

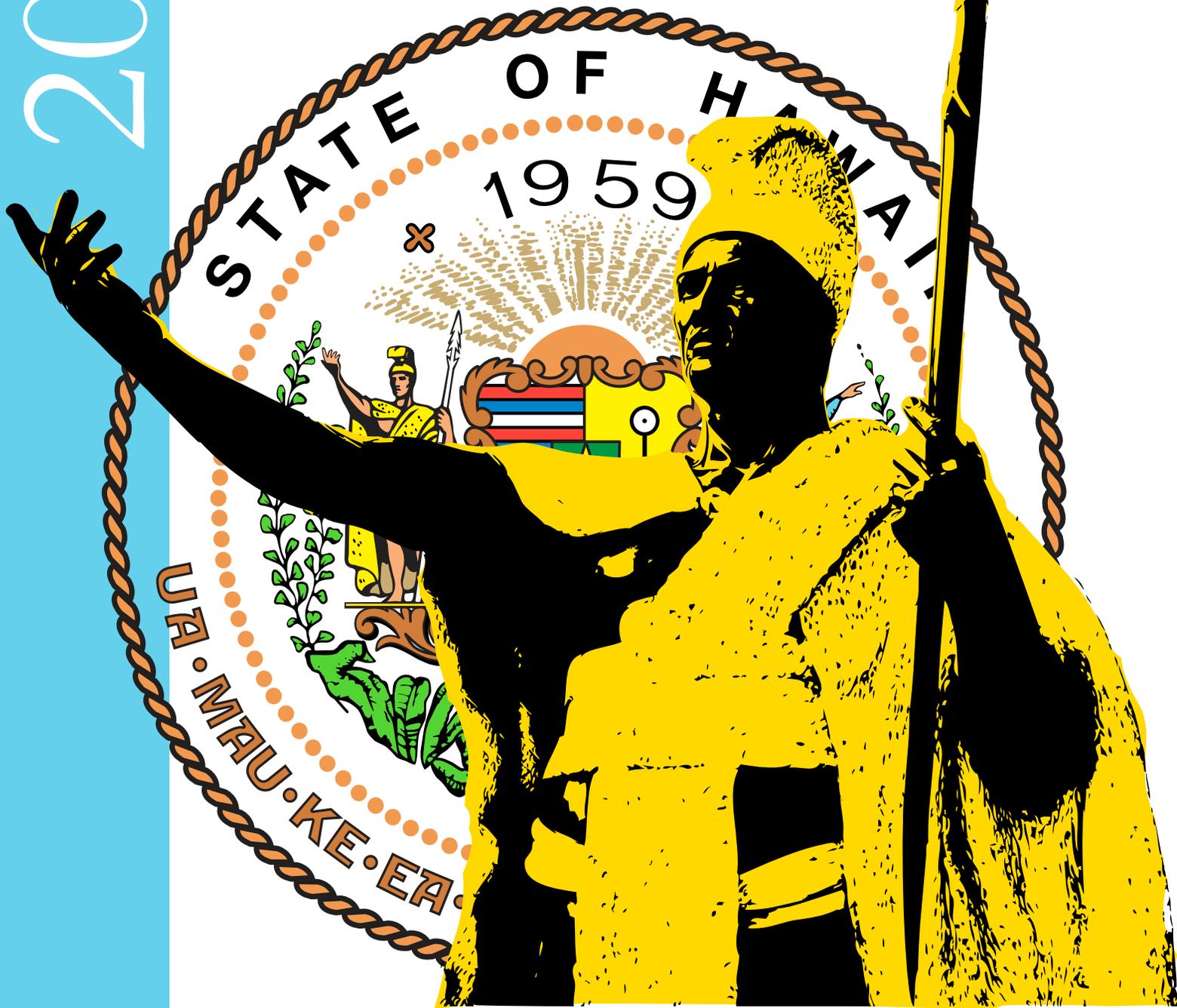


HAWAII DEPARTMENT OF  
TRANSPORTATION

AIR AND WATER TRANSPORTATION  
FACILITIES DIVISION

2016

# GENERAL PROVISIONS FOR CONSTRUCTION PROJECTS



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1                   **ARTICLE I - TERMS, ABBREVIATIONS, AND DEFINITIONS**

2

3 **1.1 Specified Publications.** When a publication is specified, it refers to the  
4 most recent date of issue, including interim publications, before the bid opening  
5 date for the project, unless a specific date or year of issue is provided.

6

7 **1.2 Abbreviations.** Meanings of abbreviations used in the specifications,  
8 on the plans, or in other contract documents are as follows:

9

10	AASHTO	American Association of State Highway and
11		Transportation Officials
12	ACI	American Concrete Institute
13	ADA	Americans with Disabilities Act
14	AGC	Associated General Contractors of America
15	AIA	American Institute of Architects
16	AISC	American Institute of Steel Construction
17	AISI	American Iron and Steel Institute
18	ANSI	American National Standards Institute
19	ASA	American Standards Association
20	ASTM	American Society for Testing and Materials
21	AWG	American Wire Gauge
22	AWS	American Welding Society
23	AWWA	American Water Works Association
24	BMP	Best Management Practice
25	CFR	Code of Federal Regulations
26	CRSI	Concrete Reinforcing Steel Institute
27	DCAB	Disability and Communication Access Board, Department of
28		Health, State of Hawaii
29	DOT–A	Hawaii Department of Transportation, Airports Division
30	DOT-HAR	Hawaii Department of Transportation, Harbors Division

31	DOTAX	Department of Taxation, State of Hawaii
32	EPA	U.S. Environmental Protection Agency
33	FAA	Federal Aviation Administration
34	FHWA	Federal Highway Administration,
35		U.S. Department of Transportation
36	HAR	Hawaii Administrative Rules
37	HDOT	Department of Transportation, State of Hawaii
38	HIOSH	Occupational Safety and Health, Department of Labor and
39		Industrial Relations, State of Hawaii
40	HMA	Hot Mix Asphalt
41	HRS	Hawaii Revised Statutes
42	IBC	International Building Code
43	IEEE	Institute of Electrical and Electronic Engineers
44	IRS	Internal Revenue Service
45	ITE	Institute of Transportation Engineers
46	MUTCD	Manual on Uniform Traffic Control Devices for Streets and
47		Highways, FHWA, U.S. Department of Transportation
48	NEC	National Electric Code
49	NEMA	National Electrical Manufacturers Association
50	NFPA	National Fire Protection
51	NPDES	National Pollutant Discharge Elimination System
52	OSHA	Occupational Safety and Health Administration/Act,
53		U.S. Department of Labor
54	SI	International Systems of Units
55	UL	Underwriter's Laboratory
56	USGS	U.S. Geological Survey
57	VECP	Value Engineering Cost Proposal

58

59 **1.3 Definitions.** Whenever the following words and terms are used in the  
60 contract documents, unless otherwise prescribed therein and without regards to  
61 the use or omission of uppercase letters, the meaning and intent shall be as  
62 follows:

63

64 **Addendum (plural - Addenda)** - A written or graphic document, including  
65 drawings and specifications, issued by the Director during the bidding period.  
66 This document modifies or interprets the bidding documents by additions,  
67 deletions, clarifications, or corrections. An addendum supersedes all prior  
68 conflicting documents.

69

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

72

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

76

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

79

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

83

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

87

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

91

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

95

96 **Blue Book** - "Rental Rate Blue Book for Construction Equipment" published by  
97 Equipment Watch, A Premedia Business Directories and Book Group.

98

99 **Calendar Day** - See Day.

100

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

111

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

114

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

119

120 **Contract** - The written agreement between the State and the Contractor setting  
121 forth the obligations of the parties thereunder, including, but not limited to, the  
122 performance of the work, the furnishing of labor and materials, the completion  
123 date, and the basis of payment. The contract comes into existence only upon  
124 delivery to the Contractor of the written agreement containing all necessary  
125 signatures and certifications of the State and the Contractor. The contract  
126 includes the notice to bidders; instructions to bidders; addenda; proposal

127 (including wage schedule, list of subcontractors, and other documentations  
128 accompanying the bid); contract form and contract bond(s); specifications;  
129 general and special provisions; general and detailed plans; field orders, orders  
130 for minor changes, and change orders; all approved or accepted submittals;  
131 notice to proceed; written operational instructions; and restrictions and limitations  
132 on the Contractor, including, but not limited to, those described in the  
133 Contractor's Training Guide and FAA Advisory Circulars.

134

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

140

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

143

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

146

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

153

154 **Contracting Officer** - See Engineer.

155

156 **Contractor** - Any individual, partnership, firm, corporation, joint venture, or other  
157 legal entity undertaking the execution of the work under the terms of the contract  
158 with the State and acting directly or through its agents or employees.

159

160 **Critical Path** - Longest logical sequence of activities that must be completed on  
161 schedule for the entire project to be completed on schedule.

162

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

166

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

169

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

172

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

176

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

182

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

185

186 **Equipment** - All machinery, tools, and apparatus, together with the supplies  
187 necessary for their upkeep and maintenance, needed to perform and/or required  
188 to complete the contract.

189

190 **Field Order** - A written order issued by the Engineer, or the Engineer's  
191 authorized representative, to the Contractor requiring a change or changes to the  
192 contract work. A field order may (1) establish a price adjustment or time  
193 adjustment; (2) may declare that no adjustment will be made to contract price or  
194 contract time; or (3) may request the Contractor submit a proposal for an  
195 adjustment to the contract price or contract time.

196

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

199

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

203

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

206

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

211

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

214

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

217

218 **Inspector** - The Engineer's authorized representative assigned to make detailed  
219 inspections of contract performance, prescribed work, and materials supplied.

220

221 **Invitation for Bids** - The published solicitation notice, bid requirements, bid  
222 forms, and the proposed contract documents, including all addenda and  
223 clarifications issued prior to receipt of the bid, whether attached, referenced  
224 therein, or incorporated by reference.

225

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

228

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

233

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

236

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

239

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

244

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

248

249 **Offer** - See Bid.

250

251 **Offeror** - See Bidder.

252

253 **Plans** - See Drawings.

254

255 **Proposal** - See Bid.

256

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

258

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

262

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

265

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

270

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

274

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

277

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

280

281 **Shop Drawings** - All drawings, diagrams, illustrations, schedules, and other data  
282 or information which are specifically prepared or assembled, by or for the  
283 Contractor, and submitted by the Contractor to illustrate some portion of the  
284 work.

285

286 **Shortage Trade** – a construction trade in which there is a shortage of Hawaii  
287 residents qualified to work in the trade, as determined by the Department of  
288 Labor and Industrial Relations.

289

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

293

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

296

297 **Solicitation** - See Invitations for Bids.

298

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

301

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

304

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

307

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

310

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

313

314 **State Waters** - All waters, fresh, brackish, or salt, around and within the State,  
315 including, but not limited to, coastal waters, streams, rivers, drainage ditches,  
316 ponds, reservoirs, canals, ground waters, and lakes; provided that drainage

317 ditches, ponds, and reservoirs required as a part of a water pollution control  
318 system are excluded.

319

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

323

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

327

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

331

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

336

337 (1) All utilities and services are connected and working;

338

339 (2) All equipment is in acceptable working condition;

340

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

344

345 (4) The building, structure, improvement, or facility can be used for its  
346 intended purpose.

347

348 For bridge and roadway work, in addition to the above requirements,  
349 substantial completion is the point at which all bridge deck, parapet, pavement  
350 structure, shoulder, drainage, traffic signal, guardrail, safety appurtenance, traffic  
351 barrier, lighting, and required signs and markings work are complete.

352

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

356

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

360

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

364

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

368

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

372

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

377

378 **Water Pollution - (1)** Such contamination or other alteration of the physical,  
379 chemical, or biological properties of any state waters, including change in

380 temperature, taste, color, turbidity, or odor of the waters; or **(2)** Such discharge  
381 of any liquid, gaseous, solid, radioactive, or other substances into any state  
382 waters, as will or is likely to, create a nuisance or render such waters  
383 unreasonably harmful, detrimental, or injurious to public health, safety, or  
384 welfare, including harm, detriment, or injury to public water supplies, fish and  
385 aquatic life and wildlife, recreational purposes, and agricultural and industrial  
386 research and scientific uses of such waters as will or is likely to violate any water  
387 quality standards, effluent standards, treatment and pretreatment standards, or  
388 standards of performance for new sources adopted by the Department of Health.

389

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

394

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

397

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

400

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

403

404

**END OF ARTICLE I**



33 be accepted if acceptance is in the best interest of the State, as determined by  
34 the Department, and the value of the work to be performed by the unnamed  
35 specialty licensee is equal to or less than one percent of the total bid amount.

36

37 **2.3 Qualification of Bidders.** In accordance with Section 103D-310,  
38 H.R.S., the Department may require any bidder or prospective bidder (hereinafter  
39 collectively referred to in this section as “bidder”) to submit answers to questions  
40 contained in a qualification questionnaire for prospective bidders, on a form  
41 furnished by the Department, properly executed and notarized, setting forth a  
42 complete statement of the experience of such prospective bidder and its  
43 organization in performing similar work and a statement of the equipment  
44 proposed to be used, together with adequate proof of the availability of such  
45 equipment. Whenever it appears to the Department, from answers to the  
46 questionnaire or otherwise, that the bidder is not fully qualified and able to  
47 perform the intended work, the Department will, after affording the bidder an  
48 opportunity to be heard and if still of the opinion that the bidder is not fully  
49 qualified to perform the work, make a written determination of non-responsibility  
50 and refuse to consider any bid offered by the bidder. All information contained in  
51 the answers to the questionnaire shall be kept confidential except disclosure may  
52 be made to law enforcement agencies as provided in Chapter 92F, H.R.S.

53

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

56

57 The Department, in its sole discretion, may declare a bidder to be non-  
58 responsible if (1) the bidder; (2) a corporation or other business entity owned  
59 substantially by the bidder; (3) a substantial stockholder or an officer of the  
60 bidder; or (4) a partner or substantial investor of the bidder is in arrears in  
61 payments owed to the State of Hawaii or its political subdivisions, is in default as  
62 a surety, or has failed or is failing to properly perform existing or previous  
63 contracts with the State.

64

65 **2.4 Contents of Invitations for Bids.** The Department will make available  
66 to prospective bidders an invitation for bids, which will state the location and  
67 description of the contemplated work, an estimate of the various quantities and  
68 items of work to be performed or materials to be furnished, and a proposal  
69 schedule of items for which bid prices are required. The invitation for bids will  
70 also state the time within which the work must be completed; the date, time, and  
71 place of the bid opening; and the maximum time from bid opening in which the  
72 Department may make the award.

