the Engineer, or the Engineer’s authorized representative, to the Contractor requiring a change or changes to the contract work. A field order may (1) establish a price adjustment or time adjustment; (2) may declare that no adjustment will be made to contract price or contract time; or (3) may request the Contractor submit a proposal for an adjustment to the contract price or contract time.

Final Acceptance Date - The calendar day on which the Engineer accepts the project as completed.

Float - The amount of time between when an activity can start and when an activity must start, i.e., the time available to complete non-critical activities required for the performance of the work without affecting the critical path.

Guarantee - Legally enforceable assurance of the duration of satisfactory performance or quality of equipment and work.

Harbors - A harbor or off-shore mooring facility which is primarily for the movement of commercial cargo, passenger, and fishing vessels entering, leaving, or traveling within the State and facilities and supporting services for loading, off-loading, and handling of cargo, passengers, and vessels.

Hawaii Administrative Rules - Rules adopted by the State in accordance with Chapter 91, H.R.S.

Holidays - The days of each year which are set apart and established as State holidays pursuant to Chapter 8, H.R.S., as amended.

Inspector - The Engineer’s authorized representative assigned to make detailed inspections of contract performance, prescribed work, and materials supplied.
**Invitation for Bids** - The published solicitation notice, bid requirements, bid forms, and the proposed contract documents, including all addenda and clarifications issued prior to receipt of the bid, whether attached, referenced therein, or incorporated by reference.

**Laws** - All Federal, State, and local laws, executive orders, and regulations having the force of law.

**Liquidated Damages** - The amount prescribed in Section 8.8 Liquidated Damages for Failure to Complete the Work or Portions of the Work on Time to be paid to the State or to be deducted from any payments payable to or which may become payable to the Contractor.

**Lump Sum (LS)** - When used as a payment method means complete payment for the item of work described in the contract documents.

**Material** - Any natural or manmade substance or item specified in the contract to be incorporated in the work.

**Notice to Bidders** - The advertisement for invitation for bids for all work and materials on which bids are required. Such advertisement will describe the nature and location of the work to be done and the time and place for the opening of bids.

**Notice to Proceed** - Written notice from the Engineer to the Contractor identifying the date on which work is to begin. This date shall also be the beginning of contract time.

**Offer** - See Bid.

**Offeror** - See Bidder.
Plans - See Drawings.

Proposal - See Bid.

Public Traffic - Vehicular or pedestrian movement on a public way.

Punchlist - A list compiled by the Engineer specifying work yet to be completed or corrected by the Contractor in order to substantially complete or finally complete the contract.

Questionnaire - The specified forms on which the bidder shall furnish required information as to its ability to perform and finance the work.

Request for Proposal - A written notice, from the Engineer to the Contractor, requesting that the Contractor provide a price and/or time proposal for contemplated changes preparatory to the issuance of a field order or change order.

Resident – a person who is physically present in the State at the time the person claims to have established the person’s domicile in the State and shows the person’s intent is to make Hawaii the person’s primary residence.

Road (Roadway, Street) - A facility designed, intended, and set aside for use by vehicles, equipment, bicyclists, or pedestrians.

Section and Subsection - Section or subsection shall be understood to refer to these specifications unless otherwise specified.

Shop Drawings - All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled, by or for the Contractor, and submitted by the Contractor to illustrate some portion of the work.
Shortage Trade – a construction trade in which there is a shortage of Hawaii residents qualified to work in the trade, as determined by the Department of Labor and Industrial Relations.

Shoulder - The portion of the roadway next to the traveled way for accommodation of stopped vehicles, placement of underground facilities, emergency use, and lateral support of base and surface courses.

Sidewalk - That portion of the roadway primarily constructed for use by pedestrians.

Solicitation - See Invitations for Bids.

Specifications - Compilation of provisions and requirements to perform prescribed work.

(a) Standard Specifications. Specifications by the State intended for general application and repetitive use for all projects.

(b) Special Provisions. Revisions and additions to the standard specifications applicable to an individual project.

Standard Plans - Drawings provided by the State for specific items of work approved for repetitive use.

State - The State of Hawaii, its Departments, and agencies acting through its authorized representative(s).

State Waters - All waters, fresh, brackish, or salt, around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage
ditches, ponds, and reservoirs required as a part of a water pollution control
system are excluded.

Structures - Bridges, piers, culverts, catch basins, drop inlets, retaining walls,
cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains,
foundation drains, and other such features that may be encountered in the work.

Subcontract - Any written agreement between the Contractor and its
subcontractors which contains the conditions under which the subcontractor is to
perform a portion of the work for the Contractor.

Subcontractor - An individual, partnership, firm, corporation, joint venture, or
other legal entity which enters into an agreement with the Contractor to perform a
portion of the work.

Substantial Completion - The status of the project or a portion of the project
subject to a separate completion date, when the Contractor has completed the
work, except for plant establishment, and each of the following requirements are
met:

1. All utilities and services are connected and working;

2. All equipment is in acceptable working condition;

3. Additional activity by the Contractor to correct punchlist items will
   not prevent or disrupt use of the work or the facility in which the work is
   located; and

4. The building, structure, improvement, or facility can be used for its
   intended purpose.
For bridge and roadway work, in addition to the above requirements, substantial completion is the point at which all bridge deck, parapet, pavement structure, shoulder, drainage, traffic signal, guardrail, safety appurtenance, traffic barrier, lighting, and required signs and markings work are complete.

**Superintendent** - The employee of the Contractor who, at the work site, is responsible for all the work and is a Contractor’s agent for communications to and from the State.

**Surety** - The qualified individual, firm, or corporation, other than the Contractor, which executes a bond with and for the Contractor to insure the Contractor’s acceptable performance of the contract.

**Unsuitable Material** - Materials that contain organic matter, muck, humus, peat, sticks, debris, chemicals, toxic matter, or other deleterious materials not suitable for use in earthwork or otherwise fail to meet the contract requirements.

**Utility** - A line, facility, or system for producing, transmitting, or distributing communications, power, electricity, heat, cooling, gas, oil, fuel, water, steam, waste, or storm water.

**Utility Owner** - The entity, whether private or owned by a State, Federal, or County governmental body, that has the power and responsibility to grant approval for or undertake construction work involving a particular utility.

**Water Pollutant** - Dredged spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, cellar dirt and industrial, municipal, and agricultural waste.

**Water Pollution** - (1) Such contamination or other alteration of the physical, chemical, or biological properties of any state waters, including change in
temperature, taste, color, turbidity, or odor of the waters; or (2) Such discharge
of any liquid, gaseous, solid, radioactive, or other substances into any state
waters, as will or is likely to, create a nuisance or render such waters
unreasonably harmful, detrimental, or injurious to public health, safety, or
welfare, including harm, detriment, or injury to public water supplies, fish and
aquatic life and wildlife, recreational purposes, and agricultural and industrial
research and scientific uses of such waters as will or is likely to violate any water
quality standards, effluent standards, treatment and pretreatment standards, or
standards of performance for new sources adopted by the Department of Health.

Work - The furnishing of all labor, material, equipment, and other incidentals
necessary or convenient for the successful execution of all the duties and
obligations imposed by the contract. Items, whether or not complete, arising out
of a Contractor’s efforts exerted in performance of the contract.

Working Day - A calendar day in which a Contractor is capable of working four
or more hours with its normal work force, exclusive of:

(1) Saturdays, Sundays, and recognized legal State holidays and such
other days specified by the contract documents as non-working days, and

(2) A day in which the Engineer suspends work for four or more hours
through no fault of the Contractor.

END OF ARTICLE I
ARTICLE II - STANDARD PROVISIONS FOR COMPETITIVE
SEALED BIDS AND AWARDS

2.1 Purpose. The provisions in this Article are standard provisions that are
deemed incorporated by reference into all invitations for competitive sealed bids.
If language in any invitation for competitive sealed bids varies from these
standard provisions, the language in the invitation shall control. These standard
provisions are intended to conform with all laws and regulations governing the
competitive sealed bid process. In the event of any variance between these
standard provisions and the procurement laws and the procurement regulations,
the laws and regulations shall control.

2.2 Contractor's License. Attention is directed to the provisions of Chapter
444, H.R.S., and related regulations in Title 16, Chapter 77, H.A.R., regarding the
licensing of contractors in the State. Holders of the General Engineering “A” and
General Building “B” licenses are deemed to hold the additional specialty
licenses specified therein.

If a specialty contractor’s license is required by law for the performance of
the work which is called for in this bid and the bidder does not hold such a
required license, the bidder must list in the proposal the name of each joint
contractor and subcontractor that the bidder intends to engage to perform work
on the project that holds such required license. Each such required license must
be held by the named joint contractor or subcontractor at the time of bid opening
as stated in the invitation. For federal–aid projects, the bidder and all named
joint contractors and subcontractors must hold each such required license prior
to the award of contract. The bidder shall also describe, in the proposal, the
nature and scope of work to be performed by each such licensee.

Construction bids that do not comply with this requirement are non-
responsive and shall be rejected. However, upon petition of a rejected bidder
and submission of any evidence requested by the Department, such a bid may
be accepted if acceptance is in the best interest of the State, as determined by
the Department, and the value of the work to be performed by the unnamed
specialty licensee is equal to or less than one percent of the total bid amount.

2.3 Qualification of Bidders. In accordance with Section 103D-310, H.R.S., the Department may require any bidder or prospective bidder (hereinafter collectively referred to in this section as "bidder") to submit answers to questions contained in a qualification questionnaire for prospective bidders, on a form furnished by the Department, properly executed and notarized, setting forth a complete statement of the experience of such prospective bidder and its organization in performing similar work and a statement of the equipment proposed to be used, together with adequate proof of the availability of such equipment. Whenever it appears to the Department, from answers to the questionnaire or otherwise, that the bidder is not fully qualified and able to perform the intended work, the Department will, after affording the bidder an opportunity to be heard and if still of the opinion that the bidder is not fully qualified to perform the work, make a written determination of non-responsibility and refuse to consider any bid offered by the bidder. All information contained in the answers to the questionnaire shall be kept confidential except disclosure may be made to law enforcement agencies as provided in Chapter 92F, H.R.S.

Failure to complete the qualification questionnaire will be sufficient cause for the Department to disqualify a prospective bidder.

The Department, in its sole discretion, may declare a bidder to be non-responsible if (1) the bidder; (2) a corporation or other business entity owned substantially by the bidder; (3) a substantial stockholder or an officer of the bidder; or (4) a partner or substantial investor of the bidder is in arrears in payments owed to the State of Hawaii or its political subdivisions, is in default as a surety, or has failed or is failing to properly perform existing or previous contracts with the State.
2.4 Contents of Invitations for Bids. The Department will make available to prospective bidders an invitation for bids, which will state the location and description of the contemplated work, an estimate of the various quantities and items of work to be performed or materials to be furnished, and a proposal schedule of items for which bid prices are required. The invitation for bids will also state the time within which the work must be completed; the date, time, and place of the bid opening; and the maximum time from bid opening in which the Department may make the award.

The plans, specifications, and other documents designated or incorporated by reference in the invitation for bids are also a part thereof, whether attached or not.

2.5 Estimated Quantities. All quantities appearing in the proposal schedule, for which unit prices must be entered by the bidder, are estimates. The State does not expressly or impliedly warrant that the actual amount of work will correspond with the estimated quantities. Payment to the Contractor will be made only for the actual quantities of work performed and accepted or materials furnished in accordance with the contract, and no change will be made in the contract unit prices if overruns and underruns occur except as provided for in the General Provisions for Construction Projects.

2.6 Examination of Plans, Specifications, and Site of Work; Patent Ambiguities; Requests for Clarification.

(a) A bidder has an obligation to carefully review the plans, specs, and other contract documents. If a bidder discovers a patent ambiguity, i.e., any discrepancy, omission, conflict, or other obvious error or ambiguity in the contract documents that affects its ability to prepare a complete and accurate bid, it must submit a written request for clarification as described in the subsection below.
(b) The Department shall make the site of work available for inspection by prospective bidders. However, the Department may limit the site inspection to a one time only opportunity either in connection with a pre-bid meeting and invitation for bids or at a time scheduled by the Department. The submission of a bid is a warranty that the bidder is fully aware of all conditions to be encountered in performing the work and of the requirements in the invitation for bids.

The bidder shall have the sole responsibility of satisfying himself concerning the nature and location of work and the general and local conditions and particularly, but without limitation, with respect to the following: those affecting transportation access; disposal, handling, and storage of materials; availability and quality of labor, water, and electric power; availability and condition of roads; climatic conditions and seasons; physical conditions at the worksites and the project area as a whole; topography and ground surface conditions; the nature and quantity of surface and subsurface materials to be encountered as described in or may reasonably be inferred from information contained in the invitation for bids; equipment and facilities needed preliminary to and during performance of the contract; and all other matters which can in any way affect performance of the contract or the time and/or the cost associated with such performance. The failure of the Contractor to acquaint himself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties, the time, or the costs of successfully performing the contract. If, as a result of its review and consideration of the foregoing, the bidder discovers a patent ambiguity, i.e., any discrepancy, omission, conflict or other obvious error or ambiguity that affects its ability to prepare a complete and accurate bid, it must submit a written request for clarification as described in the subsection below.
(c) A written request for clarification shall be submitted to the Department for review at the earliest date possible; but, in any event, such request must be received at the Project Manager’s Office designated in the invitation for bids not later than fourteen (14) calendar days before the bid opening date, not including the bid opening date. It shall be titled “Request for Clarification”. All bidders on the Department’s plan holders list will be notified of all Departmental responses by an addendum to the invitation for bids.

If a patent ambiguity is not brought to the attention of the Department within the timeframe specified herein, the Department reserves the right to deny the successful bidder any adjustment in contract price or time in order to meet contract requirements as determined by the Department.

2.7 Request for Substitution of Specified Materials and Equipment Before Bid Opening. When the invitation for bids specify materials or equipment by make and or model to indicate a quality, style, appearance, or performance, the bidder will be assumed to have based its bid on one of the specified products. Where a bidder intends to use a material or equipment of an unspecified brand, make, or model, the bidder must submit a request to the Department for review and approval at the earliest date possible; but, in any event, such request must be received at the Project Manager’s Office designated in the invitation for bids not later than fourteen (14) calendar days before the bid opening date, not including the bid opening date.

It shall be the responsibility of the bidder to submit, in quintuplicate, sufficient evidence based upon which a determination can be made by the Department that the alternate brand is a qualified equivalent. The bidder must list in its submission all deviations and variances from the requirements of the contract documents. The Department reserves the right to reject an approved substitution during construction if it discovers unlisted deviations or variances.
that result in noncompliance with the contract requirements. In the event of such rejection, the bidder will not be entitled to any adjustment in contract price or time in order to meet contract requirements.

If the evidence accompanying a request for substitution is insufficient to qualify a particular brand, make, or model, the request shall be denied. All bidders on the Department’s plan holders list will be notified of all approved substitution requests by an addendum to the invitation for bids.

2.8 Preparation and Delivery of Bid. The bidder shall submit the bid upon the forms furnished by the Department or a facsimile thereof. The bidder shall specify prices in numerals for each pay item as required on the proposal schedule. The bidder shall also show in numerals the products of any unit prices and their estimated quantities in the column provided for that purpose. The bidder shall enter the total amount of the bid obtained by adding the amounts of all pay items. All numerals shall be in ink or typed.

When an item in the bid contains a choice to be made by the bidder, the bidder shall indicate its choice in accordance with the invitation for bids for that particular item.

The bid must be signed with ink by the person or persons legally authorized to submit a bid on behalf of the bidder.

When a bid is signed by an agent, proof of the authority to sign the bid for the bidder must be on file with the State prior to the opening of bids or shall be submitted with the bid; otherwise, the bid will be rejected as irregular and unauthorized.

The bidder shall submit the bid in a sealed envelope bearing on the outside the identity of the project and the name of the bidder. A bid not received at the place specified in the invitation for bids prior to the time set for the opening
of bids will be rejected and returned unopened.

2.9 Irregular Bids. Bids will be considered irregular and may be rejected for any of the following reasons:

(1) If the bid is in a form other than that furnished by the Department or if the form is altered or any part thereof is missing.

(2) If there are additions or irregularities of any kind which make the bid incomplete, indefinite, or ambiguous as to its meaning.

(3) If the bid does not contain a bid price for each pay item listed.

(4) Unbalanced proposals in which the prices for some items are out of proportion to the prices for other items.

2.10 Disqualification of Bidders. Any of the following reasons shall result in the disqualification of a bidder and the rejection of its bid(s).

(1) More than one bid for the same work from an individual, firm, or corporation under the same or different name.

(2) Evidence of collusion among bidders.

(3) Evidence of assistance from a person who has been an employee of the Department within the preceding two years and who participated while in State office or employment in the matter with which the contract is directly concerned, pursuant to Section 84-15, H.R.S.

(4) Lack of bid security.
(5) Unsigned bid that is not correctable or waivable.

(6) Any provisions added reserving the right to accept or reject an award or to enter into a contract pursuant to an award.

2.11 Bid Security.

(a) Unless directed otherwise in the invitation for bids, each bid shall be accompanied by bid security which is intended to protect the Department against the failure or refusal of a bidder to execute the contract for the work bid or to supply the required performance and payment bonds. Bid security shall be in an amount equal to at least five percent of the base bid and additive alternates.

Bid security shall be in one of the following forms:

(1) A deposit of legal tender;

(2) A valid surety bid bond, underwritten by a company licensed to issue bonds in the State of Hawaii; or

(3) A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's, or official check drawn by or a certified check accepted by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA) and payable at sight or unconditionally assigned to the Department. These instruments may be utilized only to a maximum of one hundred thousand dollars ($100,000.00). If the required amount totals over one hundred thousand dollars ($100,000.00), more than one instrument not exceeding one hundred thousand dollars
($100,000.00) each and issued by different financial institutions shall be accepted.

(b) If a bidder fails to accompany its bid with the bid security, the bid shall be deemed nonresponsive, unless the failure to comply is determined by the Department to be nonsubstantial where:

(1) Only one bid is received, and there is not sufficient time to resolicit the contract;

(2) The amount of the bid security submitted, though less than the amount required by the solicitation, is equal to or greater than the difference in the price stated in the next higher acceptable bid plus an amount to cover reasonable administrative costs and expenses, including the cost of rebidding the project, resulting from the failure of the bonded bidder to enter into a contract for the work bid; or

(3) The bid security becomes inadequate as a result of the correction of a mistake in the bid or bid modification, if the bidder increases the amount of security to required limits within the time established by the Department.

(c) The Department will be damaged in the event of the failure or refusal of a bidder to execute the contract for the work bid or to supply the required performance and payment bonds. Such damages will be equal to the difference between the defaulting bidder’s bid and the price stated in the next higher acceptable bid, plus an amount to cover reasonable administrative and legal costs and expenses, including the cost of rebidding the project. If the amount of bid security is greater than the Department’s damages, only an amount equal to the damages shall be recovered from the bid security. If the amount of bid security is insufficient
2.12 Pre-Opening Modification or Withdrawal of Bids. Bids may be modified or withdrawn prior to the due date and time established for bid opening by the following documents:

(a) Modification of bids.

(1) A written notice accompanying the actual modified bid proposal, in its entirety, conforming to all the requirements of an original bid proposal, delivered and received in the same manner as the original bid proposal designated in the invitation for bids, and stating that a modification to the bid is submitted; or

(2) A facsimile or electronic notice accompanying the actual modification submitted either by facsimile machine, electronic mail, or an electronic procurement system, pursuant to Section 3-122-9, H.A.R., to the office designated in the invitation for bids; provided if other than through an electronic system, the bidder submits the actual written notice and the modified bid proposal, in its entirety, conforming to all the requirements of an original bid proposal, delivered and received in the same manner as the original bid proposal within two working days of receipt of the facsimile or the electronic transmittal.

(b) Withdrawal of bids.

(1) A written notice received in the office designated in the invitation for bids; or

(2) A notice by facsimile machine or other electronic method,
pursuant to Section 3-122-9, H.A.R., to the office designated in the
invitation for bids.

2.13 Cancellation of Invitation for Bids Before Bid Opening. An invitation for bids may be cancelled prior to bid opening for reasons including, but not limited to, the following:

(1) The Department no longer requires the construction;

(2) The Department no longer can reasonably expect to fund the construction;

(3) Proposed amendments to the invitation for bids would be of a magnitude that a new invitation for bids is desirable; or

(4) A determination by the Department that a cancellation is in the public interest.

2.14 Public Opening of Bids. Bids will be opened and the name of the bidder, the bid price, and such other information deemed necessary by the Department shall be read aloud publicly in the presence of one or more witnesses at the date, time, and place(s) indicated in the invitation for bids. Bidders, their authorized agents, and other interested parties are invited to be present.

2.15 Acceptance of Bids; Correction of Mistakes.

(a) Bids shall be unconditionally accepted without alteration or correction, except as allowed in Subsection 2.12(a) Modification of Bids.

(b) A bid containing a mistake discovered after the deadline for receipt of bids but prior to award may be:
Corrected or the mistake waived under the following conditions:

(A) If the mistake is attributable to an arithmetical error, the Department shall so correct the mistake with or without a request or concurrence by the affected bidder. In case of error in the extension of the bid price, the unit price shall govern;

(B) If the mistake is a minor informality which shall not affect price, quantity, quality, delivery, or contractual conditions, the Department may waive the informalities or allow the bidder to request correction by submitting documentation that demonstrates a mistake was made. Examples of mistakes include:

(i) Typographical errors;

(ii) Transposition errors;

(iii) Failure of a bidder to sign the bid or provide an original signature, but only if the unsigned bid or photocopy is accompanied by other material indicating the bidder’s intent to be bound; or

(C) The Department may correct or waive the mistake if it is not allowable under subparagraphs (A) and (B) but is an obvious mistake that if allowed to be corrected or waived is in the best interest of the Department and is fair to other bidders.
Withdrawn, if the mistake is attributable to an obvious error that shall affect price, quantity, quality, delivery, or contractual conditions, provided:

(A) The bidder requests withdrawal by submitting documentation that demonstrates a mistake was made; and

(B) The Department prepares a written approval or denial in response to this request.

(c) A mistake in a bid discovered after award of contract may be corrected or withdrawn if the Department makes a written determination that it would be unreasonable not to allow the mistake to be remedied or withdrawn.

(d) Any determination required by this section shall be final and conclusive unless clearly erroneous, arbitrary, capricious, or contrary to law.

2.16 Preferences. Unless otherwise stated in the invitation for bids, all preferences applicable to any invitation for bids shall be considered solely for the comparison of bids to determine the low bidder. The contract amount will be at the bid price exclusive of any preferences.