73

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

77

78 **2.5 Estimated Quantities.** All quantities appearing in the proposal  
79 schedule, for which unit prices must be entered by the bidder, are estimates.  
80 The State does not expressly or impliedly warrant that the actual amount of work  
81 will correspond with the estimated quantities. Payment to the Contractor will be  
82 made only for the actual quantities of work performed and accepted or materials  
83 furnished in accordance with the contract, and no change will be made in the  
84 contract unit prices if overruns and underruns occur except as provided for in the  
85 General Provisions for Construction Projects.

86

87 **2.6 Examination of Plans, Specifications, and Site of Work; Patent**  
88 **Ambiguities; Requests for Clarification.**

89

90 (a) A bidder has an obligation to carefully review the plans, specs, and  
91 other contract documents. If a bidder discovers a patent ambiguity, i.e.,  
92 any discrepancy, omission, conflict, or other obvious error or ambiguity in  
93 the contract documents that affects its ability to prepare a complete and  
94 accurate bid, it must submit a written request for clarification as described  
95 in the subsection below.

96

97           **(b)** The Department shall make the site of work available for inspection  
98 by prospective bidders. However, the Department may limit the site  
99 inspection to a one time only opportunity either in connection with a pre-  
100 bid meeting and invitation for bids or at a time scheduled by the  
101 Department. The submission of a bid is a warranty that the bidder is fully  
102 aware of all conditions to be encountered in performing the work and of  
103 the requirements in the invitation for bids.

104

105           The bidder shall have the sole responsibility of satisfying himself  
106 concerning the nature and location of work and the general and local  
107 conditions and particularly, but without limitation, with respect to the  
108 following: those affecting transportation access; disposal, handling, and  
109 storage of materials; availability and quality of labor, water, and electric  
110 power; availability and condition of roads; climatic conditions and seasons;  
111 physical conditions at the worksites and the project area as a whole;  
112 topography and ground surface conditions; the nature and quantity of  
113 surface and subsurface materials to be encountered as described in or  
114 may reasonably be inferred from information contained in the invitation for  
115 bids; equipment and facilities needed preliminary to and during  
116 performance of the contract; and all other matters which can in any way  
117 affect performance of the contract or the time and/or the cost associated  
118 with such performance. The failure of the Contractor to acquaint himself  
119 with any applicable condition will not relieve it from the responsibility for  
120 properly estimating either the difficulties, the time, or the costs of  
121 successfully performing the contract. If, as a result of its review and  
122 consideration of the foregoing, the bidder discovers a patent ambiguity,  
123 i.e., any discrepancy, omission, conflict or other obvious error or ambiguity  
124 that affects its ability to prepare a complete and accurate bid, it must  
125 submit a written request for clarification as described in the subsection  
126 below.

127

128 (c) A written request for clarification shall be submitted to the  
129 Department for review at the earliest date possible; but, in any event, such  
130 request must be received at the Project Manager's Office designated in  
131 the invitation for bids not later than fourteen (14) calendar days before the  
132 bid opening date, not including the bid opening date. It shall be titled  
133 "Request for Clarification". All bidders on the Department's plan holders  
134 list will be notified of all Departmental responses by an addendum to the  
135 invitation for bids.

136

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

142

143 **2.7 Request for Substitution of Specified Materials and Equipment**

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

153

154 It shall be the responsibility of the bidder to submit, in quintuplicate,  
155 sufficient evidence based upon which a determination can be made by the  
156 Department that the alternate brand is a qualified equivalent. The bidder must  
157 list in its submission all deviations and variances from the requirements of the  
158 contract documents. The Department reserves the right to reject an approved  
159 substitution during construction if it discovers unlisted deviations or variances

160 that result in noncompliance with the contract requirements. In the event of such  
161 rejection, the bidder will not be entitled to any adjustment in contract price or time  
162 in order to meet contract requirements.

163

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

168

169 **2.8 Preparation and Delivery of Bid.** The bidder shall submit the bid upon  
170 the forms furnished by the Department or a facsimile thereof. The bidder shall  
171 specify prices in numerals for each pay item as required on the proposal  
172 schedule. The bidder shall also show in numerals the products of any unit prices  
173 and their estimated quantities in the column provided for that purpose. The  
174 bidder shall enter the total amount of the bid obtained by adding the amounts of  
175 all pay items. All numerals shall be in ink or typed.

176

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

180

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

183

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

188

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

192 of bids will be rejected and returned unopened.

193

194 **2.9 Irregular Bids.** Bids will be considered irregular and may be rejected  
195 for any of the following reasons:

196

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

199

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

202

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

205

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

208

209 **2.10 Disqualification of Bidders.** Any of the following reasons shall result in  
210 the disqualification of a bidder and the rejection of its bid(s).

211

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

214

215 (2) Evidence of collusion among bidders.

216

217 (3) Evidence of assistance from a person who has been an  
218 employee of the Department within the preceding two years and  
219 who participated while in State office or employment in the matter  
220 with which the contract is directly concerned, pursuant to Section  
221 84-15, H.R.S.

222

223 (4) Lack of bid security.

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(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

256 (\$100,000.00) each and issued by different financial institutions  
257 shall be accepted.

258

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

262

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

265

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

273

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

278

279 **(c)** The Department will be damaged in the event of the failure or  
280 refusal of a bidder to execute the contract for the work bid or to supply the  
281 required performance and payment bonds. Such damages will be equal  
282 to the difference between the defaulting bidder's bid and the price stated  
283 in the next higher acceptable bid, plus an amount to cover reasonable  
284 administrative and legal costs and expenses, including the cost of  
285 rebidding the project. If the amount of bid security is greater than the  
286 Department's damages, only an amount equal to the damages shall be  
287 recovered from the bid security. If the amount of bid security is insufficient

288 to cover the Department's damages, the Department shall have the right  
289 to recover the balance of the damages from the defaulting bidder.

290

291 **2.12 Pre-Opening Modification or Withdrawal of Bids.** Bids may be  
292 modified or withdrawn prior to the due date and time established for bid opening  
293 by the following documents:

294

295 **(a) Modification of bids.**

296

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

302

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

313

314 **(b) Withdrawal of bids.**

315

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

318

319 **(2)** A notice by facsimile machine or other electronic method,

320                   pursuant to Section 3-122-9, H.A.R., to the office designated in the  
321                   invitation for bids.

322

323 **2.13 Cancellation of Invitation for Bids Before Bid Opening.**   An invitation  
324 for bids may be cancelled prior to bid opening for reasons including, but not  
325 limited to, the following:

326

327                   **(1)**    The Department no longer requires the construction;

328

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

331

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

334

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

337

338 **2.14 Public Opening of Bids.**    Bids will be opened and the name of the  
339 bidder, the bid price, and such other information deemed necessary by the  
340 Department shall be read aloud publicly in the presence of one or more  
341 witnesses at the date, time, and place(s) indicated in the invitation for bids.  
342 Bidders, their authorized agents, and other interested parties are invited to be  
343 present.

344

345 **2.15 Acceptance of Bids; Correction of Mistakes.**

346

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

349

350                   **(b)**    A bid containing a mistake discovered after the deadline for receipt  
351 of bids but prior to award may be:

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**(1)** 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.

384                   **(2)**     Withdrawn, if the mistake is attributable to an obvious error  
385                   that shall affect price, quantity, quality, delivery, or contractual  
386                   conditions, provided:

387

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

390

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

393

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

398

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

402

403     **2.16 Preferences.**        Unless otherwise stated in the invitation for bids, all  
404     preferences applicable to any invitation for bids shall be considered solely for the  
405     comparison of bids to determine the low bidder. The contract amount will be at  
406     the bid price exclusive of any preferences.

407

408     **2.17 Certification for Safety and Health Program for Bids in Excess of**  
409     **\$100,000.**        In accordance with Sections 103D-327 and 396-18, H.R.S., the  
410     bidder or offeror, by signing and submitting a bid, certifies that a written safety  
411     and health plan for this project will be available and implemented by the notice to  
412     proceed date for this project. Details of the requirements of this plan may be  
413     obtained from said Statute or the Department of Labor and Industrial Relations,  
414     Occupational Safety and Health Division (HIOSH).

415

416 **2.18 Certification of Employment of State of Hawaii Residents.** The  
417 bidder, by signing and submitting a bid, certifies that if awarded the contract, it  
418 will ensure that State of Hawaii residents will compose not less than 80% of the  
419 workforce employed by the bidder to perform the contract and all subcontracts of  
420 \$50,000 or more as calculated by the method described in 7.2(a).

421

422 **2.19 Cancellation of Invitation for Bids After Bid Opening.** An invitation  
423 for bids may be cancelled after bid opening but prior to award for reasons  
424 including, but not limited to, the following:

425

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

427

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

430

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

433

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

436

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

439

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

443

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

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447 **2.20 Bid Evaluation and Award.**

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**(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.

480 In lieu of the certificates referenced in subsection (c), the bidder  
481 may make available proof of compliance through the Hawaii Compliance  
482 Express or any other designated certification process. Bidders may apply  
483 and register at the "Hawaii Compliance Express" website:  
484 <https://vendors.ehawaii.gov/hce/splash/welcome.html>.

485  
486 The documents shall be submitted to the Department within 14  
487 days after bid opening unless otherwise specified in the invitation for bids  
488 or an extension is granted in writing by the Department.

489  
490 If the required documents are not submitted on a timely basis, the  
491 Department may disqualify the bidder.

492  
493 **(d)** The successful bidder will be notified by letter mailed to the address  
494 shown in its bid that is has been awarded the contract.

495  
496 **2.21 Waiver to Competitive Sealed Bid.** If, for a given invitation for bids,  
497 there is only one responsive, responsible bidder:

498  
499 **(1)** An award may be made to the single bidder, provided:

500  
501 **(A)** The Department determines in writing that the price  
502 submitted is fair and reasonable, and that either:

503  
504 **(i)** Other prospective bidders had reasonable  
505 opportunity to respond; or

506  
507 **(ii)** There is not adequate time for resolicitation; or

508  
509 **(B)** The bid exceeds available funds as certified by the  
510 Department and the price is negotiated, pursuant to Section  
511 103D-302(h), H.R.S.;

512

513

(2) The bid may be rejected and new bids or offers may be solicited if the Conditions in paragraph (1) are not met;

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516

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

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(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:

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(A) There is no time for resolicitation, or

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528

(B) Resolicitation would likely be futile.

529

530

**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.

531

532

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534

**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.

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542

**2.24 Requirements of Contract Bonds.**

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544           **(a)**    A contract performance bond indemnifies the State against loss  
545 resulting from the failure of the contractor to perform a contract, including  
546 the Contractor’s warranty obligations, in accordance with the plans,  
547 specifications, and other contract documents.

548

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

552

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

558

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

561

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

564

565                   **(2)**    Legal tender; or

566

567                   **(3)**    A certificate of deposit; credit union share certificate; or  
568 cashier’s, treasurer’s, teller’s, or official check drawn by or a  
569 certified check accepted by a bank, a savings institution, or credit  
570 union insured by the Federal Deposit Insurance Corporation or the  
571 National Credit Union Administration, and payable at sight or  
572 unconditionally assigned to the Department advertising for bids.  
573 These instruments may be utilized only to a maximum of \$100,000.  
574 If the required amount totals over \$100,000, more than one

575 instrument not exceeding \$100,000 each and issued by different  
576 financial institutions shall be accepted.

577

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

580

581 **2.25 Execution of Contract.** The contract shall be executed by the  
582 successful bidder and returned within ten (10) days after the award of the  
583 contract or within such further time as the Department may allow after the bidder  
584 has received the contract for execution, along with the required bonds and  
585 Chapter 104, H.R.S., Compliance Certificate. The contract shall not bind the  
586 State in any way unless said contract has been fully and properly executed by all  
587 the parties thereto, the Comptroller has endorsed thereon its certificate that there  
588 is available an unexpended appropriation over and above all outstanding  
589 contracts, sufficient to cover the amount required by the contract, and the fully  
590 executed contract is received by the Contractor. If the Contractor fails to execute  
591 the contract and file acceptable bond(s) within ten (10) days after the award of  
592 the contract, or within such further time as the Department may allow, the  
593 Department may cancel the award and award the contract to the next lowest,  
594 responsive and responsible bidder. The Department may recover its damages  
595 against the bid security as described in Subsection 2.11(c) herein.

596

597

**END OF ARTICLE II**

1 **ARTICLE IV - SCOPE OF WORK**

2  
3 **4.1 Intent of Contract, Duty of Contractor.** The intent of the contract is to  
4 provide for the construction, complete in every detail, of the work described by  
5 the contract documents at the accepted bid price and within the time established  
6 by the contract. The Contractor has the duty to furnish all labor, materials,  
7 equipment, tools, transportation, incidentals, and supplies and to determine the  
8 means, methods, and schedules required to complete the work in accordance  
9 with the contract documents.

10  
11 **4.2 Changes.** The Engineer may at any time after execution of contract, by  
12 written order and without notice to the sureties, make changes in the work found  
13 to be necessary or desirable. Such changes shall not invalidate the contract nor  
14 release the surety, and the Contractor will perform the work as changed, as  
15 though it had been a part of the original contract.

16  
17 **(a) Minor Changes.** The Engineer may direct minor changes in the  
18 work with no changes in contract price or contract time of performance. If  
19 the Contractor believes a minor change directive justifies an increase in  
20 contract price or contract time it must follow the oral and written notice  
21 requirements set forth in Subsection 4.2(b) Orders and Directives.

22  
23 **(b) Orders and Directives.** Except for minor change directives  
24 referred to in Subsection (a) above, only a duly issued change order or  
25 field order may alter the contract and work requirements. Any order,  
26 direction, instruction, interpretation, or determination, from the Engineer or  
27 any other person, that is not a field order or change order may be  
28 considered as a compensable change only if the Contractor gives the  
29 Engineer an oral notice not later than noon of the following working day of  
30 its intent to treat such order, direction, instruction, interpretation, or  
31 determination as a change directive. Such notice must be given before

32 the Contractor acts in conformity with the order, direction, instruction,  
33 interpretation, or determination. The oral notice shall be followed by a  
34 written notice of a potential claim that must be delivered to the Engineer  
35 within five days after communication of the order, direction, instruction,  
36 interpretation, or determination to the Contractor. The written notice of a  
37 potential claim shall state the date, circumstances, source of the order,  
38 direction, instruction, interpretation, or determination that the Contractor  
39 regards as a compensable change and provide a detailed justification for  
40 additional payment or time. Such written notice may not be waived and  
41 shall be a condition precedent to the filing of any claim by the Contractor.  
42 Unless the Contractor acts in accordance with this procedure, any such  
43 order, direction, instruction, interpretation, or determination shall not be  
44 treated as a change for which the Contractor may make a claim for an  
45 increase in the contract time, compensation, or contract price related to  
46 such work.