2.17 Certification for Safety and Health Program for Bids in Excess of $100,000. In accordance with Sections 103D-327 and 396-18, H.R.S., the bidder or offeror, by signing and submitting a bid, certifies that a written safety and health plan for this project will be available and implemented by the notice to proceed date for this project. Details of the requirements of this plan may be obtained from said Statute or the Department of Labor and Industrial Relations, Occupational Safety and Health Division (HIOSH).
2.18 Certification of Employment of State of Hawaii Residents. The bidder, by signing and submitting a bid, certifies that if awarded the contract, it will ensure that State of Hawaii residents will compose not less than 80% of the workforce employed by the bidder to perform the contract and all subcontracts of $50,000 or more as calculated by the method described in 7.2(a).

2.19 Cancellation of Invitation for Bids After Bid Opening. An invitation for bids may be cancelled after bid opening but prior to award for reasons including, but not limited to, the following:

   (1) The construction being procured is no longer required;

   (2) Ambiguous or otherwise inadequate specifications were part of the invitation for bids;

   (3) The invitation for bids did not provide for consideration of all factors of significance to the Department;

   (4) Prices exceed available funds and it would not be appropriate to adjust project scope to come within available funds;

   (5) All otherwise acceptable offers received are at clearly unreasonable prices;

   (6) There is reason to believe that the bids may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or

   (7) A determination by the Department that a cancellation is in the public interest.

2.20 Bid Evaluation and Award.
(a) The award shall be made to the lowest, responsive, responsible bidder within 60 days after bid opening and shall be based on the criteria set forth in the invitation for bids. The Department may request the bidders to allow the Department to consider the bids for the issuance of an award beyond the 60 day period. Agreement to such an extension must be made by a bidder in writing. Only bidders who have agreed to such an extension will be eligible for the award.

(b) No bid shall be withdrawn or corrected for a period of 60 days after bid opening except for a mistake as described in this article; however, a bidder may withdraw a bid without penalty anytime prior to award of the contract if it finds it is unable to comply with the provisions regarding the employment of State of Hawaii residents as described in Section 7.2 and 103B-3, H.R.S.

(c) As a condition for award, the apparent low bidder shall submit copies of the following documents as proof of compliance with the requirements with Section 103D-310(c), H.R.S.:

1. A tax clearance certificate from the Department of Taxation and the Internal Revenue Service, subject to Section 103D-328, H.R.S., current within six months of issuance date;

2. A certificate of compliance for Chapters 383, 386, 392, and 393, H.R.S., from the Department of Labor and Industrial Relations, current within six months of issuance date; and

3. A certificate of good standing from the business registration division of the Department of Commerce and Consumer Affairs, current within six months of issuance date.
In lieu of the certificates referenced in subsection (c), the bidder may make available proof of compliance through the Hawaii Compliance Express or any other designated certification process. Bidders may apply and register at the “Hawaii Compliance Express” website: https://vendors.ehawaii.gov/hce/splash/welcome.html.

The documents shall be submitted to the Department within 14 days after bid opening unless otherwise specified in the invitation for bids or an extension is granted in writing by the Department.

If the required documents are not submitted on a timely basis, the Department may disqualify the bidder.

(d) The successful bidder will be notified by letter mailed to the address shown in its bid that is has been awarded the contract.

2.21 Waiver to Competitive Sealed Bid. If, for a given invitation for bids, there is only one responsive, responsible bidder:

(1) An award may be made to the single bidder, provided:

(A) The Department determines in writing that the price submitted is fair and reasonable, and that either:

(i) Other prospective bidders had reasonable opportunity to respond; or

(ii) There is not adequate time for resolicitation; or

(B) The bid exceeds available funds as certified by the Department and the price is negotiated, pursuant to Section 103D-302(h), H.R.S.;
(2) The bid may be rejected and new bids or offers may be solicited if the Conditions in paragraph (1) are not met;

(3) The proposed procurement may be cancelled at the discretion of the Department; or

(4) An alternative procurement method may be conducted to include, but not be limited to, direct negotiations with the sole bidder first and then with any contractor should negotiations with the sole bidder fail, provided the Department determines in writing that the need for the construction continues but that the price of the one bid is not fair and reasonable and either that:

(A) There is no time for resolicitation, or

(B) Resolicitation would likely be futile.

2.22 Cancellation of Award. The State reserves the right to cancel the award of a contract at any time before the execution of said contract by all parties without any liability to the successful bidder or any other bidder.

2.23 Return of Bid Security. All bid securities, except those of the lowest two bidders, will be returned immediately following the opening and checking of the proposals. The bid security of the second lowest bidder, if not a bid bond, will be returned within ten (10) calendar days following the execution of a contract. The successful bidder’s bid security, if not a bid bond, will be returned after a satisfactory contract bond has been furnished and the contract has been executed.

2.24 Requirements of Contract Bonds.
(a) A contract performance bond indemnifies the State against loss resulting from the failure of the contractor to perform a contract, including the Contractor's warranty obligations, in accordance with the plans, specifications, and other contract documents.

(b) A contract payment bond guarantees payment and protection for those furnishing labor and materials to the contractor or its subcontractors for the work bonded.

(c) Prior to execution of the contract, the successful bidder shall file a good and sufficient performance bond and payment bond on the forms furnished by the Department, each in the amount equal to 100% of the contract price plus the amount estimated by the Department required for overruns in estimated quantities and change orders.

(d) Acceptable contract performance and payment bonds, pursuant to Sections 103D-323 and 103D-324, H.R.S., shall be limited to:

(1) Surety bond underwritten by a company licensed to issue bonds in this State;

(2) Legal tender; or

(3) A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's, or official check drawn by or a certified check accepted by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, and payable at sight or unconditionally assigned to the Department advertising for bids. These instruments may be utilized only to a maximum of $100,000. If the required amount totals over $100,000, more than one
instrument not exceeding $100,000 each and issued by different financial institutions shall be accepted.

(e) All documentation provided to the Department shall contain the original signatures signed in ink.

2.25 Execution of Contract. The contract shall be executed by the successful bidder and returned within ten (10) days after the award of the contract or within such further time as the Department may allow after the bidder has received the contract for execution, along with the required bonds and Chapter 104, H.R.S., Compliance Certificate. The contract shall not bind the State in any way unless said contract has been fully and properly executed by all the parties thereto, the Comptroller has endorsed thereon its certificate that there is available an unexpend appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract, and the fully executed contract is received by the Contractor. If the Contractor fails to execute the contract and file acceptable bond(s) within ten (10) days after the award of the contract, or within such further time as the Department may allow, the Department may cancel the award and award the contract to the next lowest, responsive and responsible bidder. The Department may recover its damages against the bid security as described in Subsection 2.11(c) herein.

END OF ARTICLE II
ARTICLE IV - SCOPE OF WORK

4.1 Intent of Contract, Duty of Contractor. The intent of the contract is to provide for the construction, complete in every detail, of the work described by the contract documents at the accepted bid price and within the time established by the contract. The Contractor has the duty to furnish all labor, materials, equipment, tools, transportation, incidentals, and supplies and to determine the means, methods, and schedules required to complete the work in accordance with the contract documents.

4.2 Changes. The Engineer may at any time after execution of contract, by written order and without notice to the sureties, make changes in the work found to be necessary or desirable. Such changes shall not invalidate the contract nor release the surety, and the Contractor will perform the work as changed, as though it had been a part of the original contract.

(a) Minor Changes. The Engineer may direct minor changes in the work with no changes in contract price or contract time of performance. If the Contractor believes a minor change directive justifies an increase in contract price or contract time it must follow the oral and written notice requirements set forth in Subsection 4.2(b) Orders and Directives.

(b) Orders and Directives. Except for minor change directives referred to in Subsection (a) above, only a duly issued change order or field order may alter the contract and work requirements. Any order, direction, instruction, interpretation, or determination, from the Engineer or any other person, that is not a field order or change order may be considered as a compensable change only if the Contractor gives the Engineer an oral notice not later than noon of the following working day of its intent to treat such order, direction, instruction, interpretation, or determination as a change directive. Such notice must be given before
the Contractor acts in conformity with the order, direction, instruction, interpretation, or determination. The oral notice shall be followed by a written notice of a potential claim that must be delivered to the Engineer within five days after communication of the order, direction, instruction, interpretation, or determination to the Contractor. The written notice of a potential claim shall state the date, circumstances, source of the order, direction, instruction, interpretation, or determination that the Contractor regards as a compensable change and provide a detailed justification for additional payment or time. Such written notice may not be waived and shall be a condition precedent to the filing of any claim by the Contractor. Unless the Contractor acts in accordance with this procedure, any such order, direction, instruction, interpretation, or determination shall not be treated as a change for which the Contractor may make a claim for an increase in the contract time, compensation, or contract price related to such work.

No more than ten working days after receipt of the written notice of a potential claim from the Contractor, a written response shall be issued for the subject work if the State agrees that it constitutes a change. The Contractor shall deem it a rejection of its potential claim if a written response is not issued in the time established. If the Contractor objects to the Engineer’s position, it shall file a written claim with the Engineer within 30 days after delivery to the Engineer of the Contractor’s written notice of a potential claim. Failure by the Contractor to submit a written notice of a potential claim in the time specified waives all rights for an increase in contract time or compensation related to such work. The claim shall be determined as provided in Section 7.16 Disputes and Claims. In all cases, the Contractor shall proceed with the work as specified in the order, direction, instruction, interpretation, or determination immediately upon providing the Engineer with the oral notice described above, unless otherwise directed in writing by the Engineer.
(c) Penal Sum of the Surety Performance and Payment Bonds.

The penal sum of the surety performance and payment bonds will be adjusted by the amount of each and every contract change order.

4.3 Field Orders. Upon receipt of the field order, the Contractor shall proceed with the work as changed by the field order without delay. If the Contractor does not agree with any of the terms or conditions or the adjustment or nonadjustment to the contract price, contract time, or both, set forth therein, the Contractor shall file a written notice of potential claim with the Engineer not later than five days after receipt of the field order. No more than ten working days after receipt of the written notice of a potential claim from the Contractor, a written response shall be issued for the subject work if the State agrees that it constitutes a change. The Contractor shall deem it a rejection of its potential claim if a written response is not issued in the time established. If the Contractor objects to the Engineer’s position, it shall file a written claim with the Engineer within 30 days after delivery to the Engineer of the Contractor’s written notice of a potential claim. Failure to file the written notice of a potential claim or to protest any portion(s) of the field order by the time specified shall constitute agreement on the part of the Contractor with all the terms, conditions, amounts and adjustment or non-adjustment to contract price, contract time, or both, set forth in the field order or the non-protested portion of the field order. Timely written notice shall be a non-waivable condition precedent to the assertion of a claim.

4.4 Duty of Contractor to Provide Change Proposals. A field order may request the Contractor supply the Engineer with a detailed proposal for an adjustment to the contract price, contract time, or both, for the work described therein. Any such request for a proposal shall not affect the duty of the Contractor to proceed as ordered with the work described in the field order.

At any time without the issuance of a field order, the Engineer may request the Contractor supply the Engineer with a detailed proposal for an adjustment to the contract price, contract time, or both, for contemplated changes
in the work. The request for change proposal is not a directive for the Contractor to perform the work described therein.

The Contractor shall submit a detailed written proposal in a time span allowed by the Engineer; however, if a time span is not stated by the Engineer, it shall be within 15 days after receipt of a request for change proposal or field order containing a request for proposal. The format shall set forth all charges the Contractor proposes for the change and a detailed justification for the proposed adjustment of the contract time, all properly itemized and supported by sufficient substantiating data to permit evaluation. The proposal shall be certified by the Contractor as accurate, complete, and current. The Engineer will determine whether the proposal is acceptable.

Unless otherwise authorized by the Engineer in writing, no payment shall be allowed to Contractor for cost incurred for pricing, negotiating, and researching for proposed or actual changes or designing of construction means and methods for proposed or actual changes. No time extensions will be granted for delay caused by late Contractor pricing of changes or proposed changes or time spent in negotiation.

The Engineer may accept the entire proposal, any discrete cost item contained within the proposal, or the proposed adjustment to contract time by a notice in writing to the Contractor delivered to the Contractor within 30 days after receipt of the proposal. The written acceptance by the Engineer of all or part of the Contractor’s proposal shall create a binding agreement between the parties for that aspect of the change.

If the Engineer refuses to accept the Contractor’s entire proposal, the Engineer may issue a field order for all or part of the proposed work. If a field order has already been issued, the Engineer may issue a supplemental field order establishing new contract prices and further adjudgments to contract price and/or contract time for the ordered changes. If the Contractor disagrees with
any term, condition, or adjustment contained in such field order or supplemental field order, it shall follow the protest procedures set forth in and be subject to the other terms of Section 4.3 Field Orders.

4.5 Contract Change Orders. The Engineer will issue contract change orders when it deems appropriate during the contract period. Such change orders shall be a signed writing designated or indicated thereon to be a change order. A contract change order may contain the adjustment(s) in contract price, as described in Section 4.6 Methods of Price Adjustment, modification(s) in contract time, as described in Section 8.5 Contract Time, or both, for a number of field orders. In all cases, the Contractor shall proceed with the work as changed by the contract change order. No payment for any changes will be made until the contract change order is issued. If the Contractor does not agree with any of the terms or conditions of the adjustment or nonadjustment to either the contract price or contract time set forth therein, the Contractor shall file a written notice of potential claim with the Engineer not later than five days after receipt of the contract change order.

4.6 Methods of Price Adjustment.

(a) Any adjustment in the contract price pursuant to a change or claim shall be made in one or more of the following ways:

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

(2) By unit prices or other price adjustments specified in the contract or subsequently agreed upon before commencement of the pertinent performance.
The Engineer may base the adjustment for a lump sum item on a calculated proportionate unit price. The Engineer will calculate the proportionate unit price by dividing the original contract lump sum price by the actual or original estimated quantity established by the contract documents.

In such other lawful manner as the parties may mutually agree.

At the sole option of the Engineer, work may be paid for on a force account basis in accordance with Section 9.6 Force Account Provisions and Compensation. However, for all change orders with a reasonably calculated value not exceeding $50,000, payment shall be made on a force account basis.

By determination by the Engineer of the reasonable and necessary costs attributed to the event or situation caused by the change, plus appropriate profit or fee, all computed by the generally accepted accounting principles and applicable sections of Chapters 3-123 and 3-126, H.A.R., and using Section 9.5 Allowances for Overhead and Profit herein, as the method for calculating overhead and profit.

The Contractor will not be compensated for loss of anticipated profits on deleted work.

4.7 Variations in Estimated Quantities. Where the quantity of a unit price item in this contract is estimated on the proposal schedule and where the actual quantity of such pay item varies more than 15 percent above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party, providing the following conditions are met:
(1) The adjustment shall be limited to any increase or decrease in direct costs; and

(2) Such increase or decrease in costs is due solely to the variation above 115 percent or below 85 percent of the estimated quantity. The adjustment shall be limited to any increase or decrease in direct costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. The adjustment shall be subject to Section 4.6 Methods of Price Adjustment and Section 9.5 Allowances for Overhead and Profit.

4.8 Differing Site Conditions. The Contractor shall promptly and before such conditions are disturbed, notify the Engineer of:

(1) Subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or

(2) Unknown physical conditions at the site of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

(a) Timeliness of Notice. No claim of the Contractor for any adjustment for contract price or contract time under this subsection shall be allowed unless the Contractor gives both:

(1) A verbal notice within 12 hours of discovery or by 10 A.M. of the next working day, whichever is later, of the differing site condition; and
(2) Written notification of a potential claim to the Engineer no later than 5 days after the discovery of the differing site condition.

The Engineer, in writing, may extend the time prescribed in this subsection for giving verbal and written notice. The notices to the Engineer are non-waivable conditions precedent to any claim under this section.

(b) Adjustments of Price or Time. After receipt of the notice, the Engineer shall promptly investigate the site and if it is found that the conditions do materially differ and so cause an increase in the Contractor’s cost of or the time required for performance of any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment will be made and the contract modified by contract change order. Any such adjustment in contract price or contract time shall be determined in accordance with the relevant adjustment subsections of this contract.

(c) No Claim After Final Payment. No claim by the Contractor for additional cost or time to the contract shall be allowed if asserted after final payment under this contract.

(d) Knowledge. Nothing contained in this subsection shall be grounds for an adjustment in contract price or contract time if the Contractor had knowledge of the existence of such conditions prior to the submission of the bids.

4.9 Maintenance of Traffic.

(a) Roadway and Pedestrian Traffic. The Contractor shall keep all roads and necessary accesses within the working area open to all traffic during the progress of the work or provide adequate detour roads as
specified or directed.

The Contractor shall plan and provide appropriate detours, signs, flashers, personnel, warnings, barricades, and other devices for safely and legally handling pedestrian, bicycle, and motor traffic. The Engineer may direct additional measures to be undertaken by the Contractor at no cost to the State when the Engineer determines the Contractor's measures are inadequate or inappropriate.

All such protective facilities, precautions to be taken, and control of traffic through the construction area shall conform and be in accordance with the latest edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways", published by the U.S. Federal Highway Administration and any amendments or revisions thereof as may be made from time to time.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic. At the end of each day's work or when construction operations are suspended for any reason, the Contractor shall remove all obstructions to the free and safe passage of public traffic.

(b) Airport and Harbor Traffic. The Contractor shall provide for the free and unobstructed movement of aircrafts, vessels, passengers, aircraft and vessel crews and service personnel, and equipment in the operations area of the airport or harbor where the work is being performed to the greatest extent possible. The Contractor shall provide for uninterrupted operation of visual and electronic signals (including power supplies thereto) used in the guidance of aircraft and vessels while operating to, from, and upon the airport or harbor.
4.10 Construction and Maintenance of Detours. The Contractor shall construct and maintain detours for the use, convenience, and safety of all traffic. Unless indicated otherwise in the contract, all such work for the use, convenience, and safety of all traffic shall be considered incidental to the work of the various pay items of the contract and no additional payment will be allowed therefor.

All detours and related signage shall be approved in writing by the Engineer.

4.11 Use of Explosives. The use of explosives will not be permitted without the expressed written permission of the Engineer and shall be in conformance with all terms and conditions for their use set by the Engineer.

4.12 Utilities and Services.

(a) Contractor’s Duty to Coordinate Utility Work. The Contractor shall contact the Hawaii One Call Center prior to any planned excavation and comply with all other requirements of 269E, H.R.S. In addition, the Contractor shall contact and cooperate with each affected utility owner in order for the work to progress on schedule and without unreasonable disruption of such utility services. If the work calls for permanent utility service installations or corrections to or modifications of existing utilities, the Contractor is responsible for scheduling and coordinating such work with appropriate utility owners. If the work required by the contract documents conflicts with the instructions, demands, or requirements of a utility owner, the Contractor shall notify the Engineer immediately. The Contractor shall furnish the Engineer with evidence that the Contractor has provided all relevant utility owners reasonable opportunity to review the drawings.
When the State has a separate agreement with utility owners for work to be performed within the worksite, at the direction of the Engineer, the Contractor shall make available all portions of the work and the worksite necessary for the utility owners to do their work.

The Contractor hereby holds the State harmless against all risks arising from acts or omissions of utility owners that damage the work or create delays, disruptions, and additional cost to the Contractor in the performance of the work. Contract time may be extended in accordance with Subsection 8.5(b) Modifications of Contract Time, on account of acts and omissions of utility owners that delay the work without fault of the Contractor.

Unless otherwise noted in the contract documents, the Contractor may relocate or adjust the utility lines or service connections for its convenience with the permission of the owner of the utility and the Engineer, at no increase in contract price or contract time.

(b) Contractor’s Duty to Locate and Protect Utilities. Before beginning any work at the worksite, the Contractor shall:

(1) Ascertain and mark the exact location and depth of all utilities within the project area including taking reasonable steps to detect the existence and location of utilities not shown on the drawings.

(2) Acquaint all personnel working near utilities with the type, size, location, and depth of the utilities as well as the consequences that might result from disturbances.
(3) Take reasonable steps to protect the utilities and prevent service disruption.

(c) Discovery of Unknown Utility; Damage to Utility. Upon discovery of a utility that was not shown to exist in the contract documents, or is found at a location that is substantially different than shown in the contract documents, the Contractor shall promptly notify the Engineer before the utility and its surrounding area are further disturbed. The Contractor shall be responsible for the safety and protection of the public and the utility, subject to further direction from the Engineer. Whenever the Contractor damages a utility or causes any interruption to any utility service, the Contractor shall promptly notify the Engineer, the affected utility owner, and the appropriate governmental authorities. The Contractor shall cooperate with the affected utility owner and the appropriate governmental authorities in the restoration of service. If the damage is to a utility that is known or should have been discovered before the damage occurred, the Contractor shall be responsible for all costs associated with its repair and restoration of service, at no increase in contract price or contract time.

(d) Temporary Utilities During Construction.

(1) Water and Sanitation: The Contractor shall provide temporary drinking and sanitary facilities for the field personnel. The facilities shall be in accordance with the applicable health regulations and shall be maintained clean and operable until the conclusion of the construction work.

(2) Telephone: The Contractor shall have a telephone available for the State’s use for communications with field personnel. Cellular telephones are acceptable. The Contractor shall install the telephone immediately upon starting work and maintain service until
the project is completed. All costs associated with obtaining and maintaining telephone service shall be borne by the Contractor.

(3) **Electricity:** Contractor shall obtain or provide temporary electric power and shall pay for all connections and energy charges incurred during construction.

(4) **Metering:** Water and electrical services shall be metered and payment for meters and services shall be borne by the Contractor. Temporary connections for water shall include installation of a meter and backflow preventer at the point of connection according to State standards at the Contractor’s cost. The Contractor shall submit requests for temporary connections in writing to the Engineer fourteen (14) calendar days prior to the connection and shall include a description of work and a sketch of the proposed installation.

4.13 **Illumination of Work.** When any work is performed at night or where daylight is obscured, the Contractor shall, as part of the contract price, provide artificial light sufficient to permit the work to be carried on efficiently, satisfactorily and safely and to permit thorough inspection. Contractor shall submit for review by the DOT a lighting plan that shall ensure conformance to all federal and state laws and codes and regulations as well as to ensure all lighting is shielded or fully cut off to prevent any illumination to the dark sky. Lighting shall be installed so as not to cause glare or reflection to persons operating aircraft, vessels, or other equipment at State Airports and Harbors or to traffic controllers in any control tower or illumination to the dark sky. Access to the place of work shall also be clearly illuminated under the same provisions. All wiring for electric light and power shall be properly installed and maintained, securely fastened in place, and shall be kept as far as possible from telephone
wires and signal wires. The DOT reserves the right to modify the plans, equipment/fixtures as required.