47

48 No more than ten working days after receipt of the written notice of  
49 a potential claim from the Contractor, a written response shall be issued  
50 for the subject work if the State agrees that it constitutes a change. The  
51 Contractor shall deem it a rejection of its potential claim if a written  
52 response is not issued in the time established. If the Contractor objects to  
53 the Engineer's position, it shall file a written claim with the Engineer within  
54 30 days after delivery to the Engineer of the Contractor's written notice of  
55 a potential claim. Failure by the Contractor to submit a written notice of a  
56 potential claim in the time specified waives all rights for an increase in  
57 contract time or compensation related to such work. The claim shall be  
58 determined as provided in Section 7.16 Disputes and Claims. In all cases,  
59 the Contractor shall proceed with the work as specified in the order,  
60 direction, instruction, interpretation, or determination immediately upon  
61 providing the Engineer with the oral notice described above, unless  
62 otherwise directed in writing by the Engineer.

63

64           **(c) Penal Sum of the Surety Performance and Payment Bonds.**

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

67

68           **4.3 Field Orders.**       Upon receipt of the field order, the Contractor shall  
69           proceed with the work as changed by the field order without delay. If the  
70           Contractor does not agree with any of the terms or conditions or the adjustment  
71           or nonadjustment to the contract price, contract time, or both, set forth therein,  
72           the Contractor shall file a written notice of potential claim with the Engineer not  
73           later than five days after receipt of the field order. No more than ten working  
74           days after receipt of the written notice of a potential claim from the Contractor, a  
75           written response shall be issued for the subject work if the State agrees that it  
76           constitutes a change. The Contractor shall deem it a rejection of its potential  
77           claim if a written response is not issued in the time established. If the Contractor  
78           objects to the Engineer's position, it shall file a written claim with the Engineer  
79           within 30 days after delivery to the Engineer of the Contractor's written notice of a  
80           potential claim. Failure to file the written notice of a potential claim or to protest  
81           any portion(s) of the field order by the time specified shall constitute agreement  
82           on the part of the Contractor with all the terms, conditions, amounts and  
83           adjustment or non-adjustment to contract price, contract time, or both, set forth in  
84           the field order or the non-protested portion of the field order. Timely written  
85           notice shall be a non-waivable condition precedent to the assertion of a claim.

86

87           **4.4 Duty of Contractor to Provide Change Proposals.**   A field order may  
88           request the Contractor supply the Engineer with a detailed proposal for an  
89           adjustment to the contract price, contract time, or both, for the work described  
90           therein. Any such request for a proposal shall not affect the duty of the  
91           Contractor to proceed as ordered with the work described in the field order.

92

93           At any time without the issuance of a field order, the Engineer may  
94           request the Contractor supply the Engineer with a detailed proposal for an  
95           adjustment to the contract price, contract time, or both, for contemplated changes

96 in the work. The request for change proposal is not a directive for the Contractor  
97 to perform the work described therein.

98

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

108

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

115

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

122

123 If the Engineer refuses to accept the Contractor's entire proposal, the  
124 Engineer may issue a field order for all or part of the proposed work. If a field  
125 order has already been issued, the Engineer may issue a supplemental field  
126 order establishing new contract prices and further adjudgments to contract price  
127 and/or contract time for the ordered changes. If the Contractor disagrees with

128 any term, condition, or adjustment contained in such field order or supplemental  
129 field order, it shall follow the protest procedures set forth in and be subject to the  
130 other terms of Section 4.3 Field Orders.

131

132 **4.5 Contract Change Orders.** The Engineer will issue contract change  
133 orders when it deems appropriate during the contract period. Such change  
134 orders shall be a signed writing designated or indicated thereon to be a change  
135 order. A contract change order may contain the adjustment(s) in contract price,  
136 as described in Section 4.6 Methods of Price Adjustment, modification(s) in  
137 contract time, as described in Section 8.5 Contract Time, or both, for a number of  
138 field orders. In all cases, the Contractor shall proceed with the work as changed  
139 by the contract change order. No payment for any changes will be made until the  
140 contract change order is issued. If the Contractor does not agree with any of the  
141 terms or conditions of the adjustment or nonadjustment to either the contract  
142 price or contract time set forth therein, the Contractor shall file a written notice of  
143 potential claim with the Engineer not later than five days after receipt of the  
144 contract change order.

145

146 **4.6 Methods of Price Adjustment.**

147

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

150

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

154

155 (2) By unit prices or other price adjustments specified in the  
156 contract or subsequently agreed upon before commencement of  
157 the pertinent performance.

158

159           **(3)**     The Engineer may base the adjustment for a lump sum item  
160           on a calculated proportionate unit price. The Engineer will calculate  
161           the proportionate unit price by dividing the original contract lump  
162           sum price by the actual or original estimated quantity established  
163           by the contract documents.

164  
165           **(4)**     In such other lawful manner as the parties may mutually  
166           agree.

167  
168           **(5)**     At the sole option of the Engineer, work may be paid for on a  
169           force account basis in accordance with Section 9.6 Force Account  
170           Provisions and Compensation. However, for all change orders with  
171           a reasonably calculated value not exceeding \$50,000, payment  
172           shall be made on a force account basis.

173  
174           **(6)**     By determination by the Engineer of the reasonable and  
175           necessary costs attributed to the event or situation caused by the  
176           change, plus appropriate profit or fee, all computed by the generally  
177           accepted accounting principles and applicable sections of Chapters  
178           3-123 and 3-126, H.A.R., and using Section 9.5 Allowances for  
179           Overhead and Profit herein, as the method for calculating overhead  
180           and profit.

181  
182           **(b)**     The Contractor will not be compensated for loss of anticipated  
183           profits on deleted work.

184  
185    **4.7 Variations in Estimated Quantities.**    Where the quantity of a unit price  
186    item in this contract is estimated on the proposal schedule and where the actual  
187    quantity of such pay item varies more than 15 percent above or below the  
188    estimated quantity stated in this contract, an adjustment in the contract price  
189    shall be made upon demand of either party, providing the following conditions are  
190    met:

191 (1) The adjustment shall be limited to any increase or decrease  
192 in direct costs; and

193

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

201

202 **4.8 Differing Site Conditions.** The Contractor shall promptly and before  
203 such conditions are disturbed, notify the Engineer of:

204

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

207

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

212

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

216

217 (1) A verbal notice within 12 hours of discovery or by 10 A.M. of  
218 the next working day, whichever is later, of the differing site  
219 condition; and

220

221                   **(2)** Written notification of a potential claim to the Engineer no  
222 later than 5 days after the discovery of the differing site condition.

223

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

228

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

238

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

242

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

247

248 **4.9 Maintenance of Traffic.**

249

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

253 specified or directed.

254

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

261

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

268

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

274

275 **(b) Airport and Harbor Traffic.** The Contractor shall provide for the  
276 free and unobstructed movement of aircrafts, vessels, passengers, aircraft  
277 and vessel crews and service personnel, and equipment in the operations  
278 area of the airport or harbor where the work is being performed to the  
279 greatest extent possible. The Contractor shall provide for uninterrupted  
280 operation of visual and electronic signals (including power supplies  
281 thereto) used in the guidance of aircraft and vessels while operating to,  
282 from, and upon the airport or harbor.

283

284 **4.10 Construction and Maintenance of Detours.** The Contractor shall con-  
285 struct and maintain detours for the use, convenience, and safety of all traffic.  
286 Unless indicated otherwise in the contract, all such work for the use,  
287 convenience, and safety of all traffic shall be considered incidental to the work of  
288 the various pay items of the contract and no additional payment will be allowed  
289 therefor.

290

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

293

294 **4.11 Use of Explosives.** The use of explosives will not be permitted without  
295 the expressed written permission of the Engineer and shall be in conformance  
296 with all terms and conditions for their use set by the Engineer.

297

298 **4.12 Utilities and Services.**

299

300 **(a) Contractor's Duty to Coordinate Utility Work.** The Contractor  
301 shall contact the Hawaii One Call Center prior to any planned excavation  
302 and comply with all other requirements of 269E, H.R.S. In addition, the  
303 Contractor shall contact and cooperate with each affected utility owner in  
304 order for the work to progress on schedule and without unreasonable  
305 disruption of such utility services. If the work calls for permanent utility  
306 service installations or corrections to or modifications of existing utilities,  
307 the Contractor is responsible for scheduling and coordinating such work  
308 with appropriate utility owners. If the work required by the contract  
309 documents conflicts with the instructions, demands, or requirements of a  
310 utility owner, the Contractor shall notify the Engineer immediately. The  
311 Contractor shall furnish the Engineer with evidence that the Contractor  
312 has provided all relevant utility owners reasonable opportunity to review  
313 the drawings.

314

315           When the State has a separate agreement with utility owners for  
316 work to be performed within the worksite, at the direction of the Engineer,  
317 the Contractor shall make available all portions of the work and the  
318 worksite necessary for the utility owners to do their work.

319  
320           The Contractor hereby holds the State harmless against all risks  
321 arising from acts or omissions of utility owners that damage the work or  
322 create delays, disruptions, and additional cost to the Contractor in the  
323 performance of the work. Contract time may be extended in accordance  
324 with Subsection 8.5(b) Modifications of Contract Time, on account of acts  
325 and omissions of utility owners that delay the work without fault of the  
326 Contractor.

327  
328           Unless otherwise noted in the contract documents, the Contractor  
329 may relocate or adjust the utility lines or service connections for its  
330 convenience with the permission of the owner of the utility and the  
331 Engineer, at no increase in contract price or contract time.

332  
333           **(b) Contractor's Duty to Locate and Protect Utilities.**       Before  
334 beginning any work at the worksite, the Contractor shall:

335  
336           **(1)** Ascertain and mark the exact location and depth of all  
337 utilities within the project area including taking reasonable steps to  
338 detect the existence and location of utilities not shown on the  
339 drawings.

340  
341           **(2)** Acquaint all personnel working near utilities with the type,  
342 size, location, and depth of the utilities as well as the consequences  
343 that might result from disturbances.

344

345                   (3) Take reasonable steps to protect the utilities and prevent  
346 service disruption.

347

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

364

365                   **(d) Temporary Utilities During Construction.**

366

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

372

373                   **(2) Telephone:** The Contractor shall have a telephone available  
374 for the State's use for communications with field personnel.  
375 Cellular telephones are acceptable. The Contractor shall install the  
376 telephone immediately upon starting work and maintain service until

377 the project is completed. All costs associated with obtaining and  
378 maintaining telephone service shall be borne by the Contractor.

379

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

383

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

393

394 **4.13 Illumination of Work.** When any work is performed at night or where  
395 daylight is obscured, the Contractor shall, as part of the contract price, provide  
396 artificial light sufficient to permit the work to be carried on efficiently,  
397 satisfactorily and safely and to permit thorough inspection. Contractor shall  
398 submit for review by the DOT a lighting plan that shall ensure conformance to all  
399 federal and state laws and codes and regulations as well as to ensure all lighting  
400 is shielded or fully cut off to prevent any illumination to the dark sky. Lighting  
401 shall be installed so as not to cause glare or reflection to persons operating  
402 aircraft, vessels, or other equipment at State Airports and Harbors or to traffic  
403 controllers in any control tower or illumination to the dark sky. Access to the  
404 place of work shall also be clearly illuminated under the same provisions. All  
405 wiring for electric light and power shall be properly installed and maintained,  
406 securely fastened in place, and shall be kept as far as possible from telephone

407 wires and signal wires. The DOT reserves the right to modify the plans,  
408 equipment/fixtures as required.

409

410

**END OF ARTICLE IV**

1 **ARTICLE V – CONTROL OF WORK**

2  
3 **5.1 Authority.**  
4

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

- 8
- 9 **(1)** Interpretation of the contract documents.
  - 10
  - 11 **(2)** Acceptability of the materials furnished and work performed.
  - 12
  - 13 **(3)** Manner of performance and rate of progress of the work.
  - 14
  - 15 **(4)** Acceptable fulfillment of the contract on the part of the  
16 Contractor.
  - 17
  - 18 **(5)** Compensation under the contract.
  - 19

20 The Engineer’s decisions on questions, claims, and disputes will be  
21 final and conclusive subject to Section 7.16 Disputes and Claims.  
22

23 The Engineer may delegate specific authority to act for the  
24 Engineer to a specific person or persons. Such delegation of authority  
25 shall be established in writing and shall become effective upon delivery to  
26 the Contractor.  
27

28 **(b) Authority of the Inspectors.** Inspectors, as a representative of  
29 the Engineer or other agencies, will inspect the work done and materials  
30 furnished. Such inspection may extend to the preparation, fabrication, or  
31 manufacture of the materials to be used. The Inspector does not have the  
32 authority vested in the Engineer unless specifically delegated in writing.

33 The Inspector may not alter or waive the provisions of the contract, issue  
34 instructions contrary to the contract, or act as agent or representative of  
35 the Contractor.

36  
37 Failure of an Inspector, at any time, to reject non-conforming work  
38 shall not be considered a waiver of the State's right to require work in strict  
39 conformity with the contract documents as a condition of final acceptance.

40  
41 **(c) Authority of the Consultant and Construction Manager.** The  
42 State may engage Consultants and Construction Managers to perform  
43 duties in connection with the work. Such retained consultants and  
44 construction managers shall have no greater authority than an inspector  
45 except to the extent delegated in writing by the Engineer.

46  
47 **(d) Notices to the State.** Any written notice to be given to the State  
48 or the Department shall be either:

49  
50 **(1)** Delivered in person to the Engineer or his delegated rep,

51  
52 **(2)** Mailed to the Engineer or his delegated rep at the address or  
53 addresses as directed in writing by the Engineer or, in the absence  
54 of written direction, to the address of the State or Department  
55 appearing on the contract, or

56  
57 **(3)** By electronic transmission such as email, to the email  
58 address or addresses as directed in writing by the Engineer.

59  
60 **5.2 Submittals.** The contract contains the description of various items that  
61 the Contractor must submit to the Engineer for review and acceptance. The  
62 Contractor shall review all submittals for correctness, conformance with the  
63 requirements of the contract documents, and completeness before submitting  
64 them to the Engineer. The submittal shall indicate the contract items and

65 specifications subsections for which the submittal is provided. The submittal  
66 shall be legible and clearly indicate what portion of the submittal is being  
67 submitted for review. The Contractor shall provide six copies of the required  
68 submissions at the earliest possible date.

69

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

72

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

75

### 76 **5.3 Shop Drawings.**

77

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

86

87 All drawings which require an engineering stamp shall be stamped  
88 by professional engineers licensed in the State of Hawaii. Unless  
89 otherwise noted in the contract documents, shop drawings shall indicate,  
90 in detail, all parts of an item of work, including erection and setting  
91 instructions and engagements with work of other trades or other separate  
92 contractors. Shop drawings for structural steel, millwork, pre-cast  
93 concrete and falsework, formwork or centering with heights of 40 feet or  
94 more, or open spans of 20 feet or more shall consist of calculations,  
95 fabrication details, erection drawings, and other shop drawings necessary  
96 to show the details, dimensions, sizes of members, anchor bolt plans,

97 insert locations and other information necessary for the complete  
98 fabrication and erection of the structure to be constructed. Shop drawings  
99 shall also include stress sheets, drawings, bending diagrams for reinforcing  
100 steel, and plans for erection, falsework, framework, cofferdam, and other  
101 items or such other similar data required for the successful completion  
102 of the work.