END OF ARTICLE IV
ARTICLE V – CONTROL OF WORK

5.1 Authority.

(a) Authority of the Engineer. The Engineer is the representative of the Department who will make decisions on all questions that may arise regarding the contract, such as, but not limited to:

(1) Interpretation of the contract documents.

(2) Acceptability of the materials furnished and work performed.

(3) Manner of performance and rate of progress of the work.

(4) Acceptable fulfillment of the contract on the part of the Contractor.

(5) Compensation under the contract.

The Engineer’s decisions on questions, claims, and disputes will be final and conclusive subject to Section 7.16 Disputes and Claims.

The Engineer may delegate specific authority to act for the Engineer to a specific person or persons. Such delegation of authority shall be established in writing and shall become effective upon delivery to the Contractor.

(b) Authority of the Inspectors. Inspectors, as a representative of the Engineer or other agencies, will inspect the work done and materials furnished. Such inspection may extend to the preparation, fabrication, or manufacture of the materials to be used. The Inspector does not have the authority vested in the Engineer unless specifically delegated in writing.
The Inspector may not alter or waive the provisions of the contract, issue instructions contrary to the contract, or act as agent or representative of the Contractor.

Failure of an Inspector, at any time, to reject non-conforming work shall not be considered a waiver of the State’s right to require work in strict conformity with the contract documents as a condition of final acceptance.

(c) Authority of the Consultant and Construction Manager. The State may engage Consultants and Construction Managers to perform duties in connection with the work. Such retained consultants and construction managers shall have no greater authority than an inspector except to the extent delegated in writing by the Engineer.

(d) Notices to the State. Any written notice to be given to the State or the Department shall be either:

(1) Delivered in person to the Engineer or his delegated rep,

(2) Mailed to the Engineer or his delegated rep at the address or addresses as directed in writing by the Engineer or, in the absence of written direction, to the address of the State or Department appearing on the contract, or

(3) By electronic transmission such as email, to the email address or addresses as directed in writing by the Engineer.

5.2 Submittals. The contract contains the description of various items that the Contractor must submit to the Engineer for review and acceptance. The Contractor shall review all submittals for correctness, conformance with the requirements of the contract documents, and completeness before submitting them to the Engineer. The submittal shall indicate the contract items and
specifications subsections for which the submittal is provided. The submittal shall be legible and clearly indicate what portion of the submittal is being submitted for review. The Contractor shall provide six copies of the required submissions at the earliest possible date.

Failure to furnish acceptable submittal(s) may result in the suspension of payments due the Contractor.

The Contractor shall not add onto the submittal(s) any conditions or disclaimers that conflict with the contract requirements.

5.3 Shop Drawings.

(a) Shop Drawing Requirements. The Contractor shall prepare, thoroughly check, approve, and submit all shop drawings to the Engineer for review. Whenever possible, electronic files, in a format designated by the Engineer, shall be submitted with the hard copies. The Contractor shall indicate its approval by stamping and signing each submittal of shop drawing. Any shop drawing submitted without being reviewed, stamped, and signed will be returned as an incomplete submittal, and any delay caused thereby shall be the Contractor’s responsibility.

All drawings which require an engineering stamp shall be stamped by professional engineers licensed in the State of Hawaii. Unless otherwise noted in the contract documents, shop drawings shall indicate, in detail, all parts of an item of work, including erection and setting instructions and engagements with work of other trades or other separate contractors. Shop drawings for structural steel, millwork, pre-cast concrete and falsework, formwork or centering with heights of 40 feet or more, or open spans of 20 feet or more shall consist of calculations, fabrication details, erection drawings, and other shop drawings necessary to show the details, dimensions, sizes of members, anchor bolt plans,
insert locations and other information necessary for the complete fabrication and erection of the structure to be constructed. Shop drawings shall also include stress sheets, drawings, bending diagrams for reinforcing steel, and plans for erection, falsework, framework, cofferdam, and other items or such other similar data required for the successful completion of the work.

All shop drawings, as required by the contract or as determined by the Engineer to be necessary to illustrate details of the work, shall be submitted to the Engineer with such promptness as to cause no delay in the work or the work of any other Contractor. Delay caused by the failure of the Contractor to submit shop drawings on a timely basis to allow for review, possible resubmittal, and acceptance will not be considered as a justifiable reason for a contract time extension. Contractor, at its own risk, may proceed with the work affected by the shop drawings after they are submitted but before receiving acceptance. The State shall not be liable for any increase in contract price or contract time required for the correction of work done without the benefit of accepted shop drawings.

The Contractor shall not make changes to the accepted shop drawings without submitting a written request to the Engineer and receiving and reviewing a written acceptance of the change by the Engineer.

By approving and submitting shop drawings, the Contractor thereby represents that it has determined and verified all field measurements and field construction criteria, or will do so, and that it has checked and coordinated each shop drawing with the requirements of the work and the contract documents. When shop drawings are prepared and processed before field measurements and field construction criteria can be or have been determined or verified, the Contractor shall make all necessary
adjustments in the work or resubmit further shop drawings, all at no increase in contract price or contract time.

The shop drawing submitted must be accompanied by a transmittal giving a list of the titles and numbers of the drawings. Each series shall be numbered consecutively for ready reference, and the submittal shall be marked with enough information to identify itself including date; project name and number; name of the submitting Contractor or subcontractor; revision number and revision box, which gives the date of the revision and what the revisions changed.

The size of the sheets that shop drawings are prepared on shall be appropriate to suit the drawing being presented so that the information is clearly and legibly depicted. The Engineer will determine what size is appropriate.

When required by the contract, the Contractor shall submit to the Engineer descriptive sheets such as brochures, catalogs, and illustrations, which will completely describe the material, product, equipment, furniture, or appliances to be used in the project as shown in the drawings and specifications and indicate such conformity by marking, or stamping, and signing each sheet.

(b) Submittal for Deviations and Variances. The Contractor shall include, with the submittal, written notification clearly identifying and summarizing all deviations or variances from the contract drawings, specifications, and other contract documents. The variances shall also be clearly indicated and marked as “Variance” on the shop drawing, descriptive sheet, and material sample or color sample. Failure to so notify of and identify such variance shall be grounds for rejection of the related work or materials, notwithstanding that the Engineer accepted the submittal. If the variances are not acceptable to the Engineer, the
Contractor will be required to furnish the item as specified or indicated on the contract documents at no increase in contract price or contract time.

5.4 Review and Acceptance Process. The Engineer will complete the review of the submittal within 30 days from the date of receipt unless a different review time is established by the contract documents. The Engineer will advise the Contractor, in writing, as to the acceptability of the submittal. Should the Engineer partially or totally reject the submittal, the Contractor shall modify the submittal as required by the Engineer and resubmit the item within 15 days. At this time, the review and acceptance cycle described above shall begin again. The review and acceptance cycle shall begin again, as described above, each time the submittal is returned to the Contractor for modification. If the volume of the shop drawings submitted at any time for review is unusually large, the Contractor shall inform the Engineer of its preferred order for reviews, and the Engineer will use reasonable efforts to accommodate the Contractor’s priority.

The acceptance by the Engineer of the Contractor’s submittal relates only to their sufficiency and compliance with the intention of the contract. Acceptance by the Engineer of the Contractor’s submittal does not relieve the Contractor of any responsibility for accuracy of dimensions, details, quantities and proper fit, and for agreement and conformity of submittal with the contract drawings and specifications. Nor will the Engineer’s acceptance relieve the Contractor of responsibility for variance from the contract documents unless the Contractor, at the time of submittal, has provided notice and identification of such variances required by this section. Acceptance of a variance shall not justify a contract price or time adjustment unless the contractor requests such adjustment at the time of submittal, and the adjustment is explicitly agreed to in writing by the Engineer. Any such request shall include price details and proposed scheduling modifications. Acceptance of a variance is subject to all contract terms, stipulations, and covenants and is without prejudice to any and all rights under the surety bond.
If the Engineer returns a submittal to the Contractor that has been rejected, the Contractor, so as not to delay the work, shall promptly make a resubmittal conforming to the requirements of the contract documents and indicating in writing on the transmittal and the subject submittal what portions of the resubmittal have been altered in order to meet the acceptance of the Engineer. Any other differences between the resubmittal and the prior submittal shall also be specifically described in the transmittal.

No mark or notation made by the Engineer on or accompanying the return of any submittal to the Contractor shall be considered a request or order for a change in work. If the Contractor believes any such mark or notation constitutes a request for a change in the work for which it is entitled to an adjustment in contract price, contract time, or both, the Contractor must follow the procedures established in Section 4.2 Changes or lose its right to claim for an adjustment.

5.5 Interpretations of the Contract Documents; Conflicts and Ambiguity.
The contract documents are complementary. Any requirement occurring in one document is as binding as though occurring in all. A stricter requirement, as determined by the Engineer, prevails over any less strict requirement. The stricter requirement will be the requirement that provides the greater product life, durability, strength, and function.

The Contractor shall not take advantage of any apparent error or omission in the contract documents. The Contractor shall carefully study and compare the contract documents with each other, with field conditions, and with the information furnished by the State and shall immediately report to the Engineer errors, conflicts, ambiguities, inconsistencies, or omissions discovered. Should an item not be sufficiently detailed or explained in the contract documents, the Contractor shall report to the Engineer immediately and request the Engineer’s clarification and interpretation. The Engineer will issue a clarification or interpretation that is consistent with the intent of and reasonably inferred from the contract documents.
The technical specifications and contract drawings within a trade heading, title, or discipline do not necessarily describe or incorporate all work required for the project involving a specific trade. It is the Contractor’s responsibility to review the entire project documents to identify the work for a specific trade.

The design and performance requirements specified in the plans and specifications prevail over any listed approved manufacturer or supplier. The listing of an approved manufacturer or supplier in the contract documents does not constitute a representation by the State that such manufacturer or supplier can provide the materials or equipment required for the job.

5.6 (Reserved)

5.7 Examination of Contract Documents and Project Site. The Contractor shall carefully examine the project site to become familiar with the conditions to be encountered in performing the work and the requirements of the contract documents. The Contractor shall be charged with knowledge of all conditions at the site that may affect the work, including the storage of materials and equipment and access thereto, that would normally be discovered by a reasonable pre-bid site inspection.

When the contract drawings include a log of test borings showing a record of the data obtained by the State’s investigation of subsurface conditions, said log represents only the finding of the State as to the character of material encountered in its test borings and only at the location of each boring. Underground site conditions in Hawaii vary widely. Accordingly, there is no warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work or any part of it or that other conditions may not occur.
5.8 Coordination Between the Contractor and the State.

(a) Drawings and Special Provisions. If available, the State will furnish the Contractor with extra bid sets of the project plans and special provisions. The project plans furnished will be the same size as that issued for bidding purposes. If none are available, the Contractor shall be responsible for making his own copies of project plans and special provisions. The Contractor shall have and maintain at least one set of plans and specifications on the work site at all times.

Revisions to the drawings may be made and, when deemed necessary by the Engineer during progress of the work, additional detailed drawings will be furnished to the Contractor. These additional drawings will be considered as forming part of the Contract.

The Contractor shall maintain on the job site a set of full-size contract drawings, marking them in red to show all variations between the construction actually provided and that indicated or specified in the contract documents, including buried or concealed construction. Actual location of work shall be clearly recorded as the work progresses, including all changes to the contract and equipment size and type. Drawings shall be available at the site at all times for inspection.

The Contractor, at his own expense, shall incorporate all field changes, Post Construction Document (PCD) Changes, etc. in a clearly legible manner utilizing the symbols of the Contract drawings onto the contract drawings. All underground stubouts shall be dimensionally located from the building structure. Monthly and final payments to the Contractor shall be subject to prior approval of the drawings. On completion of all work under the contract, two sets of marked-up record drawings, signed and dated, shall be delivered to the Engineer and shall be subject to approval before acceptance.
(b) Contractor's Authorized Representative. Before starting work, the Contractor shall designate an authorized representative to represent and act for the Contractor, shall inform the Engineer in writing of the name and address of such representative together with a clear definition of the scope of his authority to represent and act for the Contractor, and shall specify any and all limitations of such authority. Such representative shall be present or be duly represented at the site of work at all times when work is in progress. During periods when work is suspended, arrangements acceptable to the Engineer shall be made for any communications to the Contractor which may be required. The Contractor's authorized representative shall be supported by competent assistants, as necessary, and the authorized representative and his assistants shall be satisfactory to the Engineer. All directions, instructions, and other communications given to the authorized representative by the Engineer shall be construed as if given to the Contractor.

(c) Superintendent. The Contractor shall have a competent superintendent on the work site while work is being performed under the contract. The superintendent shall be able to read and understand the contract documents, shall be experienced in the type of project being undertaken and the work being performed, and shall be fluent in the English language. If a superintendent is not present at the work site, the Engineer shall have the right to suspend the work as described under Subsection 8.10 Suspension of Work.

The Contractor shall provide the Engineer a written statement giving the name of the superintendents assigned to the project. The Contractor shall be responsible for notifying the Engineer in writing of any change in the superintendents in a timely manner.
5.9 Coordination Between Contractors; Impacts.

(a) General. Other work by other Contractors may be in progress within or near the project limits. Each Contractor shall conduct work so as not to hinder the progress of the work by other Contractors within or near the project limit. Each Contractor shall be responsible for any damage it causes to work of another Contractor. Contractors shall cooperate with each other, including, but not limited to:

(1) Coordinating their work schedules and traffic control plans.

(2) Placing and disposing of the materials used.

(3) Operating and storage of equipment.

The State is not obligated to modify contract time or price on account of any inconvenience, delay, or loss experienced by the Contractor because of the presence and operations of other contractors working within or near the limits of the project.

In the event of a disputed coordination issue between Contractors, they shall submit the dispute in writing to the Engineer who shall make the final determination.

(b) Responsibility for Impact on Another State Contractor; Retention. In the event the Contractor unreasonably delays or otherwise interferes with the work of another State construction contractor during the course of the work, resulting in a claim against the State by the impacted contractor, the Contractor shall defend against any such claim, and shall indemnify and hold the State harmless for all damages, costs and legal fees resulting from the Contractor’s unreasonable delays and other interference. The Engineer, upon finding good cause in support of
the impacted contractor's claim, may deduct up to but not more than 10%
from the subsequent progress payments due the Contractor until the full
amount of the claim has been retained. This right of retention is separate
from and in addition to any other retainage rights created by contract or
law.

Upon final resolution of the impact claim, the Engineer may deduct
the amount of the claim from the retained funds described herein, and
from any other funds held by the State for the account of the Contractor.
If the retained funds are insufficient to pay the entire claim, the Engineer
may deduct up to 10% from future progress payments, or from the
final payment for the contracted work without limitation until the claim
amount is paid in full, or recover the deficit from the Contractor by any
other means authorized by law. If the retained funds exceed the amount
of the final resolution of the impact claim, the Engineer shall pay the
Contractor that portion of the retained funds that the Contractor would
otherwise be entitled to as of the time of payment.

The Contractor may contest the Engineer's finding, and should a
determination be made that the impacted contractor's claim was not
caused by the Contractor, any monies being withheld for the impacted
contractor's claim, will be released to the Contractor. Until such
determination is made, the Contractor will not be entitled to any monies
being withheld for the impacted contractor's claim.

5.10 Construction Stakes, Lines, and Grades.

(a) General. The Contractor shall survey and stake out the work
including verification and establishment of all lines, grades, dimensions, and
elevations. The Contractor shall prepare and maintain field notes and
supporting data in a manner acceptable to the Engineer. The field notes
and supporting data shall be made available to the Engineer immediately
upon request. The personnel doing the survey work and preparing the calculations derived therefrom shall be made available by the Contractor to the Engineer for explanation, clarification, or both, immediately upon request.

The Contractor shall immediately correct or replace deficient or inaccurate layout and construction work at no increase in contract price or contract time.

(b) Survey and Staking Requirements. The Engineer will furnish necessary control points for the project limits, points of intersection, and benchmarks set by the Engineer or others. The Contractor shall be responsible for the laying out of all other necessary work from the given information. The Contractor shall reset the layout as many times as necessary to perform the work.

The Contractor shall preserve all survey features, including, but not limited to, control points, stakes, marks, or monuments that the Engineer or others have furnished. If the Contractor destroys or disturbs any such survey feature, the Contractor shall replace or restore these items at no cost to the State.

5.11 Inspection of the Work and Materials. Materials and each part of the details of the work shall be subject to inspection and testing for conformance by the Engineer. Unless otherwise specified, all such testing shall be at the Contractor’s expense as part of the contract price. The Contractor shall furnish the Engineer information, assistance, and provide appropriate safeguards and equipment to allow a complete inspection to be made.

The Engineer may inspect the production, fabrication, and manufacture of materials and items that are to be incorporated into the work. The Contractor shall ensure that the producer, fabricator, and manufacturer provide access to the Engineer, without adjustment in contract price or contract time, at the source.
of such materials and items or at any other place such materials or items may be
located before they are incorporated into the work. The Engineer will comply
with safety procedures established by the facility. When any government agency
or any utility company is to pay a portion of the cost of the work covered by this
contract, they shall have the right to inspect the work. Such inspection shall not
make that government agency or utility company a party to this contract.

For any inspection, the Contractor shall expose or uncover such portions
of the work as requested by the Engineer. After inspection, the Contractor shall
restore that portion of the work to the standard required by the contract. When
the Engineer orders an inspection that is not considered a normal daily, pre-final,
or final inspection that requires uncovering or results in damage to or destruction
of work in place:

(1) If the exposed and inspected work conforms to the contract
requirements, the State will reimburse the reasonable costs of exposing,
inspecting, and restoring the work as extra work and extend contract time
as appropriate.

(2) If the exposed and inspected work is non-conforming or
otherwise non-acceptable, the costs and time relating to exposing,
inspecting, and restoring the work is not reimbursable.

(3) No reimbursement will be allowed for the costs and time of
exposing, inspecting, and restoring work that the Engineer had not been
given reasonable opportunity to inspect before it was covered.

When the contract documents or a written directive from the Engineer
require that certain work not proceed until the Engineer is given notice and the
opportunity to inspect, the Engineer may order the work done or materials used
without the Engineer having been given notice and opportunity to inspect to be
removed and replaced at no increase in contract price or contract time.
Inspections are performed for the exclusive benefit of the State. The inspection of or the failure to inspect the work shall not relieve the Contractor of obligations to fulfill the contract as prescribed, to correct defective work, and to replace unsuitable or rejected materials regardless of whether payment for such work has been made.

5.12 Removal of Non-Conforming and Unauthorized Work: Performance of Corrective or Remedial Work. All work that does not conform to the requirements of the contract shall be remedied or removed and replaced by the Contractor at no increase in contract price, contract time, or both. No payment will be made for non-conforming work.

Any work done beyond the work limits shown on the drawings and specifications or established by the Engineer or any additional work done without written authority will be considered unauthorized work. No payment will be made for unauthorized work. Unauthorized work may be ordered removed at no increase in contract price, contract time, or both.

The Engineer may require that the Contractor submit a schedule acceptable to the Engineer for the performance of corrective or remedial work. Should the Contractor fail to submit an acceptable schedule or fail to comply with the accepted schedule for performance of corrective or remedial work, or otherwise fail to comply with any order of the Engineer regarding remedial, corrective, removal, and replacement work, the Engineer shall have the authority, in addition to all other remedies provided by contract or law, to cause non-conforming work to be remedied or removed and replaced and unauthorized work removed by someone other than the Contractor. The Engineer may charge the Contractor the cost of such work, deduct the costs from any monies due or to become due the Contractor, or a combination thereof.

5.13 Maintenance. The Contractor shall assume all risk of loss or damage to
the work and shall maintain the work, including the removal of all graffiti and
defacement, until final acceptance of the project or incremental acceptance of
that portion of the work. If the Contractor fails to remedy unsatisfactory
maintenance after receipt of a written directive from the Engineer, the Engineer
shall have the authority, in addition to other remedies by law, to have such
maintenance performed by someone other than the Contractor, to charge the
Contractor for such maintenance, or deduct the cost of such maintenance from
monies due or become due to the Contractor.

During the performance of the work and upon termination or completion
thereof and at the end of each working day, the Contractor shall remove or
control all debris and waste resulting from his operations and keep and leave the
site of work in satisfactory condition.

5.14 Storage and Handling of Materials and Equipment.

(a) State's Responsibility. The Engineer will supply a reasonable
area for the storage of materials and equipment in or near the project site.

(b) Contractor's Responsibility. Materials shall be stored and
handled to preserve their quality and fitness for the work. The Contractor
shall locate stored materials so as to facilitate their prompt inspection by
the Engineer. No State land outside the project limits may be used
without authority granted by the State agency having jurisdiction over the
site. Prior to final inspection, the Contractor, at no increase in contract
price or contract time, shall restore all storage sites provided by the State
to their pre-existing or to a different condition as required by the contract
documents or pursuant to an agreement between the Contractor and
Engineer.

(c) Contractor's Risk. The Contractor assumes all risk of loss or
damage to the materials and equipment stored within the State project site
or any other storage site provided by the Engineer pursuant to Subsection 5.14(a). Storage of materials and equipment in connection with the project is an element of the Contractor’s “performance” as referred to in Section 7.15 Responsibility For Damage Claims; Indemnity.

(d) Excavated or Removed Material. All materials excavated or removed as part of the work shall be properly disposed of by the Contractor as part of the contract price, unless otherwise directed by the Engineer or the contract documents. Unsuitable excavated or removed material shall not be maintained in or around the work site for an unreasonable length of time as determined by the Engineer.

When stockpiling of suitable excavated or removed materials is necessary, the material shall be hauled and stored in an area designated by the Engineer. No excavated material shall be stockpiled at any time in a manner that may endanger traffic or that may in any other way be detrimental to the completed work, health, or the operation of the airport.

5.15 Value Engineering Incentive Proposal. On any contract in an amount greater than $100,000, the Contractor shall be entitled to an equitable adjustment to share in cost savings resulting from the value engineering proposal, subject to the following conditions:

(1) A value engineering proposal must result in a minimum savings of $4,000 to the State by providing less costly items than those specified in the contract without impairing any of their essential functions and characteristics such as service life, durability, reliability, substitutability, economy of operations and maintenance, ease of maintenance, and necessary standardized features.

(2) A value engineering proposal shall not be deemed accepted until a change order has been issued establishing the proposal as
part of the work.

(3) A value engineering proposal must be submitted in conformity with, and is subject to, the terms and conditions of Section 3-132, H.A.R., and the procedures established by the Department.