103  
104 All shop drawings, as required by the contract or as determined by  
105 the Engineer to be necessary to illustrate details of the work, shall be  
106 submitted to the Engineer with such promptness as to cause no delay in  
107 the work or the work of any other Contractor. Delay caused by the failure  
108 of the Contractor to submit shop drawings on a timely basis to allow for  
109 review, possible resubmittal, and acceptance will not be considered as a  
110 justifiable reason for a contract time extension. Contractor, at its own risk,  
111 may proceed with the work affected by the shop drawings after they are  
112 submitted but before receiving acceptance. The State shall not be liable  
113 for any increase in contract price or contract time required for the  
114 correction of work done without the benefit of accepted shop drawings.

115  
116 The Contractor shall not make changes to the accepted shop  
117 drawings without submitting a written request to the Engineer and  
118 receiving and reviewing a written acceptance of the change by the  
119 Engineer.

120  
121 By approving and submitting shop drawings, the Contractor thereby  
122 represents that it has determined and verified all field measurements and  
123 field construction criteria, or will do so, and that it has checked and  
124 coordinated each shop drawing with the requirements of the work and the  
125 contract documents. When shop drawings are prepared and processed  
126 before field measurements and field construction criteria can be or have  
127 been determined or verified, the Contractor shall make all necessary

128 adjustments in the work or resubmit further shop drawings, all at no  
129 increase in contract price or contract time.

130

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

138

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

143

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

150

151 **(b) Submittal for Deviations and Variances.** The Contractor shall  
152 include, with the submittal, written notification clearly identifying and  
153 summarizing all deviations or variances from the contract drawings,  
154 specifications, and other contract documents. The variances shall also be  
155 clearly indicated and marked as "Variance" on the shop drawing,  
156 descriptive sheet, and material sample or color sample. Failure to so  
157 notify of and identify such variance shall be grounds for rejection of the  
158 related work or materials, notwithstanding that the Engineer accepted the  
159 submittal. If the variances are not acceptable to the Engineer, the

160 Contractor will be required to furnish the item as specified or indicated on  
161 the contract documents at no increase in contract price or contract time.

162

163 **5.4 Review and Acceptance Process.** The Engineer will complete the  
164 review of the submittal within 30 days from the date of receipt unless a different  
165 review time is established by the contract documents. The Engineer will advise  
166 the Contractor, in writing, as to the acceptability of the submittal. Should the  
167 Engineer partially or totally reject the submittal, the Contractor shall modify the  
168 submittal as required by the Engineer and resubmit the item within 15 days. At  
169 this time, the review and acceptance cycle described above shall begin again.  
170 The review and acceptance cycle shall begin again, as described above, each  
171 time the submittal is returned to the Contractor for modification. If the volume of  
172 the shop drawings submitted at any time for review is unusually large, the  
173 Contractor shall inform the Engineer of its preferred order for reviews, and the  
174 Engineer will use reasonable efforts to accommodate the Contractor's priority.

175

176 The acceptance by the Engineer of the Contractor's submittal relates only  
177 to their sufficiency and compliance with the intention of the contract. Acceptance  
178 by the Engineer of the Contractor's submittal does not relieve the Contractor of  
179 any responsibility for accuracy of dimensions, details, quantities and proper fit,  
180 and for agreement and conformity of submittal with the contract drawings and  
181 specifications. Nor will the Engineer's acceptance relieve the Contractor of  
182 responsibility for variance from the contract documents unless the Contractor, at  
183 the time of submittal, has provided notice and identification of such variances  
184 required by this section. Acceptance of a variance shall not justify a contract  
185 price or time adjustment unless the contractor requests such adjustment at the  
186 time of submittal, and the adjustment is explicitly agreed to in writing by the  
187 Engineer. Any such request shall include price details and proposed scheduling  
188 modifications. Acceptance of a variance is subject to all contract terms,  
189 stipulations, and covenants and is without prejudice to any and all rights under  
190 the surety bond.

191

192 If the Engineer returns a submittal to the Contractor that has been rejected,  
193 the Contractor, so as not to delay the work, shall promptly make a resubmittal  
194 conforming to the requirements of the contract documents and indicating in writing  
195 on the transmittal and the subject submittal what portions of the resubmittal have  
196 been altered in order to meet the acceptance of the Engineer. Any other  
197 differences between the resubmittal and the prior submittal shall also be  
198 specifically described in the transmittal.

199

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

206

207 **5.5 Interpretations of the Contract Documents; Conflicts and Ambiguity.**

208 The contract documents are complementary. Any requirement occurring in one  
209 document is as binding as though occurring in all. A stricter requirement, as  
210 determined by the Engineer, prevails over any less strict requirement. The  
211 stricter requirement will be the requirement that provides the greater product life,  
212 durability, strength, and function.

213

214 The Contractor shall not take advantage of any apparent error or omission  
215 in the contract documents. The Contractor shall carefully study and compare the  
216 contract documents with each other, with field conditions, and with the  
217 information furnished by the State and shall immediately report to the Engineer  
218 errors, conflicts, ambiguities, inconsistencies, or omissions discovered. Should  
219 an item not be sufficiently detailed or explained in the contract documents, the  
220 Contractor shall report to the Engineer immediately and request the Engineer's  
221 clarification and interpretation. The Engineer will issue a clarification or  
222 interpretation that is consistent with the intent of and reasonably inferred from the  
223 contract documents.

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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.

255 **5.8 Coordination Between the Contractor and the State.**

256

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

264

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

269

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

277

278 The Contractor, at his own expense, shall incorporate all field  
279 changes, Post Construction Document (PCD) Changes, etc. in a clearly  
280 legible manner utilizing the symbols of the Contract drawings onto the  
281 contract drawings. All underground stubouts shall be dimensionally  
282 located from the building structure. Monthly and final payments to the  
283 Contractor shall be subject to prior approval of the drawings. On  
284 completion of all work under the contract, two sets of marked-up record  
285 drawings, signed and dated, shall be delivered to the Engineer and shall  
286 be subject to approval before acceptance.

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**(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.

318 **5.9 Coordination Between Contractors; Impacts.**

319

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

326

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

328

329 **(2)** Placing and disposing of the materials used.

330

331 **(3)** Operating and storage of equipment.

332

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

337

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

341

342 **(b) Responsibility for Impact on Another State Contractor;**

343 **Retention.** In the event the Contractor unreasonably delays or  
344 otherwise interferes with the work of another State construction contractor  
345 during the course of the work, resulting in a claim against the State by the  
346 impacted contractor, the Contractor shall defend against any such claim,  
347 and shall indemnify and hold the State harmless for all damages, costs  
348 and legal fees resulting from the Contractor's unreasonable delays and  
349 other interference. The Engineer, upon finding good cause in support of

350 the impacted contractor's claim, may deduct up to but not more than 10%  
351 from the subsequent progress payments due the Contractor until the full  
352 amount of the claim has been retained. This right of retention is separate  
353 from and in addition to any other retainage rights created by contract or  
354 law.

355  
356 Upon final resolution of the impact claim, the Engineer may deduct  
357 the amount of the claim from the retained funds described herein, and  
358 from any other funds held by the State for the account of the Contractor.  
359 If the retained funds are insufficient to pay the entire claim, the Engineer  
360 may deduct up to 10% from future progress payments, or from the  
361 final payment for the contracted work without limitation until the claim  
362 amount is paid in full, or recover the deficit from the Contractor by any  
363 other means authorized by law. If the retained funds exceed the amount  
364 of the final resolution of the impact claim, the Engineer shall pay the  
365 Contractor that portion of the retained funds that the Contractor would  
366 otherwise be entitled to as of the time of payment.

367  
368 The Contractor may contest the Engineer's finding, and should a  
369 determination be made that the impacted contractor's claim was not  
370 caused by the Contractor, any monies being withheld for the impacted  
371 contractor's claim, will be released to the Contractor. Until such  
372 determination is made, the Contractor will not be entitled to any monies  
373 being withheld for the impacted contractor's claim.

374

375 **5.10 Construction Stakes, Lines, and Grades.**

376

377 **(a) General.** The Contractor shall survey and stake out the work  
378 including verification and establishment of all lines, grades, dimensions, and  
379 elevations. The Contractor shall prepare and maintain field notes and  
380 supporting data in a manner acceptable to the Engineer. The field notes  
381 and supporting data shall be made available to the Engineer immediately

382 upon request. The personnel doing the survey work and preparing the  
383 calculations derived therefrom shall be made available by the Contractor to  
384 the Engineer for explanation, clarification, or both, immediately upon  
385 request.

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

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

395  
396 The Contractor shall preserve all survey features, including, but not  
397 limited to, control points, stakes, marks, or monuments that the Engineer  
398 or others have furnished. If the Contractor destroys or disturbs any such  
399 survey feature, the Contractor shall replace or restore these items at no  
400 cost to the State.

401  
402 **5.11 Inspection of the Work and Materials.** Materials and each part of the  
403 details of the work shall be subject to inspection and testing for conformance by  
404 the Engineer. Unless otherwise specified, all such testing shall be at the  
405 Contractor's expense as part of the contract price. The Contractor shall furnish  
406 the Engineer information, assistance, and provide appropriate safeguards and  
407 equipment to allow a complete inspection to be made

408  
409 The Engineer may inspect the production, fabrication, and manufacture of  
410 materials and items that are to be incorporated into the work. The Contractor  
411 shall ensure that the producer, fabricator, and manufacturer provide access to  
412 the Engineer, without adjustment in contract price or contract time, at the source

413 of such materials and items or at any other place such materials or items may be  
414 located before they are incorporated into the work. The Engineer will comply  
415 with safety procedures established by the facility. When any government agency  
416 or any utility company is to pay a portion of the cost of the work covered by this  
417 contract, they shall have the right to inspect the work. Such inspection shall not  
418 make that government agency or utility company a party to this contract.

419

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

426

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

431

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

435

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

439

440 When the contract documents or a written directive from the Engineer  
441 require that certain work not proceed until the Engineer is given notice and the  
442 opportunity to inspect, the Engineer may order the work done or materials used  
443 without the Engineer having been given notice and opportunity to inspect to be  
444 removed and replaced at no increase in contract price or contract time.

445

446           Inspections are performed for the exclusive benefit of the State. The  
447 inspection of or the failure to inspect the work shall not relieve the Contractor of  
448 obligations to fulfill the contract as prescribed, to correct defective work, and to  
449 replace unsuitable or rejected materials regardless of whether payment for such  
450 work has been made.

451

452 **5.12 Removal of Non-Conforming and Unauthorized Work: Performance**  
453 **of Corrective or Remedial Work.** All work that does not conform to the  
454 requirements of the contract shall be remedied or removed and replaced by the  
455 Contractor at no increase in contract price, contract time, or both. No payment  
456 will be made for non-conforming work.

457

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

463

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

475

476 **5.13 Maintenance.** The Contractor shall assume all risk of loss or damage to

477 the work and shall maintain the work, including the removal of all graffiti and  
478 defacement, until final acceptance of the project or incremental acceptance of  
479 that portion of the work. If the Contractor fails to remedy unsatisfactory  
480 maintenance after receipt of a written directive from the Engineer, the Engineer  
481 shall have the authority, in addition to other remedies by law, to have such  
482 maintenance performed by someone other than the Contractor, to charge the  
483 Contractor for such maintenance, or deduct the cost of such maintenance from  
484 monies due or become due to the Contractor.

485

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

490

#### 491 **5.14 Storage and Handling of Materials and Equipment.**

492

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

495

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

506

507 **(c) Contractor's Risk.** The Contractor assumes all risk of loss or  
508 damage to the materials and equipment stored within the State project site

509 or any other storage site provided by the Engineer pursuant to Subsection  
510 5.14(a). Storage of materials and equipment in connection with the  
511 project is an element of the Contractor's "performance" as referred to in  
512 Section 7.15 Responsibility For Damage Claims; Indemnity.

513

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

520

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

526

527 **5.15 Value Engineering Incentive Proposal.** On any contract in an amount  
528 greater than \$100,000, the Contractor shall be entitled to an equitable adjustment  
529 to share in cost savings resulting from the value engineering proposal, subject to  
530 the following conditions:

531

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

539

540 **(2)** A value engineering proposal shall not be deemed accepted  
until a change order has been issued establishing the proposal as

541 part of the work.

542

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

547

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

550

551 **5.16 Subcontracts.**

552

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

556

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

562

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

566

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

573 Engineer and be based on the cost of such portion of the contract items.

574

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

577

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

585

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

594

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

596

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

599

600 **(3)** Becomes insolvent;

601

602 **(4)** Has its Contractor's license suspended or revoked;

603

604 **(5)** Has allegedly defaulted or has otherwise breached the

605 subcontract in connection with the subcontracted work; or

606

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

610

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

616

617 **(d) Contractor's Responsibility for Subcontractors.** The  
618 Contractor is responsible for the operations and the work of its  
619 subcontractors as well as the conduct of the subcontractors' employees.

620

621 **5.17 Dimensions, Performance Standards, and Other Values Required by**  
622 **the Contract.** When work required by the contract is subject to contractually  
623 established tolerances, the Contractor's means and methods shall nevertheless  
624 be designed to meet the precise dimensions, performance standards, and other  
625 values required by the contract. Contractor shall not intentionally attempt to  
626 provide work that does not strictly meet the precise dimensions, performance  
627 standards, and other values required by the contract.

628

629 **END OF ARTICLE V**

630

631

632

633

634

635



33

34 **6.3 Unauthorized Excavation.** Unless otherwise expressly directed or  
35 authorized by the contract documents, Contractor shall not excavate beyond the  
36 excavation limits for the purpose of obtaining materials. The site disturbed by  
37 unauthorized excavation shall be returned to the condition existing before such  
38 unauthorized excavation at no increase in contract price or contract time. Any  
39 unauthorized excavation shall be filled, at the direction of the Engineer, with  
40 either the material taken out or a substitute material selected by the Engineer.

41

42 **6.4 Material Sample and Testing.** Submission of material samples and  
43 equipment data required by the contract documents or by the Engineer are  
44 exclusively for the benefit of the State's quality control monitoring of the project.  
45 Any statement or representation by the Engineer that any submitted sample or  
46 equipment data is "ACCEPTED", "APPROVED", or other words to similar effect,  
47 shall not be deemed conclusive that the material and equipment data for which a  
48 sample was submitted will conform to the contract requirements when  
49 incorporated into the work. The "ACCEPTANCE" or "APPROVAL" of any sample  
50 by the Engineer does not change or modify any contract requirements.

51

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

65 requirements or other material acceptable to the Engineer at no increase in  
66 contract price or contract time.

67

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

74

75 (1) The tests to be conducted and standards to be applied;

76

77 (2) Whether a submitted material sample passes the tests and  
78 meets the standards; and

79

80 (3) Whether a submitted material sample shall be retested.

81

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

87

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

91

## 92 **6.5 Sample Submittals.**

93

94 (a) **Contractor's Duty.** When sample submittals are required by the  
95 contract documents, the Contractor shall review, approve, indicate its  
96 approval, and submit to the Engineer samples of the materials to be used

97 in the work. It is the responsibility of the Contractor to submit required  
98 material and color samples for review at the earliest possible date after the  
99 date of award. Delays caused by the failure of the Contractor to submit  
100 material and color samples will not be considered as justifiable reasons for  
101 contract time extension or additional compensation.

102

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

112

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

125

126 If the Engineer notifies the Contractor that a sample does not  
127 conform to the contract documents, the Contractor shall promptly submit a  
128 sample conforming to the requirements of the contract documents,

129 indicating in writing on the transmittal and the subject sample what  
130 portions of the resubmittal have been altered.

131

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

139

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

150

151 **6.6 Notice of Change.** If, during the course of the work, the Contractor  
152 intends to change the source of supply of any previously submitted material or  
153 the location of any manufacturing or fabrication plant, the Contractor shall  
154 provide the Engineer written notice of such intended change not less than ten  
155 days before the change is made. The Engineer may require that the Contractor  
156 repeat the submittal process, in accordance with this Article VI – Control of  
157 Material, for any such material.

158

159 **6.7 Certificate of Compliance.** In addition to or instead of the submission  
160 of material samples for inspection or testing, the Engineer or the contract

161 documents may require the Contractor to submit to the Engineer a Certificate of  
162 Compliance from the manufacturer, supplier, or both.

163

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

166

167 (1) A description of the material supplied;

168

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

172

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

176

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

180

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

185

186 **6.8 Non-Conforming Materials.** All materials not conforming to the  
187 contract requirements, whether in place or not, shall be promptly removed from  
188 the site of the work when directed by the Engineer in writing. If the Contractor  
189 fails to comply forthwith with any order of the Engineer made under the  
190 provisions of this subsection, the Engineer shall have the authority to remove and  
191 replace non-conforming materials and charge the removal and replacement to  
192 the Contractor.

193

194 **6.9 State-Furnished Material.** The Contractor shall furnish all materials  
195 required to complete the work, except those specified to be furnished by the  
196 State. The contract documents or the Engineer will establish the time and means  
197 of delivery or the turning over of State-furnished materials. Unless otherwise  
198 specified, the cost of pick up and transport to the work site of such materials is  
199 included in the contract price.

200

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

204

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

207

208 **6.10 Payment for Deleted Materials.**

209

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

217

218 **(b) Returned Materials.** If acceptable deleted material is in the  
219 possession of the Contractor or is ultimately received by the Contractor, if  
220 such material is returnable to the supplier and the Engineer so directs, the  
221 material shall be returned. After the Contractor returns acceptable  
222 material to the supplier, the State will pay for the reasonable charges  
223 made by the supplier or other source for the return of the material. The  
224 Contractor shall be paid a 10 percent markup on the reasonable charges

225 made by the supplier or other source for returning the material for  
226 compensation for overhead and profit. The cost to the Contractor for  
227 handling the returned material will be paid as provided in Section 4.6  
228 Methods of Price Adjustment.

229

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

237

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

242

243 **6.11 (Reserved).**

244

245 **6.12 Assignment Of Antitrust Claims For Overcharges For Goods and**  
246 **Materials Purchased.**

247

248 Contractor and owner recognize that, in actual economic practice,  
249 overcharges resulting from antitrust violations are in fact usually borne by the  
250 owner. Therefore, Contractor hereby assigns to owner any and all claims for  
251 such overcharges as to goods and materials purchased in connection with this  
252 order or contract, except as to overcharges which result from antitrust violations  
253 commencing after the price is established under this order or contract and any  
254 contract change order. In addition, Contractor warrants and represents that each  
255 of its first tier suppliers and subcontractors shall assign any and all such claims to  
256 owner, subject to the aforementioned exception.

257

258 **6.13 Substitution Of Materials and Equipment After Bid Opening.**

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

261

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

265

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

268

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

271

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

276

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

279

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

284

285 The burden of proof as to the comparative quality and suitability of  
286 alternate equipment, articles, or materials shall be upon the Contractor. The  
287 Contractor shall furnish, at no increase in contract price or contract time, all  
288 information required by the Engineer.

289

290           The Engineer reserves the right to deny any request the Engineer deems  
291 irregular or not in the best interest of the State and shall be the sole judge of the  
292 comparative quality and suitability of alternate equipment, articles, or materials.

293

294

**END OF ARTICLE VI**

1           **ARTICLE VII – LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

2  
3       **7.1 Insurance Requirements.**

4  
5           **(a) Obligation of Contractor.** Contractor shall not commence any  
6 work until it obtains, at its own expense, all required insurance described  
7 herein. Such insurance shall be provided by an insurance company  
8 authorized by the laws of the State to issue such insurance in the State of  
9 Hawaii. Coverage by a “Non-Admitted” carrier is permissible provided the  
10 carrier has a Best’s Rating of “A-VII” or better. The Contractor shall  
11 maintain and ensure all insurance policies are current for the full period of  
12 the contract until final acceptance of the work by the State.

13  
14           The Certificate of Insurance shall contain: a clause that it is agreed  
15 that any insurance maintained by the State of Hawaii will apply in excess  
16 of, and not contribute with, insurance provided by this policy; and shall be  
17 accompanied by endorsement form CG2010 or equivalent naming the  
18 State as an additional insured to the policy which status shall be  
19 maintained for the full period of the contract until final acceptance of the  
20 work by State.

21  
22           The Contractor shall obtain all required insurance as part of the  
23 contract price. Where there is a requirement for the State of Hawaii and  
24 its officers and employees to be named as additional insureds under any  
25 Contractor’s insurance policy, before the State of Hawaii issues the Notice  
26 to Proceed, the Contractor shall obtain and submit to the Engineer a  
27 Certificate of Insurance and a written policy endorsement that confirms the  
28 State of Hawaii and its officers and employees are additional insureds for  
29 the specific State project number and project title under such insurance  
30 policies. The written policy endorsement must be issued by the insurance  
31 company insuring the Contractor for the specified policy type or by an  
32 agent of such insurance company who is vested with the authority to issue  
33 a written policy endorsement. The insurer’s agent shall also submit

34 written confirmation of such authority to bind the insurer. Any delays in  
35 the issuance of the Notice to Proceed attributed to the failure to obtain the  
36 proof of the State of Hawaii and its officers and employees' additional  
37 insured status shall be charged to the Contractor.

38

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

44

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

56

57 Nothing contained in these insurance requirements is to be  
58 construed as limiting the extent of Contractor's responsibility for payment  
59 of damages resulting from its operations under this contract, including the  
60 Contractor's obligation to pay liquidated damages, nor shall it affect the  
61 Contractor's separate and independent duty to defend, indemnify, and  
62 hold the State harmless pursuant to other provisions of this contract. In no  
63 instance will the State's exercise of an option to occupy and use  
64 completed portions of the work relieve the Contractor of its obligation to

65 maintain the required insurance until the date of final acceptance of the  
66 work.

67  
68 All insurance described herein shall be primary and cover the  
69 insured for all work to be performed under the contract, all work performed  
70 incidental thereto or directly or indirectly connected therewith, including,  
71 but not limited to traffic detour work, barricades, warnings, diversions, lane  
72 closures, and other work performed outside the work area and all change  
73 order work.

74  
75 The Contractor shall, from time to time, furnish the Engineer, when  
76 requested, satisfactory proof of coverage of each type of insurance  
77 required covering the work. Failure to comply with the Engineer's request  
78 may result in suspension of the work and shall be sufficient grounds to  
79 withhold future payments due the Contractor and to terminate the contract  
80 for Contractor's default.

81  
82 **(b) Types of Insurance.** Contractor shall purchase and maintain  
83 insurance described below which shall provide coverage against claims  
84 arising out of the Contractor's operations under the contract, whether such  
85 operations be by the Contractor itself or by a subcontractor or by anyone  
86 directly or indirectly employed by any of them or by anyone for whose acts  
87 any of them may be liable.

88  
89 **(1) Worker's Compensation.** The Contractor shall obtain  
90 worker's compensation insurance for all persons whom they  
91 employ in carrying out the work under this contract. This insurance  
92 shall be in strict conformity with the requirements of the most  
93 current and applicable State of Hawaii Worker's Compensation  
94 Insurance laws in effect on the date of the execution of this contract  
95 and as modified during the duration of the contract.

96

97                   **(2) Auto Liability.**     The Contractor shall obtain Auto Liability  
98                   Insurance covering all owned, non-owned, and hired autos with a  
99                   combined single limit of not less than \$1,000,000 per occurrence  
100                   for bodily injury and property damage with the State of Hawaii  
101                   named as additional insured. Refer to SPECIAL CONDITIONS for  
102                   any additional requirements.

103  
104                   **(3) General Liability.**     The Contractor shall obtain General  
105                   Liability insurance with a limit of not less than \$2,000,000 per  
106                   occurrence and in the Aggregates for each of the following:

107  
108                               **(A)**     Products – Completed/Operations Aggregate,

109  
110                               **(B)**     Personal & Advertising Injury, and

111  
112                               **(C)**     Bodily Injury & Property Damage.

113  
114                   The General Liability insurance shall include the State as an  
115                   additional insured. The required limit of insurance may be provided  
116                   by a single policy or with a combination of primary and excess  
117                   policies. Refer to SPECIAL CONDITIONS for any additional  
118                   requirements.

119  
120                   **(4) Builder's Risk For All Work.**     The Contractor shall take  
121                   out a policy of builder's risk insurance for the full replacement value  
122                   of the project work, from a company licensed or otherwise  
123                   authorized to do business in the State of Hawaii; naming the State  
124                   as an additional insured under each policy; and covering all work,  
125                   labor, and materials furnished by such Contractor and all its  
126                   subcontractors against loss by fire, windstorm, tsunamis,  
127                   earthquakes, lightning, explosion, other perils covered by the  
128                   standard Extended Coverage Endorsement, vandalism, and

129 malicious mischief. Refer to SPECIAL CONDITIONS for any  
130 additional requirements.

131

132 **(c) Breach of Duty by Contractor or Insurer.** If either the  
133 Contractor or its insurer wrongfully fails to defend or indemnify the State of  
134 Hawaii, its officers, and employees against any claims, the State may  
135 debar or suspend the Contractor from bidding or working on construction  
136 projects and may refuse to permit the insurer to provide insurance on  
137 construction projects.

138

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

141

142 **(d) Subcontractor Insurance.** The Contractor shall either:

143

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

152

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

155

156 In the absence of language in the certificate excluding coverage for  
157 subcontractors, it will be understood that the Contractor's insurance  
158 covers all aspects of the work whether performed by the Contractor or any  
159 of its subcontractors.

160

161 **(e) Self-Insured Retention.** The Contractor shall be permitted, in  
162 cooperation with its insurers, to maintain a self-insured retention for up to  
163 25 percent of the per occurrence combined single limits of the commercial  
164 general liability and the automobile liability policies required by the  
165 contract documents.

166

167 **7.2 Employment of State of Hawaii Residents.**

168

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

179

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

184

185 **(2)** The Contractor and any applicable subcontractors shall  
186 maintain records such as certified payrolls for laborers and  
187 mechanics who perform work at the site and timesheets for all other  
188 employees who performed work on the project. These records  
189 shall include the names, addresses and number of hours worked  
190 on the project by all employees of the Contractor and applicable  
191 subcontractors who performed work on the project to validate  
192 compliance with this section. The Contractor and applicable

193 subcontractors shall maintain, retain, and provide the Engineer  
194 access to these records at all times during the work as well as in  
195 accordance with Section 9.12 Records, Accounts, and Documents.  
196

197 **(3)** The Contractor has an affirmative duty, throughout the  
198 course of the project, to ensure that all subcontractors remain in  
199 compliance with this Section.  
200

201 **(b) Failure to Comply.** Failure to comply with Subsection 7.2(a) shall  
202 be deemed a breach of contract by the Contractor and the State may  
203 exercise all applicable remedies available including, but not limited to:  
204

205 **(1)** With respect to the Contractor, withholding of final payment  
206 on the contract until the Contractor complies with Subsection  
207 7.2(a); or  
208

209 **(2)** Proceedings for debarment or suspension of the contractor  
210 or subcontractor under Section 103D-702, H.R.S.  
211

212 **7.3 Permits and Licenses.** As part of the contract price, the Contractor  
213 shall obtain all permits and licenses required by law to perform the work and pay  
214 charges, fees, and taxes incidental to obtaining such permits and licenses. The  
215 Contractor assumes exclusive responsibility for identifying and acquiring all  
216 permits and licenses necessary to perform the work, except for those permits  
217 and licenses identified in the contract documents as being the responsibility of  
218 the State.  
219

220 The terms and conditions of any permit or license required for  
221 performance of the work, whether or not issued in the name of the Contractor,  
222 are incorporated into the contract. Compliance with such terms and conditions  
223 are duties owed by the Contractor to the State under the contract.  
224 Notwithstanding the enforcement authority of the permitting or licensing agency,

225 whether or not a State agency, non-compliance by the Contractor with any term  
226 or condition of such license or permit shall be deemed non-compliance with the  
227 contract and may constitute grounds for default.

228

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

232

233 **7.4 Working Hours; Night Work.** Normal working hours shall be from 7:00  
234 a.m. to 3:30 p.m., Monday through Friday, excluding holidays. Work performed  
235 between 3:30 p.m. and 7:00 a.m. of the following day is “night work”.

236

237 **7.5 Overtime and Night Work.** Overtime work shall be considered as work  
238 performed in excess of eight hours in any one day or work performed on  
239 Saturday, Sunday, or legal holidays of the State. Overtime and night work are  
240 permissible when approved by the Engineer in writing or as called for elsewhere  
241 within the contract documents. The Contractor shall inform the Engineer in  
242 writing at least three working days in advance of its intent to work overtime and  
243 10 working days in advance of any night work. In addition, the Contractor shall  
244 inform the Engineer of what specific work is to be done during any overtime and  
245 night work period.

246

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

250

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

254

255 **7.6 Overtime and Night Payment for State Inspection Service.**

256

257 **(a) State's Responsibility for State's Cost.** The State shall be  
258 responsible for overtime or night work payment for State's staff and  
259 inspection personnel, including consultants, when the contract requires  
260 overtime or night work to be performed or directs the Contractor to work  
261 additional shifts or overtime for the State's convenience.