(4) The Contractor shall bear the cost of the VECP submittal process.

5.16 Subcontracts.

(a) Subcontract Requirements. Nothing contained in the contract documents shall create a contractual relationship between the State and any subcontractor.

Subject to the provisions of Chapter 103D-302, H.R.S., the Contractor may subcontract a portion of the work, but the Contractor shall remain responsible for the work so subcontracted. When requested by the Engineer, the Contractor shall provide a copy of any subcontract to the Engineer within 7 calendar days.

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of any duty the Contractor may have pursuant to the contract without the written consent of the State.

The Contractor shall perform with his/her own organization work amounting to not less than 30 percent of the total contract cost, except for any items designated by the State in the contract as "specialty items". Where an entire item is subcontracted, the value of work subcontracted will be based on the contract item bid price. When a portion of an item is subcontracted, the value of work subcontracted will be estimated by the
Engineer and be based on the cost of such portion of the contract items.

No subcontract shall release the Contractor of any liability under the contract and bonds.

(b) Obligations of Subcontract of $50,000 or more as to the Employment of State of Hawaii Residents. The requirements of Section 7.2 Employment of State of Hawaii Residents, shall apply to any subcontract valued at $50,000 or more and such subcontractors awarded such subcontracts must ensure that State of Hawaii residents comprise not less than 80% of the subcontractor’s workforce used to perform the subcontract as calculated by Subsection 7.2(a).

(c) Substituting Subcontractors. Under Chapter 103D-302, H.R.S., the Contractor is required to list the names of persons or firms to be engaged by the Contractor as a subcontractor or joint contractor in the performance of the contract. Contractors may enter into subcontracts only with subcontractors listed in the proposal. However, for work not covered by a listed subcontractor, after the Notice to Proceed, the Contractor may enter into subcontracts with a nonlisted subcontractor but only for such work. Substitutions will be allowed only if the subcontractor:

(1) Fails, refuses or is unable to enter into a subcontract;

(2) Agrees in writing, together with the Contractor, to be released from the subcontract;

(3) Becomes insolvent;

(4) Has its Contractor’s license suspended or revoked;

(5) Has allegedly defaulted or has otherwise breached the
subcontract in connection with the subcontracted work; or

(6) Is unable or refuses to comply with other requirements of law applicable to Contractors, subcontractors, and public works projects.

Requests to substitute a subcontractor shall be allowed only upon the written approval of the Engineer. The Contractor agrees to hold the State harmless, defend, and indemnify the State for all claims, liabilities, or damages whatsoever, including attorney’s fees, arising out of or related to the approval or disapproval of the substitution.

(d) Contractor’s Responsibility for Subcontractors. The Contractor is responsible for the operations and the work of its subcontractors as well as the conduct of the subcontractors’ employees.

5.17 Dimensions, Performance Standards, and Other Values Required by the Contract. When work required by the contract is subject to contractually established tolerances, the Contractor’s means and methods shall nevertheless be designed to meet the precise dimensions, performance standards, and other values required by the contract. Contractor shall not intentionally attempt to provide work that does not strictly meet the precise dimensions, performance standards, and other values required by the contract.

END OF ARTICLE V
ARTICLE VI – CONTROL OF MATERIAL

6.1 Source of Supply and Quality Requirements. The Contractor shall furnish, pay for, and install all materials required to complete the work, except materials that are designated in the contract documents to be furnished by the State. Materials shall be in new condition, subject to normal wear, at the time of final acceptance.

All materials proposed to be used may be inspected and tested at any time and place including, but not limited to, the source of supply and locations of manufacture and fabrication. When requested by the Engineer, the Contractor shall notify the Engineer of the Contractor’s proposed sources of materials prior to delivery. At the request of the Engineer, the Contractor shall provide reasonable and adequate testing facilities and equipment for the Engineer at the inspection site at no increase in contract price or contract time.

6.2 Material Sources. Unless otherwise provided in the contract documents, (1) Contractor may use any suitable materials (such as stone, sand, gravel) found within the project limits in order to do the work, and (2) Contractor shall not remove any material (such as stone, sand, gravel) from the project limits without the written permission of the Engineer. Such permission will not be considered a change and may be revoked at any time for any reason by the Engineer at no increase in contract price or contract time.

The contract documents or Engineer may make available to the Contractor the option to use material from sources made available by the State. Designation of a source for material is not a representation by the Engineer of the quantity or quality of material obtainable or the method, equipment, or work required to obtain material from the source. The Contractor is not obligated to use material from such sources. The Contractor bears all costs of using such material and assumes the risk that such material does not conform to contract requirements.
6.3 Unauthorized Excavation. Unless otherwise expressly directed or authorized by the contract documents, Contractor shall not excavate beyond the excavation limits for the purpose of obtaining materials. The site disturbed by unauthorized excavation shall be returned to the condition existing before such unauthorized excavation at no increase in contract price or contract time. Any unauthorized excavation shall be filled, at the direction of the Engineer, with either the material taken out or a substitute material selected by the Engineer.

6.4 Material Sample and Testing. Submission of material samples and equipment data required by the contract documents or by the Engineer are exclusively for the benefit of the State’s quality control monitoring of the project. Any statement or representation by the Engineer that any submitted sample or equipment data is “ACCEPTED”, “APPROVED”, or other words to similar effect, shall not be deemed conclusive that the material and equipment data for which a sample was submitted will conform to the contract requirements when incorporated into the work. The ‘ACCEPTANCE” or “APPROVAL” of any sample by the Engineer does not change or modify any contract requirements.

Unless otherwise specified, all testing of materials, whether or not incorporated into the work, shall be at the Contractor’s expense as part of the contract price. The Engineer may conduct tests of or take samples of any materials at any time to verify conformance with the requirements of the contract documents. The Contractor shall collect and forward samples and provide other assistance when requested by the Engineer. In all cases, the Contractor shall furnish the required samples at no increase in contract price or contract time. The Contractor shall not be entitled to payment for work that incorporates materials required to be tested or inspected until the Engineer completes the tests or inspections. Where samples are required from the completed work, the Contractor shall cut and furnish samples from the completed work at the sites and quantities designated by the Engineer. The work where such sample has been removed shall be restored with new material conforming to the contract
requirements or other material acceptable to the Engineer at no increase in contract price or contract time.

Tests of the material samples will be made in accordance with the contract specifications, or in the absence thereof, the latest standards of HDOT Hawaii Test Methods, AASHTO, ASTM, or other recognized material organizations. References to HDOT Hawaii Test Method means “Hawaii Test Methods”, published by the State of Hawaii, Department of Transportation, Highways Division, Materials Testing and Research Branch. The Engineer shall decide:

1. The tests to be conducted and standards to be applied;

2. Whether a submitted material sample passes the tests and meets the standards; and

3. Whether a submitted material sample shall be retested.

Each sample submitted shall have a label indicating project title and number, date sampled, the material represented, its place of origin, the names of the producers and suppliers, the Contractor, and the portion of the work for which the material is intended. Samples shall be marked to indicate where the materials represented are required by the contract documents.

A letter in duplicate shall accompany each delivery of samples and shall contain a list of the samples and the same information required on the labels accompanying each sample.

6.5 Sample Submittals.

(a) Contractor’s Duty. When sample submittals are required by the contract documents, the Contractor shall review, approve, indicate its approval, and submit to the Engineer samples of the materials to be used
in the work. It is the responsibility of the Contractor to submit required material and color samples for review at the earliest possible date after the date of award. Delays caused by the failure of the Contractor to submit material and color samples will not be considered as justifiable reasons for contract time extension or additional compensation.

(b) Deviations. The Contractor shall include, with the submittal of samples, written notification of and shall clearly identify all deviations from the contract documents. Failure to so notify the Engineer of and identify such deviations shall be grounds for the subsequent rejection of the related work or materials, notwithstanding that the sample upon its submittal was accepted by the Engineer. If the deviations are not acceptable to the Engineer, the Contractor shall be required to furnish the samples as specified or indicated on the contract documents at no increase in contract price or time.

(c) Review Process. The Engineer will inspect or test samples and communicate the results of the inspection or test within 30 days of receipt, unless otherwise agreed between the Contractor and the Engineer, or as stated in the contract documents. Should the Engineer partially or totally reject the test samples, the Contractor shall modify the sample, as required by the Engineer, and resubmit the item within 15 days. At this time, the review and acceptance cycle described above shall begin again and repeat each time a test sample is returned to the Contractor for modification. If the volumes of samples submitted at any time for review is unusually large, the Contractor may inform the Engineer of its preferred order for review, and the Engineer will use reasonable efforts to accommodate the Contractor’s priorities.

If the Engineer notifies the Contractor that a sample does not conform to the contract documents, the Contractor shall promptly submit a sample conforming to the requirements of the contract documents,
indicating in writing on the transmittal and the subject sample what portions of the resubmittal have been altered.

No mark or notation made by the Engineer on or accompanying the return of any sample to the Contractor shall be considered a request or order for a change or extra work. If the Contractor believes any such mark or notation constitutes a request for a change or extra work for which it is entitled to an adjustment in contract price, contract time, or both, the Contractor must follow the procedures established in Subsection 4.2(b) Orders and Directives or else lose its right to claim for an adjustment.

(d) Conformance of Material to Submittal. After a material submittal has been accepted by the Engineer, the Contractor shall provide materials for the work that conform to such submittal. Materials that do not conform to such submittal are non-conforming material in accordance with Section 6.8 Non-Conforming Materials, even if they otherwise meet the contract requirements. If the Contractor intends to substitute a material in place of a material for which a submittal has been accepted, the Contractor shall submit the substitute material in accordance with the sampling and testing procedures described herein. The Contractor shall not use the substitute material until the Engineer accepts it.

6.6 Notice of Change. If, during the course of the work, the Contractor intends to change the source of supply of any previously submitted material or the location of any manufacturing or fabrication plant, the Contractor shall provide the Engineer written notice of such intended change not less than ten days before the change is made. The Engineer may require that the Contractor repeat the submittal process, in accordance with this Article VI – Control of Material, for any such material.

6.7 Certificate of Compliance. In addition to or instead of the submission of material samples for inspection or testing, the Engineer or the contract
documents may require the Contractor to submit to the Engineer a Certificate of Compliance from the manufacturer, supplier, or both.

A Certificate of Compliance shall be an English language document containing:

(1) A description of the material supplied;

(2) Means of material identification, including, but not limited to, label, lot number, heat number, batches, or marking including the respective quantities of each material supplied for the work;

(3) A statement that the material complies in all respects with the requirements of the cited specifications within the contract documents;

(4) When required by the Engineer, test results confirming that the material complies in all respect with the requirements of the contract documents; and

(5) The name, title, and signature of the authorized person acting on behalf of the manufacturer or the supplier of the material, the date of the signature, and the name and address of the manufacturer or supplier of the material.

6.8 Non-Conforming Materials. All materials not conforming to the contract requirements, whether in place or not, shall be promptly removed from the site of the work when directed by the Engineer in writing. If the Contractor fails to comply forthwith with any order of the Engineer made under the provisions of this subsection, the Engineer shall have the authority to remove and replace non-conforming materials and charge the removal and replacement to the Contractor.
6.9 State-Furnished Material. The Contractor shall furnish all materials required to complete the work, except those specified to be furnished by the State. The contract documents or the Engineer will establish the time and means of delivery or the turning over of State-furnished materials. Unless otherwise specified, the cost of pick up and transport to the work site of such materials is included in the contract price.

Unless otherwise stated in the contract documents, it shall be conclusively presumed that State-furnished materials conform to the contract documents as of the time of delivery to the Contractor.

Upon receipt, the Contractor shall inventory, store, inspect, protect, distribute, and install State-furnished material at its risk and cost.

6.10 Payment for Deleted Materials.

(a) Canceled Orders. If acceptable material was ordered by the Contractor for any item deleted by an ordered change in the work prior to the date of notification of such deletion by the Engineer, the Contractor shall use its best efforts in a timely manner to cancel the order. The State will pay reasonable cancellation charges required by the supplier. The Contractor will be paid a 10 percent markup on all reasonable cancellation charges for compensation for overhead and profit.

(b) Returned Materials. If acceptable deleted material is in the possession of the Contractor or is ultimately received by the Contractor, if such material is returnable to the supplier and the Engineer so directs, the material shall be returned. After the Contractor returns acceptable material to the supplier, the State will pay for the reasonable charges made by the supplier or other source for the return of the material. The Contractor shall be paid a 10 percent markup on the reasonable charges.
made by the supplier or other source for returning the material for compensation for overhead and profit. The cost to the Contractor for handling the returned material will be paid as provided in Section 4.6 Methods of Price Adjustment.

(c) Uncancelled Material. If orders for acceptable material that was deleted cannot be canceled at a reasonable cost or returned, it will be paid for at the actual cost charged by the material supplier to the Contractor including a markup for overhead and profit of 10 percent. In such cases the material paid for shall become the property of the State and the cost of further storage and handling will be paid as provided in Section 4.6 Methods of Price Adjustment.

All charges the Contractor proposes for the acceptable material that was deleted shall be properly itemized and supported by sufficient substantiating legible data to permit evaluation. The Engineer will determine whether the proposal is acceptable.

6.11 (Reserved).

6.12 Assignment Of Antitrust Claims For Overcharges For Goods and Materials Purchased.

Contractor and owner recognize that, in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the owner. Therefore, Contractor hereby assigns to owner any and all claims for such overcharges as to goods and materials purchased in connection with this order or contract, except as to overcharges which result from antitrust violations commencing after the price is established under this order or contract and any contract change order. In addition, Contractor warrants and represents that each of its first tier suppliers and subcontractors shall assign any and all such claims to owner, subject to the aforementioned exception.
6.13 Substitution Of Materials and Equipment After Bid Opening.

Substitution of material or equipment will not be allowed after the bid opening date except under the following circumstances:

(1) A specified or pre-qualified item is delayed by an unforeseeable event beyond the control of the Contractor which would impact the timely completion of the project.

(2) A specified or pre-qualified item is no longer being manufactured or is no longer reasonably commercially available.

(3) A specified or pre-qualified item is found to be unsuitable for reasons beyond the control of the Contractor.

(4) When a manufacturer or supplier of a pre-qualified or specified item makes available a suitable item determined by the Engineer to be equal to or better than the item prequalified or specified.

(5) Under such other terms and conditions acceptable to the Engineer.

Every substitution request shall be fully explained in writing by the Contractor and shall include the justification, the quantities and unit prices involved, quotations, and such other documents as are deemed necessary to support the request. Any savings in cost will accrue to the State.

The burden of proof as to the comparative quality and suitability of alternate equipment, articles, or materials shall be upon the Contractor. The Contractor shall furnish, at no increase in contract price or contract time, all information required by the Engineer.
The Engineer reserves the right to deny any request the Engineer deems irregular or not in the best interest of the State and shall be the sole judge of the comparative quality and suitability of alternate equipment, articles, or materials.

END OF ARTICLE VI
ARTICLE VII – LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

7.1 Insurance Requirements.

(a) Obligation of Contractor. Contractor shall not commence any work until it obtains, at its own expense, all required insurance described herein. Such insurance shall be provided by an insurance company authorized by the laws of the State to issue such insurance in the State of Hawaii. Coverage by a “Non-Admitted” carrier is permissible provided the carrier has a Best’s Rating of “A-VII” or better. The Contractor shall maintain and ensure all insurance policies are current for the full period of the contract until final acceptance of the work by the State.

The Certificate of Insurance shall contain: a clause that 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; and shall be accompanied by endorsement form CG2010 or equivalent naming the State as an additional insured to the policy which status shall be maintained for the full period of the contract until final acceptance of the work by State.

The Contractor shall obtain all required insurance as part of the contract price. Where there is a requirement for the State of Hawaii and its officers and employees to be named as additional insureds under any Contractor’s insurance policy, before the State of Hawaii issues the Notice to Proceed, the Contractor shall obtain and submit to the Engineer a Certificate of Insurance and a written policy endorsement that confirms the State of Hawaii and its officers and employees are additional insureds for the specific State project number and project title under such insurance policies. The written policy endorsement must be issued by the insurance company insuring the Contractor for the specified policy type or by an agent of such insurance company who is vested with the authority to issue a written policy endorsement. The insurer’s agent shall also submit
written confirmation of such authority to bind the insurer. Any delays in
the issuance of the Notice to Proceed attributed to the failure to obtain the
proof of the State of Hawaii and its officers and employees’ additional
insured status shall be charged to the Contractor.

A mere Certificate of Insurance issued by a broker who represents
the Contractor (but not the Contractor’s insurer), or by any other party who
is not authorized to contractually name the State as an additional insured
under the Contractor’s insurance policy, is not sufficient to meet the
Contractor’s insurance obligations.

Certificates shall contain a provision that coverages being certified
will not be cancelled or materially changed without giving the Engineer at
least thirty (30) days prior written notice. Contractor will immediately
provide written notice to the Director should any of the insurance policies
evidenced on its Certificate of Insurance form be cancelled, reduced in
scope or coverage, or not renewed upon expiration. Should any policy be
canceled before final acceptance of the work by the State, and the
Contractor fails to immediately procure replacement insurance as
specified, the State, in addition to all other remedies it may have for such
breach, reserves the right to procure such insurance and deduct the cost
thereof from any money due or to become due to the contractor.

Nothing contained in these insurance requirements is to be
construed as limiting the extent of Contractor’s responsibility for payment
of damages resulting from its operations under this contract, including the
Contractor’s obligation to pay liquidated damages, nor shall it affect the
Contractor’s separate and independent duty to defend, indemnify, and
hold the State harmless pursuant to other provisions of this contract. In no
instance will the State’s exercise of an option to occupy and use
completed portions of the work relieve the Contractor of its obligation to
maintain the required insurance until the date of final acceptance of the work.

All insurance described herein shall be primary and cover the insured for all work to be performed under the contract, all work performed incidental thereto or directly or indirectly connected therewith, including, but not limited to traffic detour work, barricades, warnings, diversions, lane closures, and other work performed outside the work area and all change order work.

The Contractor shall, from time to time, furnish the Engineer, when requested, satisfactory proof of coverage of each type of insurance required covering the work. Failure to comply with the Engineer’s request may result in suspension of the work and shall be sufficient grounds to withhold future payments due the Contractor and to terminate the contract for Contractor’s default.

(b) Types of Insurance. Contractor shall purchase and maintain insurance described below which shall provide coverage against claims arising out of the Contractor’s operations under the contract, whether such operations be by the Contractor itself or by a subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

(1) Worker’s Compensation. The Contractor shall obtain worker’s compensation insurance for all persons whom they employ in carrying out the work under this contract. This insurance shall be in strict conformity with the requirements of the most current and applicable State of Hawaii Worker’s Compensation Insurance laws in effect on the date of the execution of this contract and as modified during the duration of the contract.
(2) **Auto Liability.** The Contractor shall obtain Auto Liability Insurance covering all owned, non-owned, and hired autos with a combined single limit of not less than $1,000,000 per occurrence for bodily injury and property damage with the State of Hawaii named as additional insured. Refer to SPECIAL CONDITIONS for any additional requirements.

(3) **General Liability.** The Contractor shall obtain General Liability insurance with a limit of not less than $2,000,000 per occurrence and in the Aggregates for each of the following:

(A) Products – Completed/Operations Aggregate,

(B) Personal & Advertising Injury, and

(C) Bodily Injury & Property Damage.

The General Liability insurance shall include the State as an additional insured. The required limit of insurance may be provided by a single policy or with a combination of primary and excess policies. Refer to SPECIAL CONDITIONS for any additional requirements.

(4) **Builder’s Risk For All Work.** The Contractor shall take out a policy of builder’s risk insurance for the full replacement value of the project work, from a company licensed or otherwise authorized to do business in the State of Hawaii; naming the State as an additional insured under each policy; and covering all work, labor, and materials furnished by such Contractor and all its subcontractors against loss by fire, windstorm, tsunamis, earthquakes, lightning, explosion, other perils covered by the standard Extended Coverage Endorsement, vandalism, and
(c) Breach of Duty by Contractor or Insurer. If either the Contractor or its insurer wrongfully fails to defend or indemnify the State of Hawaii, its officers, and employees against any claims, the State may debar or suspend the Contractor from bidding or working on construction projects and may refuse to permit the insurer to provide insurance on construction projects.

The State may exercise these remedies in addition to other legal or equitable remedies it may have against the Contractor, insurer, or both.

(d) Subcontractor Insurance. The Contractor shall either:

(1) Require its subcontractors to procure and to maintain, during the life of its subcontract, subcontractor’s comprehensive general liability, automobile liability, and property damage liability insurance of the type and in the same amounts specified herein and further require that such coverage be required by its subcontractors from all lower tier subcontractors. On all such insurance coverages, the State of Hawaii, its officers, and employees, shall be named as additional insureds; or

(2) Insure the activities of its subcontractors and their lower tier subcontractors in its own policy.

In the absence of language in the certificate excluding coverage for subcontractors, it will be understood that the Contractor’s insurance covers all aspects of the work whether performed by the Contractor or any of its subcontractors.
(e) Self-Insured Retention. The Contractor shall be permitted, in cooperation with its insurers, to maintain a self-insured retention for up to 25 percent of the per occurrence combined single limits of the commercial general liability and the automobile liability policies required by the contract documents.

7.2 Employment of State of Hawaii Residents.

(a) Obligations of Contractor. Pursuant to 103B-3(a), H.R.S., a Contractor awarded a contract shall ensure that State of Hawaii residents comprise not less than 80% of the workforce employed to perform the contract. The 80% requirement shall be determined by dividing the total number of hours worked on the contract and all subcontracts by State of Hawaii residents, by the total number of hours worked on the contract by all employees of the Contractor and all subcontractors in the performance of the contract. The hours worked by employees within shortage trades, as determined by the Department of Labor and Industrial Relations (DLIR), shall not be included in the calculation for this section.

(1) Notarized certificates of compliance with Section 103B-3(a), H.R.S. shall be made by an officer of the Contractor and applicable subcontractors and submitted as part of Subsection 8.19(a) Final Settlement of Contract Closing Requirements.

(2) The Contractor and any applicable subcontractors shall maintain records such as certified payrolls for laborers and mechanics who perform work at the site and timesheets for all other employees who performed work on the project. These records shall include the names, addresses and number of hours worked on the project by all employees of the Contractor and applicable subcontractors who performed work on the project to validate compliance with this section. The Contractor and applicable
subcontractors shall maintain, retain, and provide the Engineer access to these records at all times during the work as well as in accordance with Section 9.12 Records, Accounts, and Documents.