262

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

267

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

269

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

277

278 **(2)** The transportation costs incurred by the State's staff and  
279 inspection personnel, which are based on established rental rates  
280 or mileage allowance in use by the State for the particular  
281 equipment or vehicle.

282

283 **(3)** Fees and other costs billed the State by consultants  
284 engaged on the project for overtime and night work.

285

286 **(c) Payment for Inspection Service.** The monies due the State for  
287 costs described herein shall be deducted from the monies due or to

288           become due the Contractor. The Contractor shall not pay the State's  
289           employees and consultants directly.

290

291   **7.7 Contractor Duty Regarding Public Convenience.**       The Contractor  
292   shall, at all times, conduct the work in such manner and in such sequence as will  
293   insure the least practicable interference with pedestrian, bicycle, and motor  
294   passageways.

295

296   **7.8 Assignment or Change of Name.**

297

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

301

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

310

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

315

316           **(1)**       The transferee assumes all of the Contractor's obligation.

317

318           **(2)**       The Contractor remains liable for all obligations under the  
319       contract but waives all rights under the contract against the State.

320

321                   **(3)**    The Contractor shall continue to furnish, and the transferee  
322                   shall also furnish, all required bonds.

323

324                   **(c)    Change of Name.**    When a Contractor requests to change the  
325                   name in which it holds a contract with the State, the Engineer shall, upon  
326                   receipt of a document indicating such change of name (for example: an  
327                   amendment to the articles of incorporation of the corporation), enter into  
328                   an agreement with the requesting Contractor to effect such a change of  
329                   name. The agreement changing the name shall specifically indicate that  
330                   no other terms and conditions of the contract are thereby changed.

331

332                   **7.9    Laws to be Observed; Indemnity.**    At all times, the Contractor shall  
333                   observe and comply with all Federal, State, and local laws, ordinances, rules,  
334                   regulations, and permit and license requirements, which in any manner affect  
335                   those engaged or employed in the work, the materials used in the work, and the  
336                   conduct of the work. The Contractor shall comply with all orders and decrees of  
337                   government bodies or officials having any jurisdiction or authority over the work  
338                   whether such orders or decrees are directed to the Contractor, its  
339                   subcontractors, vendors and suppliers, or to the State.

340

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

346

347                   The Contractor shall immediately notify the Engineer in writing of any  
348                   orders, directives, notices, decrees, or warnings issued by any governmental  
349                   agency to the Contractor, its subcontractors, vendors, and suppliers that a  
350                   violation of law, rule, regulation, or permit or license requirement is alleged to  
351                   have occurred or is occurring in connection with the work.

352

353           The Contractor shall defend, protect, hold harmless, compensate, and  
354 indemnify the State, its officers, and employees against any claim or liability  
355 arising from or based on the violation of any laws, ordinances, rules and  
356 regulations, orders or decrees, or the terms and conditions of any permits and  
357 licenses, whether such orders or decrees are directed to the Contractor, its  
358 subcontractors, vendors and suppliers, or to the State.

359

360 **7.10 Patented Devices, Materials, And Processes.**       If the Contractor  
361 desires or is required to use any designs, devices, materials, or processes  
362 covered by letters of patent or copyright, the right for such use shall be procured  
363 by the Contractor from the patentee or owner. The Contractor shall defend,  
364 protect, indemnify and hold harmless, compensate, and where appropriate,  
365 insure, the State from any and all claims, demands, liabilities, actions, and  
366 judgments for infringement by reason of the use of any such patented designs,  
367 devices, materials, or processes or any trademark or copyright in connection with  
368 the work to be performed under the contract.

369

370 **7.11 Furnishing Right-Of-Way.**   Except as noted in the contract documents,  
371 the State will be responsible for securing necessary rights-of-way.

372

373 **7.12 Safety: Accident Prevention.**

374

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

381

382       **(b)**   The Contractor and any subcontractor shall not permit any  
383 employee, in performance of the contract, to work in surroundings or

384 under conditions which are unsanitary or hazardous or dangerous to  
385 his/her health or safety, as determined under construction safety and  
386 health standards promulgated by the Federal, State, and local authorities.

387

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

391

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

399

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

405

### 406 **7.13 Protection of Persons and Property.**

407

408 **(a) Contractor's Responsibility for Damage to Property.** All  
409 damage, injury, or loss to any property caused during the course of or  
410 arising out of the work, whether or not caused by negligent acts or  
411 omissions, shall be the responsibility of the Contractor and shall be  
412 remedied promptly by the Contractor. This provision shall not affect the  
413 Contractor's legal rights of subrogation, contribution, and indemnity to  
414 recover the costs of remedial measures and other damages to which it  
415 may be entitled.

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**(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.

447 (2) Any person is treated or evacuated from the work site for  
448 medical reasons.

449

450 (3) Any member of the public claims to have been injured at the  
451 work site.

452

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

456

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

461

462 **7.14 Pollution Control and Protection Of Archeological, Historical, and**  
463 **Burial Sites.**

464

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

469

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

474

475 The Contractor shall follow:

476

477 (1) Guidelines in the City and County of Honolulu's "Best  
478 Management Practices Manual for Construction Sites in Honolulu",

479 in developing, installing, and maintaining BMPs for all projects;

480

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

483

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

486

487 **(4)** HNL SWMPP (Storm Water Management Program Plan)  
488 [http://hawaii.gov/dot/airports/doing-](http://hawaii.gov/dot/airports/doing-business/environmental/construction-site-runoff-control-program)  
489 [business/environmental/construction-site-runoff-control-program.](http://hawaii.gov/dot/airports/doing-business/environmental/construction-site-runoff-control-program)

490

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

501

502 **7.15 Responsibility For Damage Claims; Indemnity.** The Contractor shall  
503 compensate and make whole the State for all loss or damage to the State’s  
504 property and facilities arising out of any act or omission in the performance of the  
505 work by the Contractor, any subcontractor, or their employees and agents.

506

507 The Contractor shall defend, hold harmless, compensate, and indemnify  
508 the State, its employees, and officers against any loss, demand, claim, liability,  
509 suit, action, cause of action, judgment, cost, and expenses, including attorney’s  
510 fees, based upon personal injury, death, or property damage which arise out of

511 the Contractor's performance under the contract, including the operations and  
512 performance of one or more subcontractors, whether or not a lawsuit is filed  
513 against the State and whether or not the Contractor is named as a party to any  
514 such lawsuit, unless and until a court of competent jurisdiction makes a final non-  
515 reviewable determination that the personal injury, death, or property damage was  
516 caused solely by the negligence of the State.

517

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

526

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

535

## 536 **7.16 Disputes and Claims.**

537

538 **(a) Written Notice A Condition Precedent to Claim.** As a  
539 condition precedent to any claim for damages, or any matter dealing with  
540 contract price or contract time, the Contractor must give all notices of a  
541 potential claim as required by the contract documents including, but not  
542 limited to, the following Subsections of these General Provisions:

543

544                   (1)    4.2 Changes

545

546                   (2)    4.3 Field Orders

547

548                   (3)    4.4 Duty of Contractor to Provide Change Proposals

549

550                   (4)    4.5 Contract Change Orders

551

552                   (5)    4.8 Differing Site Conditions

553

554                   (6)    5.4 Review and Acceptance Process

555

556                   (7)    6.5 Sample Submittals

557

558                   (8)    8.5 Contract Time

559

560           **(b) Contractor's Duty to Maintain Accurate and Contemporaneous**

561           **Records.**        Upon delivering written notice of a potential claim as

562           described in Subsection 7.16(a) Written Notice A Condition Precedent to

563           Claim, the Contractor has the duty to support and substantiate all claims

564           by maintaining accurate, contemporaneous records of the subject work

565           and the time and costs thereof. The Engineer may direct the manner and

566           the format in which such records must be prepared, maintained, and

567           verified. The Contractor shall comply with such directives at no increase

568           in contract price or contract time. Any directive from the Engineer

569           regarding the manner and format for the keeping of records associated

570           with the potential claim shall not in any way be deemed an agreement by

571           the State regarding the validity of any element of the claim.

572

573           **(c) Contractor to Proceed with Work.**    The Contractor shall at all

574           times continue with performance of the contract in full compliance with the

575 directions of the Engineer. Continued performance by the Contractor shall  
576 not prejudice any claim for damages or any matter dealing with contract  
577 price or contract time provided that the notice of a potential claim is given  
578 in writing by the Contractor in the manner and within the time set forth in  
579 the contract documents.

580

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

589

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

591

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

596

597 **(2)** The specific provisions of the contract or laws which support  
598 the claim and a statement of the reasons why such provisions  
599 support the claim.

600

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

604

605 **(4)** Any other documents that support the claim.

606

607 (5) If an adjustment of time for the performance of the contract  
608 is sought:

609

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

611

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

614

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

617

618 (D) The Contractor's detailed analysis of its previously  
619 submitted time scaled logic diagram (TSLD) schedule and  
620 impact on the critical path.

621

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

631

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

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637 (b) **Materials.** Categories such as invoices, purchase  
638 orders, evidence of payment, descriptions, and quantities.

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**(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.

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Signature Date

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**(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

702 incomplete, the Contractor shall be notified to provide the additional  
703 information that is required. When this occurs, the Engineer's review time  
704 will be adjusted as deemed appropriate and the Contractor will be notified.

705

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

708

709 **(g) Appeal of the Engineer's Decision.**

710

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

715

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

722

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

729

730 **(4)** In its notice of appeal of the Engineer's decision, the  
731 Contractor shall provide specific citations to the Engineer's decision  
732 and explanations as to why the Contractor believes the Engineer's  
733 decision was incorrect.

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**(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.

765                   **(2)**     There has been an alleged material breach of contract by  
766                   the State excusing further performance by the Contractor; provided  
767                   that in such event the Contractor shall proceed diligently with the  
768                   performance of the contract where the Director has made a written  
769                   determination that continuation of work under the contract is  
770                   essential to the public health and safety.

771

772     **7.17 Contaminated or Hazardous Items and Material; Regulated Items and**  
773     **Material; Waste.**

774

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

785

786                   **(b)     Unknown Contaminated or Hazardous Items and Material.**     If  
787                   the Contractor encounters or exposes any items, material, or other  
788                   conditions within the worksite not previously known or suspected to be  
789                   contaminated or hazardous but which exhibits properties which may  
790                   indicate the presence of such items or material, the Contractor shall  
791                   immediately notify the Engineer. Claims by the Contractor for additional  
792                   money or time arising from work involving such items, material, or other  
793                   conditions, including the cost and time associated with notifying and  
794                   providing written reports to government agencies listed below, shall be  
795                   subject to the terms and conditions of Section 4.8 Differing Site  
796                   Conditions.

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**(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.

828 **7.18 Right to Audit Records, Records Maintenance, Retention, and**  
829 **Access.** Pursuant to Chapter 103D-317, H.R.S., the State, at reasonable  
830 times and places, may audit the books and records of a Contractor, prospective  
831 contractor, subcontractor, and prospective subcontractor relating to the  
832 Contractor's or subcontractor's cost or pricing data. Any such audits may be  
833 conducted by Federal and State employees or by consultants working on behalf  
834 of the State. The Contractor and subcontractor(s) shall maintain the books and  
835 records for a period of three years from the date of final payment under the  
836 contract.

837

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

843

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

848

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

853

854 This right of inspection and audit shall not be limited to the required  
855 retention period but shall last as long as records are retained. The Contractor  
856 and subcontractor shall retain all records related to the Contractor and  
857 subcontractor's performance of work under this Agreement for three years from  
858 the date of final payment, except that if any litigation, claim, negotiation,  
859 investigation, audit, or other action involving the records has been started before

860 the expiration of the three year period, the Contractor and subcontractors shall  
861 retain the records until final resolution of all issues that arise from it or until the  
862 end of the three year retention period, whichever occurs later.

863

864 **7.19 Conflicts of Interest.** In all State or Federal-aid projects, no official or  
865 employee of the State or any other governmental instrumentality who is  
866 authorized in his official capacity to negotiate, make, accept, or approve or to  
867 take part in negotiating, making, accepting, or approving any contract or  
868 subcontract in connection with such project shall have, directly or indirectly, any  
869 financial or other personal interest in any such contract or subcontract. No  
870 engineer, attorney, appraiser, inspector, or other person performing services for  
871 the State or any governmental instrumentality in connection with the project shall  
872 have, directly or indirectly, a financial or other personal interest, other than his  
873 employment or retention by the State or other governmental instrumentality, in  
874 any contract or subcontract in connection with such project.

875

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

880

881 **7.20 Sanitation Provisions.** The Contractor shall provide sanitation  
882 (lavatory) facilities at the work site sufficient to meet the needs of all workers and  
883 other persons anticipated to be on the work site during the progress of  
884 construction. Such facilities shall be maintained in a neat, sanitary condition at  
885 all times.

886

887

**END OF ARTICLE VII**



33           The Contractor shall not begin work before the date in the notice to  
34 proceed. Any work done prior to the notice to proceed date will be considered  
35 unauthorized work. If the Engineer does not direct that the unauthorized work be  
36 removed, it shall be paid for after the notice to proceed date and only if it is  
37 acceptable.

38

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

43

44 **8.2 Prosecution of Work.** Unless otherwise permitted by the Engineer in  
45 writing, the Contractor shall not commence with physical construction unless  
46 sufficient materials and equipment are available for either continuous  
47 construction or completion of a specified portion of the work.

48

49 **8.3 Preconstruction Data Submittal.** The awardee shall submit to the  
50 Engineer, for information and review, the preconstruction data within 30 days  
51 after the execution of the contract. Until the items listed below are received and  
52 found acceptable by the Engineer, the Contractor shall not commence work  
53 unless otherwise authorized to do so in writing and subject to such conditions set  
54 by the Engineer. No progress payment will be made to the Contractor until the  
55 Engineer acknowledges, in writing, receipt of the following preconstruction data  
56 submittals acceptable to the Engineer:

57

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

59

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

61

62           **(3)** Work Schedule.

63

- 64                   **(4)** Initial Progress Schedule (See Section 8.6 Progress  
65 Schedules).
- 66
- 67                   **(5)** Water Pollution and Siltation Control Submittals.
- 68
- 69                   **(6)** Solid Waste Disposal form.
- 70
- 71                   **(7)** Tax Rates.
- 72
- 73                   **(8)** Insurance Rates.
- 74
- 75                   **(9)** Certificate of Insurance, satisfactory to the Engineer,  
76 indicating that the Contractor has in place all insurance coverage  
77 required by the contract documents.
- 78
- 79                   **(10)** Schedule of Values.
- 80
- 81                   **(11)** List of suppliers.
- 82
- 83                   **(12)** Shop drawings and material data sheets.
- 84
- 85                   **(13)** Other submittals as directed by the Engineer.
- 86

87 **8.4 Character and Proficiency of Workers.** The Contractor shall at all  
88 times provide adequate supervision and sufficient labor and equipment for  
89 prosecuting the work to full completion in the manner and within the time required  
90 by the contract. The superintendent and all other representatives of the  
91 Contractor shall act in a civil and honest manner in all dealings with the Engineer,  
92 all other State officials and representatives, and the public in connection with the  
93 work.