(3) The Contractor has an affirmative duty, throughout the course of the project, to ensure that all subcontractors remain in compliance with this Section.

(b) Failure to Comply. Failure to comply with Subsection 7.2(a) shall be deemed a breach of contract by the Contractor and the State may exercise all applicable remedies available including, but not limited to:

(1) With respect to the Contractor, withholding of final payment on the contract until the Contractor complies with Subsection 7.2(a); or

(2) Proceedings for debarment or suspension of the contractor or subcontractor under Section 103D-702, H.R.S.

7.3 Permits and Licenses. As part of the contract price, the Contractor shall obtain all permits and licenses required by law to perform the work and pay charges, fees, and taxes incidental to obtaining such permits and licenses. The Contractor assumes exclusive responsibility for identifying and acquiring all permits and licenses necessary to perform the work, except for those permits and licenses identified in the contract documents as being the responsibility of the State.

The terms and conditions of any permit or license required for performance of the work, whether or not issued in the name of the Contractor, are incorporated into the contract. Compliance with such terms and conditions are duties owed by the Contractor to the State under the contract. Notwithstanding the enforcement authority of the permitting or licensing agency,
whether or not a State agency, non-compliance by the Contractor with any term
or condition of such license or permit shall be deemed non-compliance with the
contract and may constitute grounds for default.

The Engineer may grant a time adjustment, cost adjustment, or both, to
the extent the Engineer determines that the Contractor was not a contributing
factor for any delay in obtaining necessary permits or licenses.

7.4 Working Hours; Night Work. Normal working hours shall be from 7:00
a.m. to 3:30 p.m., Monday through Friday, excluding holidays. Work performed
between 3:30 p.m. and 7:00 a.m. of the following day is “night work”.

7.5 Overtime and Night Work. Overtime work shall be considered as work
performed in excess of eight hours in any one day or work performed on
Saturday, Sunday, or legal holidays of the State. Overtime and night work are
permissible when approved by the Engineer in writing or as called for elsewhere
within the contract documents. The Contractor shall inform the Engineer in
writing at least three working days in advance of its intent to work overtime and
10 working days in advance of any night work. In addition, the Contractor shall
inform the Engineer of what specific work is to be done during any overtime and
night work period.

The Engineer may, at any time, direct overtime and/or night work be
performed in addition to or in lieu of work during normal working hours at such
additional costs to the State as the Engineer determines to be reasonable.

The Engineer may cancel any overtime or night work previously approved
or directed when the Engineer finds that work during these periods is detrimental
to public welfare, safety, or the interest of the State.

7.6 Overtime and Night Payment for State Inspection Service.
(a) **State’s Responsibility for State’s Cost.** The State shall be responsible for overtime or night work payment for State’s staff and inspection personnel, including consultants, when the contract requires overtime or night work to be performed or directs the Contractor to work additional shifts or overtime for the State’s convenience.

(b) **Contractor’s Responsibility for State’s Cost.** The Contractor shall be responsible for overtime or night work payment for the State’s staff and inspection personnel, including consultants, when the Contractor does any other overtime or night work.

The Contractor shall pay the following costs incurred by the State:

1. The payroll costs for the State’s staff and inspection personnel assigned in connection with such work, including, but not limited to, salaries, the State’s share of contributions to the employee’s retirement, medical plan, social security, vacation, sick leave, worker’s compensation funds, per diem, and other applicable fringe benefits and overhead expenses incurred on account of such work.

2. The transportation costs incurred by the State’s staff and inspection personnel, which are based on established rental rates or mileage allowance in use by the State for the particular equipment or vehicle.

3. Fees and other costs billed the State by consultants engaged on the project for overtime and night work.

(c) **Payment for Inspection Service.** The monies due the State for costs described herein shall be deducted from the monies due or to
become due the Contractor. The Contractor shall not pay the State’s employees and consultants directly.

7.7 Contractor Duty Regarding Public Convenience. The Contractor shall, at all times, conduct the work in such manner and in such sequence as will insure the least practicable interference with pedestrian, bicycle, and motor passageways.

7.8 Assignment or Change of Name.

(a) General. The Contractor shall not sell, transfer, assign, or otherwise dispose of this contract or any part hereof or any right, title, or interest herein without the written consent of the Engineer.

The Contractor may assign money due or to become due under the contract and such assignment will be recognized by the State, if given written notice thereof, to the extent permitted by law. Any assignment of monies shall be subject to all set-offs in favor of the State and to all deductions provided for in the contract, including, but not limited to, liquidated or actual damages for delay and money retained by the State for the completion of the work in the event that the Contractor should be in default.

(b) Recognition of a Successor in Interest; Assignment. When in the best interest of the State, a successor in interest may be recognized in an assignment agreement in which the Contractor and the transferee and the State shall agree that:

(1) The transferee assumes all of the Contractor’s obligation.

(2) The Contractor remains liable for all obligations under the contract but waives all rights under the contract against the State.
(3) The Contractor shall continue to furnish, and the transferee shall also furnish, all required bonds.

(c) Change of Name. When a Contractor requests to change the name in which it holds a contract with the State, the Engineer 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.

7.9 Laws to be Observed; Indemnity. At all times, the Contractor shall observe and comply with all Federal, State, and local laws, ordinances, rules, regulations, and permit and license requirements, which in any manner affect those engaged or employed in the work, the materials used in the work, and the conduct of the work. The Contractor shall comply with all orders and decrees of government bodies or officials having any jurisdiction or authority over the work whether such orders or decrees are directed to the Contractor, its subcontractors, vendors and suppliers, or to the State.

No instruction in the contract documents or contained within any directive from the Engineer to the Contractor to observe and comply with any specific law, ordinance, rule, regulation, or permit or license requirement shall limit the duty of the Contractor to observe and comply with all other laws, ordinances, rules, regulations, or permit or license requirements that relate to the work.

The Contractor shall immediately notify the Engineer in writing of any orders, directives, notices, decrees, or warnings issued by any governmental agency to the Contractor, its subcontractors, vendors, and suppliers that a violation of law, rule, regulation, or permit or license requirement is alleged to have occurred or is occurring in connection with the work.
The Contractor shall defend, protect, hold harmless, compensate, and indemnify the State, its officers, and employees against any claim or liability arising from or based on the violation of any laws, ordinances, rules and regulations, orders or decrees, or the terms and conditions of any permits and licenses, whether such orders or decrees are directed to the Contractor, its subcontractors, vendors and suppliers, or to the State.

7.10 Patented Devices, Materials, And Processes. If the Contractor desires or is required to use any designs, devices, materials, or processes covered by letters of patent or copyright, the right for such use shall be procured by the Contractor from the patentee or owner. The Contractor shall defend, protect, indemnify and hold harmless, compensate, and where appropriate, insure, the State from any and all claims, demands, liabilities, actions, and judgments for infringement by reason of the use of any such patented designs, devices, materials, or processes or any trademark or copyright in connection with the work to be performed under the contract.

7.11 Furnishing Right-Of-Way. Except as noted in the contract documents, the State will be responsible for securing necessary rights-of-way.

7.12 Safety: Accident Prevention.

(a) The Contractor shall provide all safeguards, safety devices, and protective equipment and take any other needed actions as it determines, or as the Engineer may determine, to be reasonably necessary to protect the life and health of employees and other persons on and around the worksite and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

(b) The Contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or
under conditions which are unsanitary or hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards promulgated by the Federal, State, and local authorities.

(c) The Contractor shall designate a safety officer whose responsibility will be to monitor the Contractor's safety practices and procedures and to ensure a safe working environment.

The Engineer as well as authorized Federal, State, and local officials shall have right of entry to any site of contract performance to inspect, investigate, and enforce the matter of compliance with the construction safety and health standards referred to herein; however, it is not the responsibility of the State to review the adequacy of the Contractor's onsite safety measures or to check on the performance of the Contractor's safety officer.

(d) The Contractor shall immediately comply with all safety and security directives issued by authorized Federal, State, and local officials. If the Contractor anticipates that any such directive may result in a claim for an increase in contract price or time, it shall notify the Engineer in writing not later than 24 hours after receiving such directive.

7.13 Protection of Persons and Property.

(a) Contractor's Responsibility for Damage to Property. All damage, injury, or loss to any property caused during the course of or arising out of the work, whether or not caused by negligent acts or omissions, shall be the responsibility of the Contractor and shall be remedied promptly by the Contractor. This provision shall not affect the Contractor's legal rights of subrogation, contribution, and indemnity to recover the costs of remedial measures and other damages to which it may be entitled.
(b) Safety Precautions and Programs. The Contractor shall notify owners of adjacent properties and of underground (or overhead) utilities when performing work which may affect the owners and shall cooperate with the owners in the protection, removal, and replacement of their property.

The Contractor shall not permit any load to be placed on the work, any structure, roadway, or any other location that may endanger the safety of any persons or cause damage to any property. The Contractor shall not injure or destroy trees or shrubs that are identified in the contract documents for preservation nor remove or cut them without permission of the Engineer. The Contractor shall protect all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed.

In the event the Contractor encounters, on the site, material reasonably believed to be asbestos or other hazardous material that has not been rendered harmless, the Contractor shall stop work in the area and notify the Engineer promptly. The work in the affected area shall be resumed in the absence of hazardous materials or when the hazard has been rendered harmless.

(c) Notification to the Engineer. The Contractor shall notify the Engineer verbally as soon as conditions permit and in writing not later than noon of the following working day whenever:

(1) Police, fire, or other public safety officers are called to the work site for any reason or are present at the work site for any public safety related reason.
Any person is treated or evacuated from the work site for medical reasons.

Any member of the public claims to have been injured at the work site.

The Contractor witnesses a member of the public being involved in an accident at the worksite or on account of conditions related to the work, whether or not visible injuries occur.

Any representative of a Federal, State, or County regulatory or enforcement agency is present at the work site including but not limited to any representative of Department of Health, EPA, OSHA, and public works.

7.14 Pollution Control and Protection Of Archeological, Historical, and Burial Sites.

(a) Erosion, Siltation, and Pollution Control. The Contractor shall exercise precaution to prevent silt ing and pollution of oceans, rivers, streams, lakes, reservoirs, and other bodies and conveyances of water, including sewer systems and storm drains.

The Contractor shall provide for pollution, dust, and erosion control during the work, including periods of suspension of contract performance. If material begins to erode, the Contractor shall act immediately to bring the siltation, erosion, and pollution under control.

The Contractor shall follow:

(1) Guidelines in the City and County of Honolulu’s “Best Management Practices Manual for Construction Sites in Honolulu”,

7-15
in developing, installing, and maintaining BMPs for all projects;

(2) City and County of Honolulu’s “Rules for Soil Erosion Standards and Guidelines” for all projects on Oahu;

(3) Appropriate Soil Erosion Guidelines for Maui, Kauai, Molokai, Lanai, and Hawaii projects; and


(b) Archaeological, Historical, and Burial Sites. Whenever the Contractor encounters sites of potentially historic or archaeological significance such as walls, platforms, pavements, and mounds or remains such as artifacts, burials, concentration of charcoal, or shells, work shall cease in the immediate vicinity of the site, and the site shall be protected from damage. The Contractor shall suspend any work that may affect the site and inform the Engineer immediately. Upon direction by the Engineer, the Contractor shall provide and install temporary fencing to protect such sites. The Contractor shall not resume the work suspended without the prior written direction of and subject to the conditions set by the Engineer.

7.15 Responsibility For Damage Claims; Indemnity. The Contractor shall compensate and make whole the State for all loss or damage to the State’s property and facilities arising out of any act or omission in the performance of the work by the Contractor, any subcontractor, or their employees and agents.

The Contractor shall defend, hold harmless, compensate, and indemnify the State, its employees, and officers against any loss, demand, claim, liability, suit, action, cause of action, judgment, cost, and expenses, including attorney’s fees, based upon personal injury, death, or property damage which arise out of
the Contractor's performance under the contract, including the operations and
performance of one or more subcontractors, whether or not a lawsuit is filed
against the State and whether or not the Contractor is named as a party to any
such lawsuit, unless and until a court of competent jurisdiction makes a final non-
reviewable determination that the personal injury, death, or property damage was
caused solely by the negligence of the State.

The State may participate in the defense of any claim or suit brought
against its officers or employees, without relieving the Contractor of any
obligation hereunder. The purchase of liability insurance shall not relieve the
Contractor of the obligations described herein. If the Contractor and its insurer
fail to undertake the defense of the State, its employees, and officers, after a
tender of defense has been duly made, the State may retain and withhold money
to cover the Contractor's obligation, whether or not the Contractor is terminated
for cause.

The Contractor shall pay all just claims for materials, supplies, tools, labor,
and other just claims against the Contractor or any subcontractor in connection
with this contract, and the payment bond or security will not be released by final
acceptance and payment by the State unless all such claims are paid or
released. The State may, but is not obligated to, withhold or retain as much of
the monies due or to become due the Contractor under this contract considered
necessary by the Engineer to cover such just claims until satisfactory proof of
payment or the establishment of an acceptable payment plan.

7.16 Disputes and Claims.

(a) Written Notice A Condition Precedent to Claim. As a
condition precedent to any claim for damages, or any matter dealing with
contract price or contract time, the Contractor must give all notices of a
potential claim as required by the contract documents including, but not
limited to, the following Subsections of these General Provisions:
(b) **Contractor’s Duty to Maintain Accurate and Contemporaneous Records.** Upon delivering written notice of a potential claim as described in Subsection 7.16(a) Written Notice A Condition Precedent to Claim, the Contractor has the duty to support and substantiate all claims by maintaining accurate, contemporaneous records of the subject work and the time and costs thereof. The Engineer may direct the manner and the format in which such records must be prepared, maintained, and verified. The Contractor shall comply with such directives at no increase in contract price or contract time. Any directive from the Engineer regarding the manner and format for the keeping of records associated with the potential claim shall not in any way be deemed an agreement by the State regarding the validity of any element of the claim.

(c) **Contractor to Proceed with Work.** The Contractor shall at all times continue with performance of the contract in full compliance with the
directions of the Engineer. Continued performance by the Contractor shall
not prejudice any claim for damages or any matter dealing with contract
price or contract time provided that the notice of a potential claim is given
in writing by the Contractor in the manner and within the time set forth in
the contract documents.

(d) Making of a Claim. All Contractors’ claims for damages or any
matter dealing with contract price or contract time shall be submitted in
writing to the Engineer. The written submission (“The Claim”) shall be
clearly identified and labeled as a claim. The Contractor shall sequentially
number its claims in the chronological order submitted to the Engineer.
No claim shall be valid if it is delivered to the Engineer after the date of
final acceptance or later than 180 days after Contractor’s delivery of its
notice of potential claim, whichever comes first.

The claim shall, at a minimum, contain the following:

1. A detailed description of the facts and circumstances that
justify every element of the claim. The detailed description shall
include, but is not limited to, providing all necessary dates,
locations, and items of work affected by the claim.

2. The specific provisions of the contract or laws which support
the claim and a statement of the reasons why such provisions
support the claim.

3. A copy of the related written notice of potential claim
required by Subsection 7.16(a) Written Notice A Condition
Precedent to Claim.

4. Any other documents that support the claim.
(5) If an adjustment of time for the performance of the contract is sought:

(A) The specific days and dates for which it is sought.

(B) The specific reasons the Contractor believes a time adjustment should be granted.

(C) The specific provisions of the contract under which additional time is sought.

(D) The Contractor’s detailed analysis of its previously submitted time scaled logic diagram (TS LD) schedule and impact on the critical path.

(6) If additional monetary compensation is sought, the claim cannot be in an amount greater than the Contractor would be entitled to under the terms, conditions, and limitations set forth in Section 9.6 Force Account Provisions and Compensation; however, the Engineer may determine the Contractor's entitlement, if any, in accordance with any payment method described in Section 4.6 Methods of Price Adjustment. The exact amount sought and a breakdown of that amount into the following categories shall be provided to the Engineer:

(a) Labor. Categories such as listing of individuals, description and location of work performed, classification, hours worked, wage rate, fringe benefits, and employee number if available.

(b) Materials. Categories such as invoices, purchase orders, evidence of payment, descriptions, and quantities.
(c) Equipment. Categories such as detailed description (make, model, year, attachments, and serial number), hours of use, and dates of use.

(d) Contractor’s Margin for Profit and Overhead.

(e) Other categories as specified by the Contractor or the State.

(7) The claim shall be certified on behalf of the Contractor by an authorized representative, as follows:

Under penalty of law for submission of false claims, false statements, and misrepresentation, the undersigned,

__________________________________________
(Name)

__________________________________________
(Title)

__________________________________________
(Company)

hereby certifies that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the State of Hawaii is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

__________________________________________
Signature

__________________________________________
Date
(e) **Subcontractor’s Claim.** When the Subcontractor submits a claim to the Contractor and the Contractor, upon its review and investigation of said claim, concludes that the State is ultimately liable for payment of any part of said claim and the Contractor chooses to seek recovery against the State for all or any part of the Subcontractor’s claim, the Contractor shall:

1. Independently verify the basis for and amount of said claim.
2. Limit said claim to only those portions for which the State may be liable.
3. Submit said claim as a Contractor’s claim, in accordance with this section.

(f) **Engineer’s Review and Decision.** The Engineer shall review the claim and may request additional information, documentation, and other evidence, which the Contractor shall provide. The Engineer may conduct interviews with Contractor’s employees and other persons having knowledge related to the claim.

The Engineer shall render a written decision on the claim after the claim is complete and fully documented, as follows:

1. Within 60 days for claims equal to or less than $50,000.
2. Within 90 days on claims exceeding $50,000.

If the Engineer does not issue a written decision within the time period described herein, then the Contractor may proceed as if the claim has been denied in its entirety. If the claim submittal is found to be
incomplete, the Contractor shall be notified to provide the additional information that is required. When this occurs, the Engineer’s review time will be adjusted as deemed appropriate and the Contractor will be notified.

The decision will be sent to the Contractor by Certified Mail, Return Receipt Requested.

(g) Appeal of the Engineer’s Decision.

(1) Any Contractor aggrieved by an adverse decision by the Engineer on a claim may appeal the decision to the Director, as head of the purchasing agency, as specified in the Hawaii Administrative Rules for Procurement Disputes.

(2) Appeals of the Engineer’s decision must be filed in writing not later than 30 days after delivery of the Engineer’s decision on the claim to the Contractor, or if no written decision is delivered, within 30 days after the deadline for the Engineer’s decision. A copy of the notice of appeal of the Engineer’s decision shall be delivered to the Engineer.

(3) The record on appeal by the Contractor to the Director shall be limited to the Claim as submitted by the Contractor described in Subsection 7.16(d) Making of a Claim, the Engineer’s response to the claim, the project file, and any other material or evidence the Director, in the Director’s discretion, believes may be useful in deciding the merits of the appeal.

(4) In its notice of appeal of the Engineer’s decision, the Contractor shall provide specific citations to the Engineer’s decision and explanations as to why the Contractor believes the Engineer’s decision was incorrect.
(5) All controversies and claims which are appealed to the Director shall be decided by the Director within 90 days after the filing of the appeal by the Contractor; provided that:

(A) If the Director does not issue a written decision within 90 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 the appeal was denied.

(B) The Director immediately furnishes 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 unless the Contractor brings an action seeking judicial review of the decision in a Hawaii circuit court within the six months from the date of receipt of the decision.

(h) Contractor’s Duty to Continue Work. During the claim review and appeal process including any litigation in relation to the claim, the Contractor shall proceed diligently with performance of this contract, except where:

(1) The State has suspended the work or has terminated the contract for default of the Contractor or for the convenience of the State.
(2) There has been an alleged material breach of contract by the State excusing further performance by the Contractor; provided that in such 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.

7.17 Contaminated or Hazardous Items and Material; Regulated Items and Material; Waste.

(a) Known or Suspected Contaminated or Hazardous Items and Material. If the contract documents have noted an area of known or suspected contaminated or hazardous items or material within the project limits, in the absence of specific orders from the Engineer or directions in the contract documents, the Contractor shall report the discovery of such items or material to the appropriate governmental agencies, cooperate with all investigations and either remediate or remove and dispose of such items or material as part of the contract price unless otherwise noted in the contract documents. Upon encountering any such items or material the Contractor shall immediately notify the Engineer.

(b) Unknown Contaminated or Hazardous Items and Material. If the Contractor encounters or exposes any items, material, or other conditions within the worksite not previously known or suspected to be contaminated or hazardous but which exhibits properties which may indicate the presence of such items or material, the Contractor shall immediately notify the Engineer. Claims by the Contractor for additional money or time arising from work involving such items, material, or other conditions, including the cost and time associated with notifying and providing written reports to government agencies listed below, shall be subject to the terms and conditions of Section 4.8 Differing Site Conditions.
(c) Contractor's Duty to Report. Whenever the Contractor encounters or exposes any hazardous or contaminated items, material, or conditions at the worksite, whether the existence of which was previously known, suspected, or unknown, the Contractor shall notify the State Department of Health/HEER office, the Federal Environmental Protection Agency, the U.S. Coast Guard, the National Response Center, and other appropriate government agencies, and comply with any directives or instructions provided by them.

(d) Material and Waste Brought to the Worksite. The Contractor shall assume sole responsibility for

(1) The management of all regulated materials and items brought to the worksite.

(2) The management of all waste generated by or incidental to the Contractor's operations, including, but not limited to, lubricants, antifreeze, engine fluids, paints, and solvents.

Management of such materials and items includes, but is not limited to, their transport, storage, handling, and disposal.

(e) Reimbursement of State Expenses. In addition to all other remedies provided by law or contract, the State may withhold from or recover from the Contractor any money it is required to expend to remediate, remove, or dispose of any such items and material, as well as the cost of any fines or impositions made by appropriate enforcement agencies arising from the management of such items and material, whether or not the Contractor exercised due care.
7.18 Right to Audit Records, Records Maintenance, Retention, and Access. Pursuant to Chapter 103D-317, H.R.S., the State, at reasonable times and places, may audit the books and records of a Contractor, prospective contractor, subcontractor, and prospective subcontractor relating to the Contractor's or subcontractor's cost or pricing data. Any such audits may be conducted by Federal and State employees or by consultants working on behalf of the State. The Contractor and subcontractor(s) shall maintain the books and records for a period of three years from the date of final payment under the contract.

The Contractor and its subcontractors shall, in accordance with generally acceptable accounting practices, maintain fiscal records and supporting documents and related files, papers, and reports that adequately reflect all direct and indirect expenditures and management and fiscal practices related to the Contractor and subcontractor's performance of work under this contract.