94

95 All workers shall possess the proper license, certification, job  
96 classification, skill, training, and experience necessary to properly perform the  
97 work assigned to them.

98  
99 The Engineer may direct the removal of any worker(s) who does not carry  
100 out the assigned work in a proper and skillful manner or who is disrespectful,  
101 intemperate, violent, or disorderly. The worker shall be removed forthwith by the  
102 Contractor and will not work again without the written permission of the Engineer.

## 103 104 **8.5 Contract Time.**

105  
106 **(a) Calculation of Contract Time.** When the contract time is on a  
107 working day basis, the total contract time allowed for the performance of  
108 the work will be the number of working days shown in the contract plus  
109 any additional working days authorized in writing as provided hereinafter.  
110 The count of elapsed working days to be charged against contract time,  
111 will begin from the date of notice to proceed and will continue  
112 consecutively to the date of substantial completion. When multiple shifts  
113 are used to perform the work, the State will not consider the hours worked  
114 over the normal eight working hours per day or night as an additional  
115 working day.

116  
117 Whenever the Engineer provides the Contractor with a written  
118 statement of elapsed working days, the Contractor may file a written  
119 protest with the Engineer setting forth, in detail, the basis of the protest,  
120 not later than seven days after receiving the statement. Failure of the  
121 Contractor to file such a protest shall be deemed an acceptance by the  
122 Contractor of the correctness of the statement.

123  
124 When the contract is on a calendar day basis, the total contract time  
125 allowed for the performance of the work will be the number of days shown  
126 in the contract plus any additional days authorized in writing as provided

127 hereinafter. The count of elapsed days to be charged against contract  
128 time will begin from the date of notice to proceed and will continue  
129 consecutively to the date of substantial completion. The Engineer will  
130 exclude days elapsing between the orders of the Engineer to suspend  
131 work and resume work for suspensions not the fault of the Contractor.

132

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

143

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

155

156 Additional time to perform the extra work, to the extent such  
157 work affects the critical path, will be added to the time allowed in  
158 the contract for the completion of the project, or the Engineer may

159 limit the extension to only the portion of the project work affected by  
160 the delay, without regard to the date the change directive was  
161 issued, even if the contract completion date has passed. A change  
162 requiring additional time issued after contract time has expired will  
163 not constitute an excusal or waiver of pre-existing Contractor delay.

164

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

173

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

181

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

185

186 **(i)** State specifically the reason or reasons for the  
187 delay and fully explain in a detailed chronology how  
188 the delay affects the critical path.

189

190 (ii) Include copies of pertinent documentation to  
191 support the time extension request.

192  
193 (iii) Cite the anticipated period of delay and the time  
194 extension requested.

195  
196 (iv) State either that the above circumstances have  
197 been cleared and normal working conditions restored  
198 as of a certain day or that the above circumstances  
199 will continue to prevent completion of the project.

200  
201 (B) The Contractor shall notify the Engineer in writing  
202 when the delay ends. Time extensions will be the exclusive  
203 relief granted and no additional compensation will be paid  
204 the Contractor for such delays.

205  
206 (4) **Delays in Delivery of Materials or Equipment.** For  
207 delays in delivery of materials or equipment, which occur as a result  
208 of unforeseeable causes beyond the control and without fault of the  
209 Contractor, its subcontractor(s), or supplier(s), time extensions shall  
210 be the exclusive relief granted and no additional compensation will  
211 be paid the Contractor on account of such delay. The delay shall  
212 not exceed the difference between the originally scheduled delivery  
213 date and the actual delivery date. The Contractor may be granted  
214 an extension of time provided that it complies with the following  
215 procedures:

216  
217 (A) The Contractor's written notice to the Engineer must  
218 describe the delays and state the effect such delays may  
219 have on the critical path.

220

221                   **(B)** The Contractor, if requested, must submit to the  
222 Engineer, within five days after a firm delivery date for the  
223 material and equipment is established, a written statement  
224 regarding the delay. The Contractor must justify the delay  
225 as follows:

226  
227                   **(i)** State specifically all reasons for the delay.  
228 Explain in a detailed chronology the effect of the delay  
229 on the critical path.

230  
231                   **(ii)** Submit copies of purchase order(s), factory  
232 invoice(s), bill(s) of lading, shipping manifest(s),  
233 delivery tag(s), and any other documents to support  
234 the time extension request.

235  
236                   **(iii)** Cite the start and end date of the delay and the  
237 time extension requested.

238  
239                   **(5) Delays for Suspension of Work.** When the performance  
240 of the work is totally suspended for one or more days (calendar or  
241 working days, as appropriate) by order of the Engineer in  
242 accordance with Subsections 8.10(a)(1), 8.10(a)(2), 8.10(a)(3) or  
243 8.10(a)(5), the number of days from the effective date of the  
244 Engineer's order to suspend operations to the effective date of the  
245 Engineer's order to resume operations shall not be counted as  
246 contract time, and the contract completion date will be adjusted.  
247 During periods of partial suspensions of the work, the Contractor  
248 will be granted a time extension only if the partial suspension  
249 affects the critical path. If the Contractor believes that an extension  
250 of time is justified for a partial suspension of work, it must request  
251 the extension in writing at least five working days before the partial  
252 suspension will affect the critical path operation(s) in progress. The

253 Contractor must show how the critical path was affected based on  
254 the status of the work and must also support its claim, if requested,  
255 with statements from its subcontractors. A suspension of work will  
256 not constitute a waiver of pre-existing Contractor delay.

257

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

260

261 **(A)** Delays within the Contractor's control in performing  
262 the work caused by the Contractor, subcontractor, supplier,  
263 or any combination thereof.

264

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

269

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

272

273 **(D)** Delays caused by the failure of the Contractor to  
274 make submittals in a timely manner for review and  
275 acceptance by the Engineer, such as, but not limited to,  
276 shop drawings, descriptive sheets, material samples, and  
277 color samples except as covered in Subsection 8.5(b)(3) and  
278 8.5(b)(4).

279

280 **(E)** Delays caused by the failure to submit sufficient  
281 information and data in a timely manner in the proper form in  
282 order to obtain necessary permits related to the work.

283

284 (F) Failure to follow the procedure within the time allowed  
285 by contract to request a time extension.

286  
287 (G) Failure of the Contractor to provide evidence sufficient  
288 to support the time extension request.

289  
290 (7) **Reduction in Time.** If the State deletes or modifies any  
291 portion of the work, an appropriate reduction of contract time may  
292 be made in accordance with Section 4.2 Changes.

293

294 **8.6 Progress Schedules.**

295

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

299

300 Schedule submittals shall be as follows:

301

302 (1) **For Contracts \$2,000,000 or Less or For Contract Time**  
303 **100 Working Days or 140 Calendar Days or less.** For  
304 contracts of \$2,000,000 or less or for contract time of 100 working  
305 days or 140 calendar days or less, the progress schedule will be a  
306 Time Scaled Logic Diagram (TSLD). The Contractor shall submit a  
307 TSLD submittal package and it shall meet the following  
308 requirements and have these essential and distinctive elements:

309

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

316 site fabrications, and other pertinent factors that relate to  
317 progress.

318

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

322

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

327

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

330

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

335

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

337

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

342

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

345

346 **(I)** Show target bars for all activities.

347

348 (J) Vertical and horizontal sight lines both major and  
349 minor shall be used as well as a separator line between  
350 groups. The Engineer will determine frequency and style.

351

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

354

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

361

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

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

369

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

371

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

374

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

377

378 (D) The time scaled schematic shall be on a calendar or  
379 working days basis. What will be used shall be determined

380 by how the contract keeps track of time. It will be the same.  
381 Plot the critical calendar dates anticipated.

382

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

388

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

390

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

393

394 **(H)** No individual activity shall have duration of more than  
395 20 calendar days unless requested and approved by the  
396 Engineer.

397

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

403

404 **(J)** Incorporate all physical access and availability  
405 restraints.

406

407 **(b) Inspection and Testing.** All schedules shall provide reasonable  
408 time and opportunity for the Engineer to inspect and test each work  
409 activity.

410

411 **(c) Engineer's Acceptance of Progress Schedule.** The submittal  
412 of and the Engineer's receipt of any progress schedule shall not be  
413 deemed an agreement to modify any terms or conditions of the contract.  
414 Any modifications to the contract terms and conditions that appear in or  
415 may be inferred from an acceptable schedule will not be valid or  
416 enforceable unless and until the Engineer exercises discretion to issue an  
417 appropriate change order. Nor shall any submittal or receipt imply the  
418 Engineer's approval of the schedule's breakdown, its individual elements,  
419 or any critical path that may be shown; nor shall it obligate the State to  
420 make its personnel available outside normal working hours or the working  
421 hours established by the Contract in order to accommodate such  
422 schedule. The Contractor has the risk of all elements (whether or not  
423 shown) of the schedule and its execution. No claim for additional  
424 compensation, time, or both, shall be made by the Contractor or  
425 recognized by the Engineer for delays during any period for which an  
426 acceptable progress schedule or an updated progress schedule, as  
427 required by Subsection 8.6(e) Contractor's Continuing Schedule Submittal  
428 Requirements, had not been submitted. Any acceptance or approval of  
429 the schedule shall be for general format only and shall not be deemed an  
430 agreement by the State that the construction means, methods, and  
431 resources shown on the schedule will result in work that conforms to the  
432 contract requirements or that the sequences or durations indicated are  
433 feasible.

434  
435 **(d) Initial Progress Schedule.** The Contractor shall submit an initial  
436 progress schedule. The initial progress schedule shall consist of the  
437 following:

- 438
- 439 **(1)** Four sets of the TSLD schedule.
  - 440
  - 441 **(2)** All the software files and data to re-create the TSLD in a  
442 computerized software format as specified by the Engineer.

443  
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474

**(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:

- 475 (i) Quantity, type, make, and model of equipment;  
476  
477 (ii) The manpower to do the work, specifying  
478 worker classification; and  
479  
480 (iii) The production rate per eight hour day, or the  
481 working hours established by the contract documents  
482 needed to meet the time indicated on the schedule. If  
483 the production rate is not for eight hours, the number  
484 of working hours shall be indicated.

- 485  
486 (6) Two sets of color time-scaled project evaluation and review  
487 technique charts (“PERT”) using the activity box template of Logic –  
488 Early Start or such other template designated by the Engineer.

489  
490 If the contract documents establish a sequence or order for the  
491 work, the initial progress schedule shall conform to such sequence or  
492 order.

493  
494 **(e) Contractor’s Continuing Schedule Submittal Requirements.**  
495 After the acceptance of the initial TSLD and when construction starts, the  
496 Contractor shall submit four plotted progress schedules, two PERT charts,  
497 and reports on all construction activities every two weeks (bi-weekly).  
498 This scheduled bi-weekly submittal shall also include an updated version  
499 of the project schedule in a computerized software format as specified by  
500 the Engineer. The submittal shall have all the information needed to re-  
501 create that time period’s TSLD plot and reports. The bi-weekly submittal  
502 shall include, but is not limited to, an update of activities based on actual  
503 durations, all new activities, and any changes in duration or start or finish  
504 dates of any activity.

505

506           The Contractor shall submit with every update, in report form  
507 acceptable to the Engineer, a list of changes to the progress schedule  
508 since the previous schedule submittal. The Engineer may change the  
509 frequency of the submittal requirements but may not require a submittal of  
510 the schedule to be more than once a week. The Engineer may decrease  
511 the frequency of the submittal of the bi-weekly schedule.

512  
513           The Contractor shall submit updates of the anticipated work  
514 completion graph, equipment listing, manpower requirement graph, or  
515 method statement when requested by the Engineer. The Contractor shall  
516 submit such updates within 4 calendar days from the date of the request  
517 by the Engineer.

518  
519           The Engineer may withhold progress payments until the Contractor  
520 is in compliance with all schedule update requirements.

521  
522       **(f) Float.** All float appearing on a schedule is a shared commodity.  
523 Float does not belong to or exist for the exclusive use or benefit of either  
524 the State or the Contractor. The State or the Contractor has the  
525 opportunity to use available float until it is depleted. Float has no  
526 monetary value.

527  
528       **(g) Scheduled Meetings.** The Contractor shall meet with the  
529 Engineer to review the progress schedule on a periodic basis as  
530 determined by the Engineer. The Contractor shall have someone  
531 attending the meeting that can answer all questions on the TSLD and  
532 other schedule related submittals.

533  
534       **(h) Accelerated Schedule; Early Completion.** If the Contractor  
535 submits an accelerated schedule (shorter than the contract time), the  
536 Engineer's review and acceptance of an accelerated schedule does not  
537 constitute an agreement or obligation by the State to modify the contract

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

546

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

554

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

560

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

567

568 **8.7 Weekly Meeting.** In addition to the bi-weekly schedule meetings, the  
569 Contractor shall be available to meet once a week with the Engineer, at the time

570 and place as determined by the Engineer, to discuss the work and its progress  
571 including, but not limited to, the progress of the project, potential problems,  
572 coordination of work, submittals, erosion control reports, etc. The Contractor's  
573 personnel attending shall have the authority to make decisions and answer  
574 questions.

575

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

581

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

586

587 **(b)** The duration of all events and delays.

588

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

592

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

594

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

597

598 Two days prior to each weekly meeting, the Contractor shall submit a list  
599 of outstanding submittals, RFIs, and issues that require discussion.

600

601 **8.8 Liquidated Damages for Failure to Complete the Work or Portions of**  
602 **the Work on Time.** The actual amount of damages resulting from the  
603 Contractor's failure to complete the contract in a timely manner is difficult to  
604 accurately determine. Therefore, the amount of such damages shall be  
605 liquidated damages as set forth herein and in the Special Provisions, Invitation  
606 for Bid, or Request for Proposal. The State may, at its discretion, deduct the  
607 amount from monies due or that may become due under the contract.

608

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

614

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

618

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

623

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

627

628 When the Contractor fails to complete the work on such punchlist  
629 within the contract time or any extension thereof, the Contractor shall pay  
630 liquidated damages to the State of 20 percent of the amount of liquidated  
631 damages established for failure to substantially complete the work within

632 the contract time. Liquidated damages shall not be assessed for the  
633 period between:

634

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

637

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

640

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

644

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

651

652 **8.9 Fines and Other Penalties.** In addition to any compensatory remedies  
653 available to the State arising out of the Contractor's failure to complete the  
654 work by the contract completion date including, but not limited to,  
655 liquidated damages, the Contractor shall reimburse the State for any fines,  
656 penalties, citations, or fees levied by a third party against the State arising  
657 from the late completion of the work.