The representatives of the State (and Federal government representatives when federal funds are utilized) have the right to inspect and copy any book, document, paper, file, or other record that is related to the performance of the work of the Contractor and any subcontractor.

The Contractor shall provide full cooperation during any audit or inspection and shall insure that its subcontractors comply with this requirement. The Contractor shall bear all costs (including attorney's fees) of enforcement in the event of its or its subcontractor's failure or refusal to fully cooperate.

This right of inspection and audit shall not be limited to the required retention period but shall last as long as records are retained. The Contractor and subcontractor shall retain all records related to the Contractor and subcontractor's performance of work under this Agreement for three years from the date of final payment, except that if any litigation, claim, negotiation, investigation, audit, or other action involving the records has been started before
the expiration of the three year period, the Contractor and subcontractors shall
retain the records until final resolution of all issues that arise from it or until the
end of the three year retention period, whichever occurs later.

7.19 Conflicts of Interest. In all State or Federal-aid projects, no official or
employee of the State or any other governmental instrumentality who is
authorized in his official capacity to negotiate, make, accept, or approve or to
take part in negotiating, making, accepting, or approving any contract or
subcontract in connection with such project shall have, directly or indirectly, any
financial or other personal interest in any such contract or subcontract. No
engineer, attorney, appraiser, inspector, or other person performing services for
the State or any governmental instrumentality in connection with the project shall
have, directly or indirectly, a financial or other personal interest, other than his
employment or retention by the State or other governmental instrumentality, in
any contract or subcontract in connection with such project.

A violation of the provisions of this Section shall void the contract or
agreement in respect of which such violation occurs, and no claim for loss or
damage shall be made by the Contractor against the State or the Federal
government.

7.20 Sanitation Provisions. The Contractor shall provide sanitation
(lavatory) facilities at the work site sufficient to meet the needs of all workers and
other persons anticipated to be on the work site during the progress of
construction. Such facilities shall be maintained in a neat, sanitary condition at
all times.

END OF ARTICLE VII
ARTICLE VIII – PROSECUTION AND PROGRESS

8.1 Notice to Proceed (NTP). A notice to proceed will be issued to the Contractor. It shall establish the date the Contractor is expected to start work and from which contract time will commence.

The Engineer will consult with the Contractor in an effort to set a mutually agreeable notice to proceed date. When the notice to proceed date is set by mutual agreement, Contractor shall have no claim for delay impact costs resulting from the issuance of the notice to proceed for such date.

In the absence of an agreed notice to proceed date, the Engineer will issue a notice to proceed to the Contractor for a date convenient to the State. In the event that the Engineer establishes a starting date that is more than 90 days after the effective date of the contract, the Contractor may not terminate the contract for a default by the State but may submit a claim in accordance with Section 7.16 Disputes and Claims for increased labor and material costs which are directly attributable to the delay beyond the first 90 days. The Engineer may suspend the contract before issuing the notice to proceed, in which case the Contractor's remedies are exclusively those set forth in Section 8.10 Suspension of Work.

The Contractor shall begin work no later than 10 working days from the date in the notice to proceed and shall diligently prosecute the same to completion within the contract time. In the event that the Contractor fails to start the work, the Engineer may terminate the contract in accordance with Section 8.11 Termination of Contract for Cause. The Contractor shall notify the Engineer at least three working days before beginning work.

The Contractor shall notify the Engineer at least 24 hours before restarting work after a suspension of work pursuant to Section 8.10 Suspension of Work.
The Contractor shall not begin work before the date in the notice to proceed. Any work done prior to the notice to proceed date will be considered unauthorized work. If the Engineer does not direct that the unauthorized work be removed, it shall be paid for after the notice to proceed date and only if it is acceptable.

When construction is started, the Contractor shall work expeditiously and pursue the work diligently until it is complete. If a portion of the work is to be done in stages, the Contractor shall leave the area safe and usable for the user agency at the end of each stage.

8.2 Prosecution of Work. Unless otherwise permitted by the Engineer in writing, the Contractor shall not commence with physical construction unless sufficient materials and equipment are available for either continuous construction or completion of a specified portion of the work.

8.3 Preconstruction Data Submittal. The awardee shall submit to the Engineer, for information and review, the preconstruction data within 30 days after the execution of the contract. Until the items listed below are received and found acceptable by the Engineer, the Contractor shall not commence work unless otherwise authorized to do so in writing and subject to such conditions set by the Engineer. No progress payment will be made to the Contractor until the Engineer acknowledges, in writing, receipt of the following preconstruction data submittals acceptable to the Engineer:

(1) List of the Superintendent and other Supervisory Personnel.

(2) Name of person(s) authorized to sign for the Contractor.

(3) Work Schedule.
(4) Initial Progress Schedule (See Section 8.6 Progress Schedules).

(5) Water Pollution and Siltation Control Submittals.

(6) Solid Waste Disposal form.

(7) Tax Rates.

(8) Insurance Rates.

(9) Certificate of Insurance, satisfactory to the Engineer, indicating that the Contractor has in place all insurance coverage required by the contract documents.

(10) Schedule of Values.

(11) List of suppliers.

(12) Shop drawings and material data sheets.

(13) Other submittals as directed by the Engineer.

8.4 Character and Proficiency of Workers. The Contractor shall at all times provide adequate supervision and sufficient labor and equipment for prosecuting the work to full completion in the manner and within the time required by the contract. The superintendent and all other representatives of the Contractor shall act in a civil and honest manner in all dealings with the Engineer, all other State officials and representatives, and the public in connection with the work.
All workers shall possess the proper license, certification, job classification, skill, training, and experience necessary to properly perform the work assigned to them.

The Engineer may direct the removal of any worker(s) who does not carry out the assigned work in a proper and skillful manner or who is disrespectful, intemperate, violent, or disorderly. The worker shall be removed forthwith by the Contractor and will not work again without the written permission of the Engineer.

8.5 Contract Time.

(a) Calculation of Contract Time. When the contract time is on a working day basis, the total contract time allowed for the performance of the work will be the number of working days shown in the contract plus any additional working days authorized in writing as provided hereinafter. The count of elapsed working days to be charged against contract time, will begin from the date of notice to proceed and will continue consecutively to the date of substantial completion. When multiple shifts are used to perform the work, the State will not consider the hours worked over the normal eight working hours per day or night as an additional working day.

Whenever the Engineer provides the Contractor with a written statement of elapsed working days, the Contractor may file a written protest with the Engineer setting forth, in detail, the basis of the protest, not later then seven days after receiving the statement. Failure of the Contractor to file such a protest shall be deemed an acceptance by the Contractor of the correctness of the statement.

When the contract is on a calendar day basis, the total contract time allowed for the performance of the work will be the number of days shown in the contract plus any additional days authorized in writing as provided.
hereinafter. The count of elapsed days to be charged against contract time will begin from the date of notice to proceed and will continue consecutively to the date of substantial completion. The Engineer will exclude days elapsing between the orders of the Engineer to suspend work and resume work for suspensions not the fault of the Contractor.

(b) Modifications of Contract Time. Whenever the Contractor believes that an extension of contract time is justified, the Contractor shall serve written notice on the Engineer not more than five working days after the occurrence of the event that causes a delay or justifies a contract time extension. The Engineer may grant an extension of contract time for any discrete part of the work affected by the delay(s) while, at the same time, keeping the existing completion date in place or modifying it separately for the remainder of the work not affected by the delay. Contract time may be adjusted for the following reasons or events but only if and to the extent the critical path has been affected:

(1) Changes in the Work, Additional Work, and Delays Caused by the State. If the Contractor believes that an extension of time is justified on account of any act or omission by the State, and is not adequately provided for in a field order or change order, it must request the additional time as provided above. At the request of the Engineer, the Contractor must show how the critical path will be affected and must also support the time extension request with schedules as well as statements from its subcontractors, suppliers, or manufacturers, as necessary. Claims for compensation for any altered or additional work will be determined pursuant to Section 4.2 Changes.

Additional time to perform the extra work, to the extent such work affects the critical path, will be added to the time allowed in the contract for the completion of the project, or the Engineer may
limit the extension to only the portion of the project work affected by
the delay, without regard to the date the change directive was
issued, even if the contract completion date has passed. A change
requiring additional time issued after contract time has expired will
not constitute an excusal or waiver of pre-existing Contractor delay.

(2) Delay for Permits. For delays in the routine application
and processing time required to obtain necessary permits, including
permits to be obtained from State agencies, on the condition that
the delay is not caused by the Contractor and, provided that, as
soon as the delay occurs, the Contractor notifies the Engineer in
writing that the permits are not available. Time extensions will be
the exclusive relief granted and no additional compensation will be
paid the Contractor on account of such delays.

(3) Delays Beyond Contractor’s Control. For delays
caused by acts of God, a public enemy, fire, inclement weather
days or adverse conditions resulting therefrom, earthquakes,
floods, epidemics, quarantine restrictions, labor disputes impacting
the Contractor or the State, freight embargoes, and other reasons
beyond the Contractor’s control, the Contractor may be granted an
extension of time provided that:

(A) In the written notice of delay to the Engineer, the
Contractor describes possible effects on the completion date
of the contract. The description of delays shall:

(i) State specifically the reason or reasons for the
delay and fully explain in a detailed chronology how
the delay affects the critical path.
(ii) Include copies of pertinent documentation to support the time extension request.

(iii) Cite the anticipated period of delay and the time extension requested.

(iv) State either that the above circumstances have been cleared and normal working conditions restored as of a certain day or that the above circumstances will continue to prevent completion of the project.

(B) The Contractor shall notify the Engineer in writing when the delay ends. Time extensions will be the exclusive relief granted and no additional compensation will be paid the Contractor for such delays.

(4) Delays in Delivery of Materials or Equipment. For delays in delivery of materials or equipment, which occur as a result of unforeseeable causes beyond the control and without fault of the Contractor, its subcontractor(s), or supplier(s), time extensions shall be the exclusive relief granted and no additional compensation will be paid the Contractor on account of such delay. The delay shall not exceed the difference between the originally scheduled delivery date and the actual delivery date. The Contractor may be granted an extension of time provided that it complies with the following procedures:

(A) The Contractor’s written notice to the Engineer must describe the delays and state the effect such delays may have on the critical path.
(B) The Contractor, if requested, must submit to the Engineer, within five days after a firm delivery date for the material and equipment is established, a written statement regarding the delay. The Contractor must justify the delay as follows:

(i) State specifically all reasons for the delay. Explain in a detailed chronology the effect of the delay on the critical path.

(ii) Submit copies of purchase order(s), factory invoice(s), bill(s) of lading, shipping manifest(s), delivery tag(s), and any other documents to support the time extension request.

(iii) Cite the start and end date of the delay and the time extension requested.

(5) Delays for Suspension of Work. When the performance of the work is totally suspended for one or more days (calendar or working days, as appropriate) by order of the Engineer in accordance with Subsections 8.10(a)(1), 8.10(a)(2), 8.10(a)(3) or 8.10(a)(5), the number of days from the effective date of the Engineer’s order to suspend operations to the effective date of the Engineer’s order to resume operations shall not be counted as contract time, and the contract completion date will be adjusted. During periods of partial suspensions of the work, the Contractor will be granted a time extension only if the partial suspension affects the critical path. If the Contractor believes that an extension of time is justified for a partial suspension of work, it must request the extension in writing at least five working days before the partial suspension will affect the critical path operation(s) in progress. The
Contractor must show how the critical path was affected based on the status of the work and must also support its claim, if requested, with statements from its subcontractors. A suspension of work will not constitute a waiver of pre-existing Contractor delay.

(6) Contractor Caused Delays. No time extension will be granted under the following circumstances:

(A) Delays within the Contractor’s control in performing the work caused by the Contractor, subcontractor, supplier, or any combination thereof.

(B) Delays within the Contractor’s control in arrival of materials and equipment caused by the Contractor, subcontractor, supplier, or any combination thereof, in ordering, fabricating, and delivery.

(C) Delays requested for changes which do not affect the critical path.

(D) Delays caused by the failure of the Contractor to make submittals in a timely manner for review and acceptance by the Engineer, such as, but not limited to, shop drawings, descriptive sheets, material samples, and color samples except as covered in Subsection 8.5(b)(3) and 8.5(b)(4).

(E) Delays caused by the failure to submit sufficient information and data in a timely manner in the proper form in order to obtain necessary permits related to the work.
(F) Failure to follow the procedure within the time allowed by contract to request a time extension.

(G) Failure of the Contractor to provide evidence sufficient to support the time extension request.

(7) Reduction in Time. If the State deletes or modifies any portion of the work, an appropriate reduction of contract time may be made in accordance with Section 4.2 Changes.

8.6 Progress Schedules.

(a) Forms of Schedule. All schedules shall be submitted using the specific computer program designated in the bid documents or as directed by the Engineer.

Schedule submittals shall be as follows:

(1) For Contracts $2,000,000 or Less or For Contract Time 100 Working Days or 140 Calendar Days or less. For contracts of $2,000,000 or less or for contract time of 100 working days or 140 calendar days or less, the progress schedule will be a Time Scaled Logic Diagram (TSLD). The Contractor shall submit a TSLD submittal package and it shall meet the following requirements and have these essential and distinctive elements:

(A) The major features of work shown in the chronological order in which the Contractor proposes to work that feature of work and its location on the project. The schedule shall account for normal inclement weather, unusual soil, or other conditions that may influence the progress of the work, schedules, and coordination required by any utility, off or on
site fabrications, and other pertinent factors that relate to progress.

(B) All features listed or not listed in the contract documents that the Contractor considers a controlling factor for the timely completion of the contract work.

(C) The time span and sequence of the activities or events for each feature, and its interrelationship and interdependencies in time and logic to other features in order to complete the project.

(D) The total anticipated time necessary to complete work required by the contract.

(E) Identification of the critical path i.e. a chronological listing of critical intermediate dates or time periods for features or milestones or phases that can affect timely completion of the project.

(F) Major activities related to the location on the project.

(G) Non-construction activities, such as submittal and acceptance periods for shop drawings and material, procurement, testing, fabrication, mobilization, and demobilization or order dates of long lead material.

(H) Set schedule logic for out of sequence activities to retain logic. In addition, open ends shall be non-critical.

(I) Show target bars for all activities.
(J) Vertical and horizontal sight lines both major and minor shall be used as well as a separator line between groups. The Engineer will determine frequency and style.

(K) The file name, print date, revision number, data, and project title and number shall be included in the title block.

(L) Have columns with the appropriate data in them for activity ID, description, original duration, remaining duration, early start, early finish, total float, percent complete, and resources. The resource column shall list who is responsible for the work to be done in the activity. These columns shall be to the left of the bar chart.

(2) For Contracts More Than $2,000,000 or For Contract Time of More Than 100 Working Days or 140 Calendar Days.

For contracts which have a contract amount more than $2,000,000 or contract time of more than 100 working days or 140 calendar days, the Contractor shall submit a Timed-Scaled Logic Diagram (TSLD) and it shall meet the following requirements and have these essential and distinctive elements:

(A) The information and requirements listed in (1) above.

(B) Additional reports and graphics available from the software as requested by the Engineer.

(C) Sufficient detail to allow at least weekly monitoring of the Contractor and subcontractor's operations.

(D) The time scaled schematic shall be on a calendar or working days basis. What will be used shall be determined
by how the contract keeps track of time. It will be the same. Plot the critical calendar dates anticipated.

(E) Breakdown of activity, such as forming, placing reinforcing steel, concrete pouring and curing, and stripping in concrete construction. Indicate location of work to be done in such detail that it would be easily determined where work would be occurring within approximately 200 feet.

(F) Latest start and finish dates for critical path activities.

(G) Identify responsible subcontractor, supplier, and others for their respective activity.

(H) No individual activity shall have duration of more than 20 calendar days unless requested and approved by the Engineer.

(I) All activities shall have work breakdown structure codes and activity codes. The activity codes shall have coding that incorporates information for phase, location, who is responsible for doing work, type of operation, and activity description.

(J) Incorporate all physical access and availability restraints.

(b) Inspection and Testing. All schedules shall provide reasonable time and opportunity for the Engineer to inspect and test each work activity.
(c) **Engineer's Acceptance of Progress Schedule.** The submittal of and the Engineer’s receipt of any progress schedule shall not be deemed an agreement to modify any terms or conditions of the contract. Any modifications to the contract terms and conditions that appear in or may be inferred from an acceptable schedule will not be valid or enforceable unless and until the Engineer exercises discretion to issue an appropriate change order. Nor shall any submittal or receipt imply the Engineer’s approval of the schedule’s breakdown, its individual elements, or any critical path that may be shown; nor shall it obligate the State to make its personnel available outside normal working hours or the working hours established by the Contract in order to accommodate such schedule. The Contractor has the risk of all elements (whether or not shown) of the schedule and its execution. No claim for additional compensation, time, or both, shall be made by the Contractor or recognized by the Engineer for delays during any period for which an acceptable progress schedule or an updated progress schedule, as required by Subsection 8.6(e) Contractor’s Continuing Schedule Submittal Requirements, had not been submitted. Any acceptance or approval of the schedule shall be for general format only and shall not be deemed an agreement by the State that the construction means, methods, and resources shown on the schedule will result in work that conforms to the contract requirements or that the sequences or durations indicated are feasible.

(d) **Initial Progress Schedule.** The Contractor shall submit an initial progress schedule. The initial progress schedule shall consist of the following:

(1) Four sets of the TSLD schedule.

(2) All the software files and data to re-create the TSLD in a computerized software format as specified by the Engineer.
(3) A listing of equipment that is anticipated to be used on the project, including the type, size, make, year of manufacture, and all information necessary to identify the equipment in the Rental Rate Blue Book for Construction Equipment.

(4) An anticipated manpower requirement graph plotting contract time and total manpower requirement. This may be superimposed over the payment graph.

(5) A Method Statement that is a detailed narrative describing the work to be done and the method by which the work shall be accomplished for each major activity.

(A) A major activity is an activity that meets any of the following criteria:

(i) Has a duration longer than five days;

(ii) Is a milestone activity;

(iii) Is a contract item that exceeds $10,000 on the Proposal Schedule;

(iv) Is a critical path activity; or

(v) Is an activity designated as such by the Engineer.

(B) Each Method Statement shall include the following items needed to fulfill the schedule:
(i) Quantity, type, make, and model of equipment;

(ii) The manpower to do the work, specifying worker classification; and

(iii) The production rate per eight hour day, or the working hours established by the contract documents needed to meet the time indicated on the schedule. If the production rate is not for eight hours, the number of working hours shall be indicated.

(6) Two sets of color time-scaled project evaluation and review technique charts (“PERT”) using the activity box template of Logic – Early Start or such other template designated by the Engineer.

If the contract documents establish a sequence or order for the work, the initial progress schedule shall conform to such sequence or order.

(e) Contractor’s Continuing Schedule Submittal Requirements.

After the acceptance of the initial TSLD and when construction starts, the Contractor shall submit four plotted progress schedules, two PERT charts, and reports on all construction activities every two weeks (bi-weekly). This scheduled bi-weekly submittal shall also include an updated version of the project schedule in a computerized software format as specified by the Engineer. The submittal shall have all the information needed to recreate that time period’s TSLD plot and reports. The bi-weekly submittal shall include, but is not limited to, an update of activities based on actual durations, all new activities, and any changes in duration or start or finish dates of any activity.
The Contractor shall submit with every update, in report form acceptable to the Engineer, a list of changes to the progress schedule since the previous schedule submittal. The Engineer may change the frequency of the submittal requirements but may not require a submittal of the schedule to be more than once a week. The Engineer may decrease the frequency of the submittal of the bi-weekly schedule.

The Contractor shall submit updates of the anticipated work completion graph, equipment listing, manpower requirement graph, or method statement when requested by the Engineer. The Contractor shall submit such updates within 4 calendar days from the date of the request by the Engineer.

The Engineer may withhold progress payments until the Contractor is in compliance with all schedule update requirements.

(f) Float. All float appearing on a schedule is a shared commodity. Float does not belong to or exist for the exclusive use or benefit of either the State or the Contractor. The State or the Contractor has the opportunity to use available float until it is depleted. Float has no monetary value.

(g) Scheduled Meetings. The Contractor shall meet with the Engineer to review the progress schedule on a periodic basis as determined by the Engineer. The Contractor shall have someone attending the meeting that can answer all questions on the TSLD and other schedule related submittals.

(h) Accelerated Schedule; Early Completion. If the Contractor submits an accelerated schedule (shorter than the contract time), the Engineer’s review and acceptance of an accelerated schedule does not constitute an agreement or obligation by the State to modify the contract

8-17
The Contractor is solely responsible for and shall accept all risks and any delays, other than those that can be directly and solely attributable to the State, that may occur during the work until the contract completion date. The contract time or completion date is established for the benefit of the State and cannot be changed without an appropriate change order or final acceptance by the State. The State may accept the work before the completion date set by the contract but is not obligated to do so.

If the TSLD indicates an early completion of the project, the Contractor shall, upon submittal of the schedule, cooperate with the Engineer in explaining how it will be achieved. In addition, the Contractor shall submit the above explanation in writing which shall include the State’s part, if any, in achieving the early completion date. Early completion of the project shall not rely on changes to the Contract Documents unless approved by the Engineer.

(i) Contractor Responsibilities. The Contractor shall promptly respond to any inquiries from the Engineer regarding any schedule submission. The Contractor shall adjust the schedule to address directives from the Engineer and shall resubmit the TSLD package to the Engineer until the Engineer finds it acceptable.

The Contractor shall perform the work in accordance with the submitted TSLD. The Engineer may require the Contractor to provide additional work forces and equipment to bring the progress of the work into conformance with the TSLD at no increase in contract price or contract time whenever the Engineer determines that the progress of the work does not insure completion within the specified contract time.

8.7 Weekly Meeting. In addition to the bi-weekly schedule meetings, the Contractor shall be available to meet once a week with the Engineer, at the time
and place as determined by the Engineer, to discuss the work and its progress including, but not limited to, the progress of the project, potential problems, coordination of work, submittals, erosion control reports, etc. The Contractor's personnel attending shall have the authority to make decisions and answer questions.

The Contractor shall bring to weekly meetings a detailed work schedule showing the next three weeks' work. The number of copies of the detailed work schedule to be submitted will be determined by the Engineer. The three-week schedule is in addition to the TSLD and shall in no way be considered as a substitute for the TSLD or vice versa. The three-week schedule shall show:

(a) All construction events, traffic control, and BMP related activities in such detail that the Engineer will be able to determine at what location and type of work will be done for any day for the next three weeks. This is for the State to use to plan its manpower requirements for that time period.

(b) The duration of all events and delays.

(c) The critical path clearly marked in red or marked in a manner that makes it clearly distinguishable from other paths and is acceptable to the Engineer.

(d) Critical submittals and requests for information (RFI's).

(e) The project title, project number, date created, period the schedule covers, Contractor’s name, and creator of the schedule on each page.

Two days prior to each weekly meeting, the Contractor shall submit a list of outstanding submittals, RFIs, and issues that require discussion.
8.8 Liquidated Damages for Failure to Complete the Work or Portions of the Work on Time. The actual amount of damages resulting from the Contractor’s failure to complete the contract in a timely manner is difficult to accurately determine. Therefore, the amount of such damages shall be liquidated damages as set forth herein and in the Special Provisions, Invitation for Bid, or Request for Proposal. The State may, at its discretion, deduct the amount from monies due or that may become due under the contract.

When the Contractor fails to reach substantial completion of the work for which liquidated damages are specified, within the time or times fixed in the contract or any extension thereof, in addition to all other remedies for breach that may be available to the State, the Contractor shall pay liquidated damages to the State, in the amount specified in the contract documents.

If a contract time extension is granted for part but not all of the project, the Engineer may make a reasonable apportionment of the liquidated damages amount among the different completion dates.

(a) Liquidated Damages Upon Termination. If the State terminates on account of Contractor’s default, liquidated damages may be charged against the defaulting Contractor and its surety until substantial completion of work.

(b) Liquidated Damages for Failure to Complete the Punchlist. The Contractor shall complete the work on any punchlist created after substantial completion within the contract time or any extension thereof.

When the Contractor fails to complete the work on such punchlist within the contract time or any extension thereof, the Contractor shall pay liquidated damages to the State of 20 percent of the amount of liquidated damages established for failure to substantially complete the work within
the contract time. Liquidated damages shall not be assessed for the period between:

(1) Substantial completion of the work and the time the punchlist is delivered to the Contractor,

(2) The date of the completion of punchlist as determined by the Engineer and the date of the successful final inspection, and

(3) The date of the inspection that results in final acceptance and the receipt by the Contractor of the written notice of the final acceptance.

(c) Actual Damages Recoverable If Liquidated Damages Deemed Unenforceable. In the event a court of competent jurisdiction holds that any liquidated damages assessed pursuant to this contract are unenforceable, the State will be entitled to recover its actual damages for Contractor's failure to complete the work or any designated portion of the work within the time set by the contract.

8.9 Fines and Other Penalties. In addition to any compensatory remedies available to the State arising out of the Contractor's failure to complete the work by the contract completion date including, but not limited to, liquidated damages, the Contractor shall reimburse the State for any fines, penalties, citations, or fees levied by a third party against the State arising from the late completion of the work.

8.10 Suspension of Work.

(a) Suspension of Work. The Engineer may, by written order, suspend the performance of the work, either in whole or in part, for such periods as the Engineer may deem necessary. Unless instructed
otherwise by the Engineer, the Contractor shall be responsible for the
maintenance and protection of the work during the period of suspension.
Suspension may be ordered for any cause, including, but not limited to:

(1) Unanticipated weather or soil conditions considered
unsuitable for prosecution of the work.

(2) Whenever a redesign that may affect the work is deemed
necessary by the Engineer.

(3) Unacceptable noise or dust arising from the construction,
even if it does not violate any law, regulation, or permit.

(4) Failure on the part of the Contractor to:

(A) Correct conditions unsafe for the general public or for
the workers.

(B) Carry out orders given by the Engineer.

(C) Perform the work in strict compliance with the
provisions of the contract.

(D) Provide adequate supervision on the jobsite.

(5) The convenience of the State.

(b) Partial and Total Suspension. Suspension of work on some but
not all items of work shall be considered a “partial suspension”.
Suspension of work on all items shall be considered “total suspension”.
The period of suspension shall be computed from the date set out in the
written order for work to cease until the date of the order for work to resume.

(c) Reimbursement to Contractor. In the event that the Contractor is ordered by the Engineer, in writing as provided herein, to suspend work under the contract for the reasons specified in Subsections 8.10(a)(1), 8.10(a)(2), 8.10(a)(3) or 8.10(a)(5) of the “Suspension of Work” paragraph, the Contractor may be reimbursed for actual direct costs incurred on work at the jobsite, as authorized in writing by the Engineer, including costs expended for the maintenance and protection of the work. An allowance of 5 percent for indirect categories of delay costs will be paid on any reimbursed direct costs, including extended branch and home-office overhead and delay impact costs. No allowance will be made for anticipated profits. Payment for equipment which is ordered to standby during such suspension of work shall be made as described in Subsection 9.6(h) Idle and Standby Equipment.

(d) Cost Adjustment. If the performance of all or part of the work is suspended for reasons beyond the control of the Contractor, an adjustment shall be made for any increase in cost of performance of this contract (excluding profit) necessarily caused by such suspension, and the contract modified in writing accordingly.

However, no adjustment to the contract price shall be made for any suspension, delay, or interruption:

(1) For weather related conditions;

(2) To the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or
(3) For which an adjustment is provided for or excluded under any other provision of this Contract.

(e) Claims for Adjustment. Any adjustment in contract price made shall be determined in accordance with Sections 4.2 Changes and 4.6 Methods of Price Adjustment.

Any claims for such compensation shall be filed in writing with the Engineer within 30 days after the date of the order to resume work or the claim will not be considered. The claim shall conform to the requirements of Subsection 7.16(d) Making of a Claim. The Engineer will take the claim under consideration, may make such investigations as are deemed necessary, and will be the sole judge as to the equitability of the claim. The Engineer’s decision will be final.

(f) No Adjustment. No provision of this clause shall entitle the Contractor to any adjustments for delays due to failure of its surety, the cancellation or expiration of any insurance coverage required by the contract documents, for suspensions made at the request of the Contractor, for any delay required under the contract, or for suspensions, either partial or whole, made by the Engineer under Subsection 8.10(a)(4) of the “Suspension of Work” paragraph.

8.11 Termination of Contract for Cause.

(a) Default. If the Contractor refuses or fails to perform the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this contract, or any extension thereof, or commits any other material breach of this contract, and further fails within seven days after receipt of written notice from the Engineer to commence and continue correction of the refusal or failure with diligence and promptness, the Engineer may, by written notice to the Contractor,
declare the Contractor in breach and terminate the Contractor’s right to proceed with the work or the part of the work as to which there has been delay or other breach of contract. In such event, the State may take over the work, perform the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, the materials, appliances, and plants as may be on the site of the work and necessary therefore. Whether or not the Contractor’s right to proceed with the work is terminated, the Contractor and the Contractor’s sureties shall be liable for any damage to the State resulting from the Contractor’s refusal or failure to complete the work within the specified time.

(b) Additional Rights and Remedies. The rights and remedies of the State provided in this contract are in addition to any other rights and remedies provided by law.

(c) Costs and Charges. All costs and charges incurred by the State, together with the cost of completing the work under contract, will be deducted from any monies due or which would or might have become due to the Contractor had it been allowed to complete the work under the contract. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay the State the amount of the excess.

In case of termination, the Engineer will limit any payment to the Contractor to the part of the contract satisfactorily completed at the time of termination. Payment will not be made until the work has satisfactorily been completed and all required documents, including the tax clearance required by Section 9.11 Final Payment, are submitted by the Contractor. Termination shall not relieve the Contractor or Surety from liability for liquidated damages.
(d) **Erroneous Termination for Cause.** If, after notice of termination of the Contractor’s right to proceed under this section, it is determined for any reason that good cause did not exist to allow the State to terminate as provided herein, the rights and obligations of the parties shall be the same as and the relief afforded the Contractor shall be limited to the provisions contained in Section 8.12 Termination for Convenience.

8.12 **Termination For Convenience.**

(a) **Terminations.** The Director may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Director will 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 date set in the notice of termination, the Contractor shall 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 State’s approval. The Engineer 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 work not terminated by the notice of termination and may incur obligations as necessary to do so.

(c) **Right to Construction and Goods.** The Engineer may require the Contractor to transfer title and to deliver to the State in the manner and to the extent directed by the Engineer, the following:
Any completed work.

Any partially completed construction, goods, materials, parts, tools, dies, jigs, fixtures, drawings, information, and contract rights (hereinafter called "construction material") that the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

The Contractor shall protect and preserve all property in the possession of the Contractor in which the State has an interest. If the Engineer does not elect to retain any such property, the Contractor shall use its best efforts to sell such property and construction materials for the State’s account in accordance with the standards of Chapter 490:2-706, H.R.S.

(d) Compensation.

The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by Subchapter 15, Chapter 3-122, H.A.R. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Engineer may pay the Contractor, if at all, an amount set in accordance with Subsection 8.12(d)(3).

The Engineer 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 construction, supplies, and construction materials
under Subsection 8.12(c)(3); and the proportionate contract price of the work not terminated.

(3) Absent complete agreement, the Engineer will pay the Contractor the following amounts less any payments previously made under the contract:

(A) The cost of all contract work performed prior to the effective date of the notice of termination plus a 5 percent markup on the actual direct costs, including amounts paid to subcontractor, less amounts paid or to be paid for completed portions of such work. However, 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. No anticipated profit or consequential damage will be due or paid.

(B) Subcontractors shall be paid a markup of 10 percent on their direct job costs incurred to the date of termination. No anticipated profit or consequential damage will be due or paid to any subcontractor. These costs must not include payments made to the Contractor for subcontract work during the contract period.

(C) The total sum to be paid the Contractor shall not exceed the total contract price reduced by the amount of any sales of construction supplies and construction materials.

(4) Cost claimed, agreed to, or established by the State shall be in accordance with Chapter 3-123, H.A.R.
8.13 Pre-Final and Final Inspections.

The procedures described herein shall apply for the entire project if there is a single completion date or to each part of the project for which there is a separate completion date. When there are two or more separate completion dates, “project” as used herein shall refer to each part of the work for which there is a separate completion date. Inspection and acceptance procedures shall be applied as described herein for each part of the project for which there is a separate completion date.

(a) Inspection Requirements. Before the Engineer undertakes a final inspection of any work, a pre-final inspection must first be conducted. The Contractor shall notify the Engineer that the work has reached substantial completion and is ready for pre-final inspection.

(b) Pre-Final Inspection. Before notifying the Engineer that the work has reached substantial completion, the Contractor shall inspect the project and test all installed items with all of its subcontractors as appropriate. The Contractor shall also submit the following documents as applicable to the work:

(1) All written guarantees required by the contract.

(2) Complete weekly certified payroll records for the Contractor and Subcontractors.

(3) Certificate of Plumbing and Electrical Inspection.

(4) Certificate of Building Occupancy.

(5) Certificate of Soil and Wood Treatments.
(6) Certificate of Water System Chlorination.

(7) Certificate of Elevator Inspection and Boiler and Pressure Pipe Inspection.

(8) Maintenance Service Contract and two copies of a list of all equipment installed.

(9) Any other final items and submittals required by the contract documents.

(c) Procedure. When in compliance with the above requirements, the Contractor shall notify the Engineer in writing that the project has reached substantial completion and is ready for pre-final inspection.

The Engineer will then make a preliminary determination as to whether or not the project is substantially complete and ready for pre-final inspection. The Engineer may, in writing, postpone until after the pre-final inspection the Contractor's submittal of any of the items listed in Subsection 8.13(b) Pre-Final Inspection, herein, if in the Engineer's discretion it is in the interest of the State to do so.

If, in the opinion of the Engineer, the project is not substantially complete, the Engineer will provide the Contractor a punchlist of specific deficiencies in writing which must be corrected or finished before the work will be ready for a pre-final inspection. The Engineer may add to or otherwise modify this punchlist from time to time. The Contractor shall take immediate action to correct the deficiencies and must repeat all steps described above, including written notification that the work is ready for pre-final inspection.
After the Engineer is satisfied that the project appears substantially complete, a final inspection shall be scheduled within ten working days after receipt of the Contractor’s latest letter of notification that the project is ready for final inspection.

If, as a result of the pre-final inspection, the Engineer determines the work is not substantially complete, the Engineer will inform the Contractor in writing as to specific deficiencies which must be corrected before the work will be ready for another pre-final inspection. If the Engineer finds the work is substantially complete but finds deficiencies that must be corrected before the work is ready for final inspection, the Engineer will prepare, in writing, and deliver to the Contractor a punchlist describing such deficiencies.

At any time before final acceptance, the Engineer may revoke the determination of substantial completion if the Engineer finds that it was not warranted and will notify the Contractor in writing the reasons therefore together with a description of the deficiencies negating the declaration.

When the date of substantial completion has been determined by the State, liquidated damages for the failure to complete the punchlist, if due to the State, will be assessed pursuant to Subsection 8.8(b) Liquidated Damages for Failure to Complete the Punchlist.

(d) Punchlist; Clean Up and Final Inspection. Upon receiving a punchlist after substantial completion, the Contractor shall promptly devote all required time, labor, equipment, materials, and incidentals to correct and remedy all punchlist deficiencies. The Engineer may add to or otherwise modify this punchlist until final acceptance of the project.

Before final inspection of the work, the Contractor shall clean all ground, occupied by the Contractor in connection with the work, of all
rubbish, excess materials, temporary structures, and equipment; shall remove all graffiti and defacement of the work; and shall restore all property and facilities that may have been damaged or affected during the course of the work to the original condition, unless otherwise directed by the Engineer. The worksite shall be left in a neat and presentable condition to the satisfaction of the Engineer.

Final inspection will occur within ten working days after the Contractor notifies the Engineer in writing that all punchlist deficiencies remaining after the pre-final inspection have been completed and the Engineer concurs. If the Engineer determines that deficiencies still remain at the final inspection, the work will not be accepted, and the Engineer will notify the Contractor, in writing, of the deficiencies which shall be corrected and the steps above repeated.

If the Contractor fails to correct the deficiencies and complete the work by the established or agreed date, the State may correct the deficiencies by whatever method it deems appropriate and deduct the cost from any payments due the Contractor.

8.14 Final Acceptance.

The procedures described herein shall apply for the entire project if there is a single completion date or to each part of the project for which there is a separate completion date. When there are two or more separate completion dates, “project” as used herein shall refer to each part of the work for which there is a separate completion date. Inspection and acceptance procedures shall be applied as described herein for each part of the project for which there is a separate completion date.

When the Engineer finds that the project has been satisfactorily completed in compliance with the contract, the Engineer will notify the Contractor in writing
of the project’s completion and acceptance. The final acceptance date shall determine end of contract time, liquidated damages for failure to complete the punchlist, and commencement of all guaranty periods subject to Section 8.16 Contractor’s Responsibility for Work; Risk of Loss or Damage.

8.15 Use of Structure or Improvement. The State has the right to use the structure, equipment, improvement, or any part thereof, at any time after it is considered by the Engineer as available, whether or not substantial completion has been reached. In the event that the structure, equipment, or any part thereof is used by the State before final acceptance, the Contractor is not relieved of its responsibility to protect and preserve all the work until final acceptance.

8.16 Contractor’s Responsibility for Work; Risk of Loss or Damage. Until the written notice of final acceptance has been received, the Contractor shall take every precaution against loss or damage to any part of the work from any cause whatsoever, whether arising from the performance or from the non-performance of the work. The Contractor shall rebuild, repair, restore, and make good all loss or damage to any portion of the work resulting from any cause before its receipt of the written notice of final acceptance and shall bear the risk and expense thereof.

The risk of loss or damage to the work from any hazard or occurrence that may or may not be covered by a builder’s risk policy is that of the Contractor and Surety, unless such risk of loss is placed elsewhere by express language in the contract documents.

8.17 Guarantee of Work.

(1) Regardless of, and in addition to, any manufacturers’ warranties, all work and equipment shall be guaranteed by the Contractor against defects in materials, equipment, or workmanship for one year from the
date of final acceptance or as otherwise specified in the contract
documents.

(2) When the Engineer determines that repairs or replacements of any
guaranteed work and equipment is necessary due to materials,
equipment, or workmanship which are inferior, defective, or not in
accordance with the terms of the contract, the Contractor shall, at no
increase in contract price or contract time, and within five working days of
receipt of written notice from the State, commence to do all of the
following:

(A) Correct all noted defects and make replacements, as
directed by the Engineer, in the equipment and work.

(B) Repair or replace to new or pre-existing condition any
damages resulting from such defective materials and equipment or
installation thereof.

(3) The State will be entitled to the benefit of all manufacturers’ and
installers’ warranties that extend beyond the terms of the Contractor’s
guaranty regardless of whether or not such extended warranty is required
by the contract documents. The Contractor shall prepare and submit all
documents required by the providers of such warranties to make them
effective and submit copies of such documents to the Engineer. If an
available extended warranty cannot be transferred or assigned to the
State as the ultimate user, the Contractor shall notify the Engineer who
may direct that the warranted items be acquired in the name of the State
as purchaser.

(4) If a defect is discovered during a guarantee period, all repairs and
corrections to the defective items when corrected shall be guaranteed for
a new duration equal to the original full guarantee period. The running of
the guarantee period shall be suspended for all other work affected by any defect. The guarantee period for all other work affected by any such defect shall restart for its remaining duration upon confirmation by the Engineer that the deficiencies have been repaired or remedied.

(5) Nothing in this section is intended to limit or affect the State’s rights and remedies arising from the discovery of latent defects in the work after the expiration of any guarantee period.

8.18 No Waiver of Contract Obligations. None of the provisions of this contract shall be considered waived by the State unless such waiver is given in writing by the State. No such waiver shall be a waiver of any past or future default, breach or modification of any of the terms, provisions, conditions, or covenants of the contract unless expressly stipulated in such waiver.

The following will not operate or be considered as a waiver of any portion of the contract, or any power herein reserved, or any right to damages provided herein or by law:

(1) Any payment for, or acceptance of, the whole or any part of the work.

(2) Any extension of time.

(3) Any possession taken by the Engineer.

A waiver of any notice requirement or of any noncompliance with the contract will not be held to be a waiver of any other notice requirement or any other noncompliance with the contract.

8.19 Final Settlement of Contract.
(a) **Closing Requirements.** The contract will be considered settled after the project acceptance date or, after the last acceptance date if there is more than one acceptance date for different portions of the project, and when the following items have been satisfactorily submitted, where applicable:

1. Two accepted final as-built drawings as specified in Subsection 5.8(a) Drawings and Special Provisions.
2. All written guarantees required by the contract.
3. Complete and certified weekly payrolls for the Contractor and its subcontractors.
7. Certificate of water system chlorination.
8. Certificate of elevator inspection and boiler and pressure pipe installation.
9. Certificates of Compliance for employment of State of Hawaii residents by Contractor and applicable subcontractors per Section 7.2 Employment of State of Hawaii Residents.
10. Tax clearance.
11. All other documents required by the Contract or by law.
(b) Failure to Meet Closing Requirements. The Contractor shall meet the applicable closing requirements within 60 days from the date of Project Acceptance or the agreed to Punchlist complete date. Should the Contractor fail to comply with these requirements, the Engineer may terminate the contract for cause.

END OF ARTICLE VIII
ARTICLE IX - MEASUREMENT AND PAYMENT

9.1 Schedule of Values. After the award of contract, the Contractor shall submit a schedule of prices (Schedule of Values) for each of the various items of work paid for by a lump sum price. For projects involving more than a single building, structure, or facility, the breakdown cost shall reflect a separate schedule of prices for the various items of work for each building, structure, and facility. The sum of the prices submitted for the various items must equal the lump sum bid in the bidder’s proposal. This schedule of values will be subject to acceptance by the Engineer who may require the bidder to submit another or several other schedules if, in the Engineer’s opinion, the prices are unbalanced or not sufficiently detailed. The Engineer is not bound by any cost proposal schedule in the bid documents in determining if the schedule of values is sufficiently detailed or balanced; the accepted schedule of values shall supersede any bid proposal schedule. This schedule of values (1) shall be used for the purpose of determining the value of monthly payments due the Contractor for work installed complete in place and (2) may be used as the basis for determining cost and credit of added or deleted items of work, respectively.

As a condition of payment, the Contractor shall estimate, at the close of each month, the percentage of work completed under each of the various construction items during such month and submit the estimate to the Engineer for review and approval. The Contractor shall be paid the percentage of the price, as approved by the Engineer, established for each item less any permissible retention.

9.2 Payment is not Acceptance. No payment made to the Contractor prior to final acceptance is an acceptance by the State of the work or the portion of the work related to the payment; nor does a progress payment affect the State’s rights to inspect, test, or reject the work. A progress payment does not relieve the Contractor of the risk of loss or damage to the work for which payment is made. The Contractor still maintains the responsibility and duty with respect to
the work for which payment is made, to protect against loss or damage, to insure
the work, to insure and indemnify the State against claims, to maintain the
required surety bonds, and to protect the work and the public.

9.3 Measurement of Quantities.

(a) Measurements; Disputes. The work will be measured in accordance with United States standard measure or as otherwise stated in this contract. Final measurement shall be verified or determined by the Engineer. If the Contractor has a dispute about the measurement of the work, the Contractor must demonstrate the existence of an error by actual physical measurement before the work has progressed in a manner that would make a proper verification of the contested measurements impractical. If the Contractor’s claim cannot be physically verified, the Engineer’s measurements will be deemed as correct.

(b) Methodology. Longitudinal measurements for area computations of the various surfaces will be made in the horizontal projection of the actual surface. Transverse measurements for area computations will be the neat dimensions shown in the contract documents or the horizontal projection of the actual surface or as ordered in writing by the Engineer. No deductions in measurement for unit price payment purposes will be made for fixtures or structures in place having a combined area of nine square feet or less.

Work will be measured to the pay limits shown in the contract documents.

Measurement of items that are measured by the linear foot will be made parallel to the base or foundation.

Every vehicle hauling material specified for measurement and payment by “loose measurement” or “measurement by vehicle” shall be
made available to the Engineer for verification of its load volume or capacity. A vehicle’s full load shall be its water level capacity. The Engineer may direct that any load in a vehicle be leveled for purposes of measurement or payment.

The Contractor shall notify the Engineer 24 hours before hauling material payment for which is based upon weight. Unless otherwise directed by the Engineer, the truck used to haul material paid by weight shall be weighed with no load on a properly certified scale before each load is added.

The following items will not be paid for and such quantities will be deducted from the final total measured quantities:

(1) Quantities of material wasted or disposed of in a manner not called for under the contract;

(2) Rejected material, including material rejected after it has been placed by reason of the failure to conform to the provisions of the contract;

(3) Material not unloaded from the transporting vehicle;

(4) Material placed outside of the lines indicated on the plans or given by the Engineer; or

(5) Material remaining on hand after completion of the work.

No compensation will be allowed for hauling any above-described material to or from the site.
(c) Standards and Definitions. When identifying standard manufactured items by gage, unit weight, or section dimensions, such identification will be nominal weights or dimensions. Standard manufactured items shall be such items as fence, wire, plates, rolled shapes, and pipe conduit. Unless specific allowable tolerances are set by the contract documents, tolerances generally accepted or established by the industries involved in the manufacture of the product are acceptable.

A station, when used as a definition or term of measurement, is 100 linear feet.

The term "gage" refers to the U. S. steel wire gage or U.S standard gage for uncoated hot and cold rolled sheets.

The term "ton" will mean the short ton of 2,000 pounds avoirdupois weight. The Contractor shall weigh materials measured or proportioned by weight on properly certified scales.

9.4 Full Compensation; Changes. The contract price is full compensation for the work.

Change order work as described in Section 4.5 Contract Change Orders, shall be paid for in the manner established by the related change order.

The total price adjustment as specified in the field order or the change order shall be considered full compensation for all materials, labor, insurance, bonds, fees, taxes, equipment use or rental, profit and all overhead, and any delay impact costs.

9.5 Allowances for Overhead and Profit. In determining the cost or credit to the State resulting from a change, the allowances for all overhead, including extended overhead resulting from adjustments to contract time (including home
office, branch office, and field overhead and related delay impact costs) and profit combined, shall not exceed the percentages set forth below:

(1) 20 percent of the direct cost for any work performed by the Contractor’s own labor force.

(2) 20 percent of the direct cost for any work performed by each subcontractor’s own labor force.

(3) For the Contractor or any subcontractor for work performed by their respective subcontractor or tier subcontractor, 10 percent of the amount due to the performing subcontractor or tier subcontractor.

(a) Allowance Percentages. The allowance percentages will be applied to all credits and to the net increase of direct costs where work is added and deleted by the changes.

(b) Allowed Markup. Not more than three markup allowance line item additions not exceeding the maximum percentage noted in Subsections 9.5(1), 9.5(2), and 9.5(3) are allowed for profit and overhead, regardless of the number of tier subcontractors.

9.6 Force Account Provisions and Compensation. The contract documents may provide that certain work be compensated by force account method, or the Contractor may be directed to provide changes compensable under the price adjustment provision Subsection 4.6(a)(5). When performing force account work, the Contractor and its subcontractor(s) shall comply with the provisions of this section. Compensation by force account will not alter any rights, duties, and obligations under the contract. The Contractor shall follow these procedures:
(a) The Contractor’s Duties; Engineer’s Authority. The Contractor has the duty to perform the work payable under this provision efficiently and economically. When the Engineer determines the Contractor is working inefficiently or uneconomically, the Engineer may direct the Contractor to stop, modify its means and methods, or the Engineer may specifically direct means and methods of doing the force account work. The Engineer will not pay for work that is unacceptable or for the cost of correcting work that fails to conform to contract requirements.

(b) Records. The Contractor shall maintain accurate daily records of all allowable costs. The records, as well as all work and costs, are subject to review, audit, and approval by the Engineer.

The Contractor shall use the State’s Force Account Form and obtain the Inspector’s signature thereon each day the Contractor performs force account work. As the condition of payment of the force account work, the Contractor shall submit an original and two copies of the force account records, together with invoices, receipts, and other backup data to the Engineer.

(c) Allowable Costs. Allowable costs include labor, equipment and machinery, trucks, insurance, taxes and bonds, overhead, profit, and reimbursable expenses all as described herein. Other costs or items not covered under this section are subject to the Engineer’s written approval.

(d) Labor. Allowable costs include Contractor and subcontractor(s) costs for hourly worker wages, and fringe benefits required by employment contracts, plus overhead and profit markup. The Contractor shall provide the information on the force account form regarding each worker and supervisor.
Overtime compensation, per diem costs, and other reimbursable costs are not allowed unless approved in writing by the Engineer prior to incurring the expense. Overhead and profit markup will not be allowed for such costs. Costs and time for employees to travel to and from the project site are not allowed unless approved in writing by the Engineer prior to performing the work.

(e) Materials. Contractor and subcontractor(s) are allowed the actual cost of materials (excluding financing costs) delivered and incorporated into the work plus overhead and markup. The Contractor shall provide descriptions and quantities of materials, prices, and extensions and costs to transport materials if not included in the prices of the materials. The Contractor shall provide legible receipts and invoices for all materials used and transportation charges. The Contractor shall promptly inform the Engineer of any early payment discounts that are available, as well as scheduled or anticipated price increases.

If materials used are not specifically purchased for the force account work but are taken from the Contractor’s stock, then in lieu of the invoices, the Contractor shall certify that the materials were taken from stock and that the amount claimed represents the actual cost to the Contractor.

(f) Equipment and Machinery. For equipment and machinery necessary and actually used (other than small tools defined under Subsection 9.6(i) Small Tools) that are owned or leased or rented, the Contractor is allowed costs for use of equipment or machinery at a per hour rate.

Hourly rates shall include costs for fuel, oil, lubricants, supplies, necessary attachments, repairs, maintenance, tire wear, depreciation, storage, and other incidentals. The allowable hourly rates shall be the
Contractor's actual customary charges, e.g., shop rates, yard rates, or rental cost as verified by Contractor's records or invoices, provided that the maximum rate shall not exceed the current rates published in the Blue Book, effective at the time of equipment use. Blue Book hourly rates are calculated based upon the following formula:

\[
\text{Hourly Rates} = \left(\frac{\text{Blue Book Monthly Rate}}{176}\right) \times (\text{Regional Adjustment Factor}) \times (\text{Rate Adjustment Table Factor}) + \text{Hourly Operating Cost}
\]

Equipment and machinery costs are not subject to any additional overhead and profit markup.

Equipment and machinery shall be in good condition and suitable for the purpose for which the equipment and machinery are to be used.

For equipment and machinery that is not listed in the Blue Book, the Contractor shall obtain the Engineer’s written approval of the monthly and hourly rates prior to using the equipment or machinery. If there is no agreement on the rates, the Engineer will set the rate. Engineer may, prior to the use of rental equipment, approve in writing rates that are higher than the published rates, if justified by special circumstance.

(g) **Equipment Charges.** The rental period for equipment and machinery brought to the work site, specifically for the force account work, begins when the equipment or machinery reaches the work site, continues each day the equipment or machinery is at the site, and terminates at the end of the day when the equipment or machinery is no longer needed for the force account work or when the equipment or machinery leaves the project site, whichever comes first.
Rental times for all other equipment and machinery used for force account are paid for the time actually used. Prior to the performance of work, the Engineer must approve any hours of operation in excess of 8 hours in any one day. No additional premium beyond the normal rates used will be paid for equipment or machinery over 8 hours per day or 40 hours per week.

The total of all force account rental charges minus the operating cost accrued over the duration of the contract for a specific item of equipment or machinery (same make, model, or kind of equipment or machinery doing the same kind of force account work) shall not exceed the replacement cost of that equipment. The Contractor shall provide the cost of replacement to the Engineer prior to using the equipment or machinery. If the Engineer does not agree with the replacement cost provided by the Contractor or if the Contractor does not provide the replacement cost, the Engineer shall set the replacement cost. The Contractor may contest the replacement cost set by the Engineer in accordance with Section 7.16 Disputes and Claims. The Engineer will pay only the hourly operating cost should the replacement cost be reached. This provision shall not apply to the accrued rental charges for barricades and other traffic control devices.

Rental times are not allowed or credited for any time during which equipment or machinery is inoperative due to its breakdown.

(h) Idle and Standby Equipment. In the event the equipment or machinery must standby due to work being delayed or halted by reasons beyond the Contractor’s control, the rental rate shall be: Standby/Idle Hourly Rental Rates = [(Blue Book Monthly Rate ÷ 176) X (Regional Adjustment Factor) X (Rate Adjustment Table Factor)] X 0.50 or the Contractor’s shop rates or yard rates, whichever is lower. The Engineer may order the demobilization of standby/idle equipment or may direct that
equipment that was located at the jobsite at the start of the force account work cease to be used for force account work.

Payment will be made only when:

1. The Contractor has notified the Engineer in writing at the beginning of the standby/idle period that compensation is expected for the individual piece of equipment or machinery.

2. The Contractor submits to the Engineer on each Monday a list of the equipment or machinery that was idle the past week. This list shall have all information necessary to determine the hourly rental rate and the date and time it became idle and the reason for the equipment or machinery being idle. The list shall also have the date and time when any maintenance was performed on the equipment or machinery during the period the equipment was idle.

With the written approval of the Engineer, the Contractor may store the idle equipment or machinery on the project site for its own convenience at no increase in contract price or contract time.

(i) Small Tools. Contractor and subcontractor(s) are not allowed costs for depreciation or use of small tools, even if the small tools are consumed by use. Small tools are individual pieces of equipment, tools, or other items having a purchase price for that new item or equivalent replacement value of $500.

(j) Trucks and Utility Items. The Contractor’s cost for utility vehicles and other items such as pickup trucks, vans, flatbed trucks, storage trailers, containers, etc. that are already in use or planned for use on the entire project will not be allowed except for the time that, in the
opinion of the Engineer, they: (1) are directly and necessarily used for the performance of the force account work; and (2) the use of such items has not been included within the Contractor’s total project overhead costs.

Allowable rental rates for trucks not owned or leased by the Contractor shall not exceed the listed rates in the Blue Book or those established under the Hawaii State Public Utilities Commission, whichever is less.

The Contractor shall provide points of origin, destinations, mileage, and hourly rates for each travel segment.

Payment for use of trucks shall be in accordance with the provisions of Subsection 9.6(f) Equipment and Machinery.

(k) Transportation, Mobilization, and Demobilization. The Contractor shall obtain the Engineer’s approval of the location from which the equipment or machinery will be moved or transported.

Where the equipment or machinery must be transported to the work site, the Contractor will be paid the reasonable costs to mobilize and demobilize, load and unload, and transport the equipment or machinery to and from its original location to the work site or, upon completion of the work, to another location, whichever cost is less.

The cost to transport the equipment or machinery shall not exceed the rates established by the Hawaii State Public Utilities Commission. If the rates are nonexistent, then the rates will be determined by the Engineer based upon the prevailing rates charged by established haulers within the locale.
If the Contractor uses the equipment or machinery for other than force account work, the costs to mobilize and transport may be disallowed or prorated depending on the non-force account work.

(1) **Subcontractors.** Subcontractor’s costs are allowed plus a markup limited under Section 9.5 Allowances for Overhead and Profit and applicable State excise tax. Costs for insurance and taxes shall comply with the provisions of Subsections 9.6(m) Insurance and Taxes.

(m) **Insurance and Taxes.** Contractor and subcontractor(s) are allowed actual additional costs attributable exclusively to the force account work for insurance premiums for property damage, liability and workers compensation insurance, State unemployment contributions, Federal unemployment taxes, Social Security and Medicare taxes, plus an allowable markup of 6 percent.

(n) **Other Costs.** Any other costs or items not covered under this Section 9.6 Force Account Provisions and Compensation are subject to the Engineer’s written approval and conditions.

(o) **Reimbursable Expenses.** All costs are subject to Section 3-123, H.A.R., Cost Principles. Reimbursable expenses are subject to the Engineer’s written approval and conditions. Overhead and profit markups are not permitted on reimbursable expenses.

Costs incurred by the Contractor for air transportation and associated ground transportation and per diem or subsistence allowance costs (lodging and meals) are allowed as reimbursable expenses when the project conditions require special skilled workers not readily available on the island of the project site. Air transportation shall not exceed the actual cost of coach class airfare. Whenever possible, Contractor shall take advantage of advance purchase discount air fares. Ground
transportation shall not exceed the actual cost of renting a compact-sized vehicle. Rental vehicles shall be shared among Contractor’s employees to the greatest extent possible. Insurance coverage is not a reimbursable expense.

Per diem or subsistence costs (lodging and meals) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel for State government employees. No per diem is allowed for leaving and returning the same day. The Contractor shall obtain prior written approval from the Engineer for other conditions.

(p) **State Excise Tax and Bond.** The Contractor will be reimbursed for State excise taxes paid or payable on the allowable force account work. The State shall pay increased premiums only on the bonds the Contract requires the Contractor to maintain for the work. No additional premium costs shall be paid for bonds not required by the Contract or for bonds acquired or maintained by any subcontractor.

The actual bond premium, not to exceed 1 percent is allowed on items covered by Subsections 9.6(d) Labor, 9.6(e) Materials, 9.6(f) Equipment and Machinery, 9.6(j) Trucks and Utility Items, 9.6(l) Subcontractors, 9.6(m) Insurance and Taxes, 9.6(n) Other Costs, and 9.6(o) Reimbursable Expenses when applicable. When the original contract price includes a bond premium for an allowance item to be paid by force account, no additional bond premium for such allowance items will be paid until the allowance amount is exhausted.

9.7 **Assignment of Payments.** The Contractor may not assign its right to receive monies due under the contract without the written consent of the State and the surety.

9.8 **Progress Payments.**
(a) Monthly Payment. The Contractor shall be paid progress payments monthly upon approval of a monthly payment estimate by the Engineer. The monthly payment estimate shall be based upon the value of the items of work that appear to be satisfactorily completed, including the value of materials incorporated in the work. Materials not yet incorporated in the work will be paid in accordance with Subsection 9.8(b) Payment for Material On Hand. Monthly payments will be approximate only and shall be subject to correction before or in the final payment. Monthly shall mean the period between the first day of the month to the last day of the month. The Engineer and the Contractor may agree on a different monthly period.

The Engineer may withhold all or any part of a monthly payment due to the Contractor, without interest accruing on account of:

(1) The failure of the Contractor to meet a requirement of law or the contract that is a condition precedent of payment.

(2) The exercise of any right granted the Engineer to withhold money due the Contractor established by law or the contract.

No monthly payment will be made if the total value of the work done since the last estimate is less than $2,000.

(b) Payment for Material On Hand. The Contractor will be paid the manufacturer’s, supplier’s, distributor’s, or fabricator’s invoice cost of materials not yet incorporated into the work on the following conditions:

(1) If acceptance of submittals of such materials are required by the contract documents, the submittal processes have been
completed and the materials for which payment is requested conform to the accepted submittal.

(2) The materials shall be stored and handled in accordance with Section 5.14 Storage and Handling of Materials and Equipment.

(3) Payments shall be made only if:

(A) All materials are acceptable to the Engineer.

(B) Contractor provides legible documentary evidence that all materials for which payment is requested have been paid in full.

(C) The materials are insured for their full replacement value to the benefit of the State against theft, fire, damages incurred in transportation to the site, and other hazards.

(D) In case of materials stored off the project site, the materials are clearly marked and identified for the project and are not commingled with other materials not to be incorporated into the project.

The payment authorized in this subsection will not exceed the contract price of that item. Payment for the material under this subsection is not final acceptance of the material nor shall any such payment shift the risk of loss or damage from the Contractor to the State.

Payment for the material does not relieve the Contractor of its obligations to furnish material acceptable to the Engineer and to properly
incorporate the material into the project in accordance with the contract documents.

The State will not make material payment on living or perishable plant material or any material that may deteriorate or is not insurable.

9.9 Prompt Payment.

(a) Contractor's Duty.

(1) When any subcontractor has met all the terms and conditions of the subcontract, and there are no bona fide disputes, the Contractor, upon receiving payment from the State for the work, shall make full payment to the subcontractor of all monies due within 10 days from the receipt of an invoice from the subcontractor. Upon final payment to the Contractor, full payment to the subcontractor shall include all retainage amounts due. This payment obligation applies to payments made to and payable to all tiers of subcontractors.

(2) Bona Fide Disputes. The existence of a bona fide dispute with a subcontractor or material supplier shall not release the Contractor of its prompt payment obligations as to all sums due that are not directly affected by such disputes.

The following are examples of 'bona fide disputes':

(A) When work done by a subcontractor is paid for and later found to be non-conforming or unacceptable and the amount previously paid by the State is deducted from the Contractor’s subsequent payment request.
When the Contractor and subcontractor disagree as to whether the subcontractor has failed to promptly correct any deficiencies or non-conforming work.

(C) When the Contractor and subcontractor disagree as to whether the subcontractor has failed to fulfill any material term, condition, or requirement of its subcontract.

(b) Filing Of Non-Payment Complaint And Verification Of Its Validity. Subcontractors and material suppliers may file, in writing, a complaint with the Engineer regarding non-payment by the Contractor. Such a complaint must state:

(1) The amount past due for work performed and already paid for by the State;

(2) The date the work was completed;

(3) The date payment was due from the Contractor;

(4) That all the terms, conditions, or requirements of its subcontract have been met; and

(5) That no bona fide dispute over its performance exists.

The Engineer will investigate, hear and receive evidence, and determine the validity of the complaint, and the Engineer's decision on the matter shall be final. It is not the Engineer's responsibility to determine how a bona fide dispute should be resolved.

(c) Follow-Up Action. If the Engineer determines that the Contractor failed to make prompt payment required under the subcontract
or these contract documents to a subcontractor or material supplier with whom the Contractor has no bona fide dispute within the time period specified above, the Engineer shall inform the Contractor of the findings and direct the Contractor to make payment accordingly.

If the Contractor does not act promptly, the Engineer may do any or all of the following including:

(1) Withholding from future progress payment amounts to cover any sums paid to the Contractor for work performed by a subcontractor if the State finds that the subcontractor’s complaint regarding non-payment by the Contractor has merit.

(2) Refer the matter to the Contractor Licensing Board for appropriate action.

(3) Initiate a petition for debarment.

(d) Penalty. The Contractor will be subject to a penalty of one and one-half percent per month upon outstanding amounts due that were not timely paid by the Contractor under the following conditions.

Where a subcontractor has provided evidence to the Contractor of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request, and:

(1) Has provided to the contractor an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State; or

(2) The following has occurred:
(A) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to contractor and the surety, as provided for in section 103D-324; and

(B) The subcontractor has provided to the Contractor an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the Contractor; any other bond acceptable to the Contractor; or any other form of mutually acceptable collateral,

then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the Engineer to the Contractor and subsequently, upon receipt from the Engineer by the Contractor, to the subcontractor within ten days after receipt of payment from the Engineer.

The penalty may be withheld from future payment due to the Contractor if the Contractor was the responsible party. If a Contractor has a violation three or more times within two years of the first violation, the Contractor shall be referred by the Engineer to the Contractors License Board for action under Section 444-17(14), HRS.

(e) Documented Subcontractor Final Payment Request. A properly documented final payment request from a subcontractor shall include:
(1) Substantiation of the amounts requested;

(2) A certification by the subcontractor, to the best of the subcontractor’s knowledge and belief, that:

   (A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

   (B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

   (C) The payment request does not include any amounts that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

(3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The Engineer shall return any defective final payment request, along with a statement identifying the defect, to the Contractor within seven days after receipt.

(f) Additional Subcontract Terms and Conditions.
This section shall not be construed to impair the right of a contractor or a subcontractor, at any tier, to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment, provided that any such payments withheld shall be withheld by the Engineer.

9.10 Retainage; Withholding of Payment for Unsatisfactory Progress.

(a) Retainage. If the Engineer finds that satisfactory progress is being made, an amount equivalent to 5 percent of the first 50 percent of the whole will be deducted from the total of the amounts ascertained as payable and will be retained by the Department until after completion of the entire contract in an acceptable manner. After 50 percent of the work has been completed, the Department shall make any of the remaining progress payments in full provided progress is satisfactory.

(b) Withholding of Payment for Unsatisfactory Progress. If the Contractor is progressing or performing the work unsatisfactorily, the Engineer, upon written notice to the Contractor, may withhold sums not exceeding 5 percent of the total contract price from subsequent progress payments.

The Engineer may deduct, from any amounts due to the Contractor, sums assessed as liquidated damages as well as any other charges against the Contractor allowed by law or the contract documents.

If the Contractor refuses or fails to comply with the laws and regulations dealing with equal employment opportunity, affirmative action, non-discrimination, labor compliance, implementing and maintaining the BMP and NPDES standards, and disadvantaged business enterprise requirements, the Engineer, at its sole discretion and upon written notice
to the Contractor, may withhold any or all of the monthly progress payments that are due or to become due.

With the approval of the State, the Contractor may withdraw, from time to time, the whole or any portion of the sum withheld after endorsing over to the State and depositing with the State any general obligation bond of the State or its political subdivisions suitable to the State. But in no case will the bond have a face value less than the value of the amount to be withdrawn. The State may sell the bond and use monies directly withheld from progress payments or the final payment.

9.11 Final Payment. The Engineer will prepare the final estimate when the State accepts the project in accordance with Section 8.14 Final Acceptance. Prior progress estimates and payments shall be subject to correction in the final estimate and payment.

Upon final settlement, the State will pay the entire sum due, less all previous payments and less any sums that may have been or may be deducted in accordance with the provisions of the contract, upon receipt of the following documents in a format acceptable to the Engineer:

(1) Consent of the surety to payment of the final estimate and certificate of release from the surety.

(2) Evidence by affidavit that the Contractor fully paid the debts resulting from the contract.

(3) A current “Certificate of Vendor Compliance” issued by the Hawaii Compliance Express (HCE). The Certificate of Vendor Compliance is used to certify the Contractor’s compliance with (a) Section 103D-328, HRS (for all contracts $25,000 or more) which requires a current tax clearance certificate issued by the Hawaii State Department of Taxation and the
Internal Revenue Service; (b) Chapters 383, 386, 392, and 393, HRS; and (c) Subsection 103D-310(c), HRS. The State reserves the right to verify that compliance is current prior to the issuance of final payment. Contractors are advised that non-compliance status will result in the rejection of the submission and the final payment being withheld until compliance is attained.

Sums necessary to meet the claims of any governmental agencies may be withheld from the sums due the Contractor until said claims have been fully and completely discharged or otherwise satisfied.

9.12 Records, Accounts, And Documents. The Contractor shall retain and preserve its bid documents and estimates, contract records, accounts, data, and documents of the Contractor and its subcontractors, including all records regarding the employment of State of Hawaii residents, for not less than three years from the date of final payment. If any lawsuit or claim relating to the work is pending before the expiration of the three year period, the Contractor shall retain the documents until it is resolved. The Contractor shall provide written notice to the Engineer not less than 30 days of its intent to dispose of the contract records. The Engineer may direct, in writing, the Contractor to retain such records for an additional period of time at no cost to the State. The documents shall be available for inspection and auditing by the State and other government agencies at the offices of the Contractor and its subcontractors upon 24 hours notice to the Contractor. The Contractor shall cooperate during such inspection and auditing of the documents at no cost to the State.

END OF ARTICLE IX.