658

659 **8.10 Suspension of Work.**

660

661 (a) **Suspension of Work.** The Engineer may, by written order,  
662 suspend the performance of the work, either in whole or in part, for such  
663 periods as the Engineer may deem necessary. Unless instructed

664 otherwise by the Engineer, the Contractor shall be responsible for the  
665 maintenance and protection of the work during the period of suspension.  
666 Suspension may be ordered for any cause, including, but not limited to:

667

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

670

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

673

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

676

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

678

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

681

682 (B) Carry out orders given by the Engineer.

683

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

686

687 (D) Provide adequate supervision on the jobsite.

688

689 (5) The convenience of the State.

690

691 (b) **Partial and Total Suspension.** Suspension of work on some but  
692 not all items of work shall be considered a "partial suspension".  
693 Suspension of work on all items shall be considered "total suspension".  
694 The period of suspension shall be computed from the date set out in the

695 written order for work to cease until the date of the order for work to  
696 resume.

697

698 **(c) Reimbursement to Contractor.** In the event that the Contractor  
699 is ordered by the Engineer, in writing as provided herein, to suspend work  
700 under the contract for the reasons specified in Subsections 8.10(a)(1),  
701 8.10(a)(2), 8.10(a)(3) or 8.10(a)(5) of the "Suspension of Work" paragraph,  
702 the Contractor may be reimbursed for actual direct costs incurred on work  
703 at the jobsite, as authorized in writing by the Engineer, including costs  
704 expended for the maintenance and protection of the work. An allowance  
705 of 5 percent for indirect categories of delay costs will be paid on any  
706 reimbursed direct costs, including extended branch and home-office  
707 overhead and delay impact costs. No allowance will be made for  
708 anticipated profits. Payment for equipment which is ordered to standby  
709 during such suspension of work shall be made as described in Subsection  
710 9.6(h) Idle and Standby Equipment.

711

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

717

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

720

721 **(1)** For weather related conditions;

722

723 **(2)** To the extent that performance would have been so  
724 suspended, delayed, or interrupted by any other cause, including  
725 the fault or negligence of the Contractor; or

726

727                   **(3)** For which an adjustment is provided for or excluded under  
728 any other provision of this Contract.

729

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

733

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

741

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

749

750 **8.11 Termination of Contract for Cause.**

751

752                   **(a) Default.** If the Contractor refuses or fails to perform the work, or  
753 any separable part thereof, with such diligence as will assure its  
754 completion within the time specified in this contract, or any extension  
755 thereof, or commits any other material breach of this contract, and further  
756 fails within seven days after receipt of written notice from the Engineer to  
757 commence and continue correction of the refusal or failure with diligence  
758 and promptness, the Engineer may, by written notice to the Contractor,

759 declare the Contractor in breach and terminate the Contractor's right to  
760 proceed with the work or the part of the work as to which there has been  
761 delay or other breach of contract. In such event, the State may take over  
762 the work, perform the same to completion, by contract or otherwise, and  
763 may take possession of, and utilize in completing the work, the materials,  
764 appliances, and plants as may be on the site of the work and necessary  
765 therefore. Whether or not the Contractor's right to proceed with the work  
766 is terminated, the Contractor and the Contractor's sureties shall be liable  
767 for any damage to the State resulting from the Contractor's refusal or  
768 failure to complete the work within the specified time.

769

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

773

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

781

782 In case of termination, the Engineer will limit any payment to the  
783 Contractor to the part of the contract satisfactorily completed at the time of  
784 termination. Payment will not be made until the work has satisfactorily  
785 been completed and all required documents, including the tax clearance  
786 required by Section 9.11 Final Payment, are submitted by the Contractor.  
787 Termination shall not relieve the Contractor or Surety from liability for  
788 liquidated damages.

789

790 **(d) Erroneous Termination for Cause.** If, after notice of termination  
791 of the Contractor's right to proceed under this section, it is determined for  
792 any reason that good cause did not exist to allow the State to terminate as  
793 provided herein, the rights and obligations of the parties shall be the same  
794 as and the relief afforded the Contractor shall be limited to the provisions  
795 contained in Section 8.12 Termination for Convenience.

796

797 **8.12 Termination For Convenience.**

798

799 **(a) Terminations.** The Director may, when the interests of the State  
800 so require, terminate this contract in whole or in part, for the convenience  
801 of the State. The Director will give written notice of the termination to the  
802 Contractor specifying the part of the contract terminated and when  
803 termination becomes effective.

804

805 **(b) Contractor's Obligations.** The Contractor shall incur no further  
806 obligations in connection with the terminated work, and on the date set in  
807 the notice of termination, the Contractor shall stop work to the extent  
808 specified. The Contractor shall also terminate outstanding orders and  
809 subcontracts as they relate to the terminated work. The Contractor shall  
810 settle the liabilities and claims arising out of the termination of  
811 subcontracts and orders connected with the terminated work subject to the  
812 State's approval. The Engineer may direct the Contractor to assign the  
813 Contractor's right, title, and interest under terminated orders or  
814 subcontracts to the State. The Contractor must still complete the work not  
815 terminated by the notice of termination and may incur obligations as  
816 necessary to do so.

817

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

821

822 (1) Any completed work.

823

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

829

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

836

837 (d) **Compensation.**

838

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

846

847 (2) The Engineer and the Contractor may agree to a settlement  
848 provided the Contractor has filed a termination claim supported by  
849 cost or pricing data submitted as required and that the settlement  
850 does not exceed the total contract price plus settlement costs  
851 reduced by payments previously made by the State; the proceeds  
852 of any sales of construction, supplies, and construction materials

853 under Subsection 8.12(c)(3); and the proportionate contract price of  
854 the work not terminated.

855  
856 **(3)** Absent complete agreement, the Engineer will pay the  
857 Contractor the following amounts less any payments previously  
858 made under the contract:

859  
860 **(A)** The cost of all contract work performed prior to the  
861 effective date of the notice of termination plus a 5 percent  
862 markup on the actual direct costs, including amounts paid to  
863 subcontractor, less amounts paid or to be paid for completed  
864 portions of such work. However, if it appears that the  
865 Contractor would have sustained a loss if the entire contract  
866 would have been completed, no markup shall be allowed or  
867 included, and the amount of compensation shall be reduced  
868 to reflect the anticipated rate of loss. No anticipated profit or  
869 consequential damage will be due or paid.

870  
871 **(B)** Subcontractors shall be paid a markup of 10 percent  
872 on their direct job costs incurred to the date of termination.  
873 No anticipated profit or consequential damage will be due or  
874 paid to any subcontractor. These costs must not include  
875 payments made to the Contractor for subcontract work  
876 during the contract period.

877  
878 **(C)** The total sum to be paid the Contractor shall not  
879 exceed the total contract price reduced by the amount of any  
880 sales of construction supplies and construction materials.

881  
882 **(4)** Cost claimed, agreed to, or established by the State shall be  
883 in accordance with Chapter 3-123, H.A.R.

884

885 **8.13 Pre-Final and Final Inspections.**

886

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

894

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

899

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

905

906 **(1)** All written guarantees required by the contract.

907

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

910

911 **(3)** Certificate of Plumbing and Electrical Inspection.

912

913 **(4)** Certificate of Building Occupancy.

914

915 **(5)** Certificate of Soil and Wood Treatments.

916

- 917                   **(6)**    Certificate of Water System Chlorination.  
918  
919                   **(7)**    Certificate of Elevator Inspection and Boiler and Pressure  
920                   Pipe Inspection.  
921  
922                   **(8)**    Maintenance Service Contract and two copies of a list of all  
923                   equipment installed.  
924  
925                   **(9)**    Any other final items and submittals required by the contract  
926                   documents.

927  
928                   **(c) Procedure.**    When in compliance with the above requirements,  
929                   the Contractor shall notify the Engineer in writing that the project has  
930                   reached substantial completion and is ready for pre-final inspection.

931  
932                   The Engineer will then make a preliminary determination as to  
933                   whether or not the project is substantially complete and ready for pre-final  
934                   inspection. The Engineer may, in writing, postpone until after the pre-final  
935                   inspection the Contractor's submittal of any of the items listed in  
936                   Subsection 8.13(b) Pre-Final Inspection, herein, if in the Engineer's  
937                   discretion it is in the interest of the State to do so.

938  
939                   If, in the opinion of the Engineer, the project is not substantially  
940                   complete, the Engineer will provide the Contractor a punchlist of specific  
941                   deficiencies in writing which must be corrected or finished before the work  
942                   will be ready for a pre-final inspection. The Engineer may add to or  
943                   otherwise modify this punchlist from time to time. The Contractor shall  
944                   take immediate action to correct the deficiencies and must repeat all steps  
945                   described above, including written notification that the work is ready for  
946                   pre-final inspection.

947

948                   After the Engineer is satisfied that the project appears substantially  
949 complete, a final inspection shall be scheduled within ten working days  
950 after receipt of the Contractor's latest letter of notification that the project is  
951 ready for final inspection.

952

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

961

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

966

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

971

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

977

978                   Before final inspection of the work, the Contractor shall clean all  
979 ground, occupied by the Contractor in connection with the work, of all

980 rubbish, excess materials, temporary structures, and equipment; shall  
981 remove all graffiti and defacement of the work; and shall restore all  
982 property and facilities that may have been damaged or affected during the  
983 course of the work to the original condition, unless otherwise directed by  
984 the Engineer. The worksite shall be left in a neat and presentable  
985 condition to the satisfaction of the Engineer.

986  
987 Final inspection will occur within ten working days after the  
988 Contractor notifies the Engineer in writing that all punchlist deficiencies  
989 remaining after the pre-final inspection have been completed and the  
990 Engineer concurs. If the Engineer determines that deficiencies still remain  
991 at the final inspection, the work will not be accepted, and the Engineer will  
992 notify the Contractor, in writing, of the deficiencies which shall be  
993 corrected and the steps above repeated.

994  
995 If the Contractor fails to correct the deficiencies and complete the  
996 work by the established or agreed date, the State may correct the  
997 deficiencies by whatever method it deems appropriate and deduct the cost  
998 from any payments due the Contractor.

999

#### 1000 **8.14 Final Acceptance.**

1001

1002 The procedures described herein shall apply for the entire project if there  
1003 is a single completion date or to each part of the project for which there is a  
1004 separate completion date. When there are two or more separate completion  
1005 dates, "project" as used herein shall refer to each part of the work for which there  
1006 is a separate completion date. Inspection and acceptance procedures shall be  
1007 applied as described herein for each part of the project for which there is a  
1008 separate completion date.

1009

1010 When the Engineer finds that the project has been satisfactorily completed  
1011 in compliance with the contract, the Engineer will notify the Contractor in writing

1012 of the project's completion and acceptance. The final acceptance date shall  
1013 determine end of contract time, liquidated damages for failure to complete the  
1014 punchlist, and commencement of all guaranty periods subject to Section 8.16  
1015 Contractor's Responsibility for Work; Risk of Loss or Damage.

1016

1017 **8.15 Use of Structure or Improvement.** The State has the right to use the  
1018 structure, equipment, improvement, or any part thereof, at any time after it is  
1019 considered by the Engineer as available, whether or not substantial completion  
1020 has been reached. In the event that the structure, equipment, or any part thereof  
1021 is used by the State before final acceptance, the Contractor is not relieved of its  
1022 responsibility to protect and preserve all the work until final acceptance.

1023

1024 **8.16 Contractor's Responsibility for Work; Risk of Loss or Damage.**  
1025 Until the written notice of final acceptance has been received, the Contractor  
1026 shall take every precaution against loss or damage to any part of the work from  
1027 any cause whatsoever, whether arising from the performance or from the non-  
1028 performance of the work. The Contractor shall rebuild, repair, restore, and make  
1029 good all loss or damage to any portion of the work resulting from any cause  
1030 before its receipt of the written notice of final acceptance and shall bear the risk  
1031 and expense thereof.

1032

1033 The risk of loss or damage to the work from any hazard or occurrence that  
1034 may or may not be covered by a builder's risk policy is that of the Contractor and  
1035 Surety, unless such risk of loss is placed elsewhere by express language in the  
1036 contract documents.

1037

1038 **8.17 Guarantee of Work.**

1039

1040 (1) Regardless of, and in addition to, any manufacturers' warranties, all  
1041 work and equipment shall be guaranteed by the Contractor against  
1042 defects in materials, equipment, or workmanship for one year from the

1043 date of final acceptance or as otherwise specified in the contract  
1044 documents.

1045

1046 **(2)** When the Engineer determines that repairs or replacements of any  
1047 guaranteed work and equipment is necessary due to materials,  
1048 equipment, or workmanship which are inferior, defective, or not in  
1049 accordance with the terms of the contract, the Contractor shall, at no  
1050 increase in contract price or contract time, and within five working days of  
1051 receipt of written notice from the State, commence to do all of the  
1052 following:

1053

1054 **(A)** Correct all noted defects and make replacements, as  
1055 directed by the Engineer, in the equipment and work.

1056

1057 **(B)** Repair or replace to new or pre-existing condition any  
1058 damages resulting from such defective materials and equipment or  
1059 installation thereof.

1060

1061 **(3)** The State will be entitled to the benefit of all manufacturers' and  
1062 installers' warranties that extend beyond the terms of the Contractor's  
1063 guaranty regardless of whether or not such extended warranty is required  
1064 by the contract documents. The Contractor shall prepare and submit all  
1065 documents required by the providers of such warranties to make them  
1066 effective and submit copies of such documents to the Engineer. If an  
1067 available extended warranty cannot be transferred or assigned to the  
1068 State as the ultimate user, the Contractor shall notify the Engineer who  
1069 may direct that the warranted items be acquired in the name of the State  
1070 as purchaser.

1071

1072 **(4)** If a defect is discovered during a guarantee period, all repairs and  
1073 corrections to the defective items when corrected shall be guaranteed for  
1074 a new duration equal to the original full guarantee period. The running of

1075 the guarantee period shall be suspended for all other work affected by any  
1076 defect. The guarantee period for all other work affected by any such  
1077 defect shall restart for its remaining duration upon confirmation by the  
1078 Engineer that the deficiencies have been repaired or remedied.

1079

1080 (5) Nothing in this section is intended to limit or affect the State's rights  
1081 and remedies arising from the discovery of latent defects in the work after  
1082 the expiration of any guarantee period.

1083

1084 **8.18 No Waiver of Contract Obligations.** None of the provisions of this  
1085 contract shall be considered waived by the State unless such waiver is given in  
1086 writing by the State. No such waiver shall be a waiver of any past or future  
1087 default, breach or modification of any of the terms, provisions, conditions, or  
1088 covenants of the contract unless expressly stipulated in such waiver.

1089

1090 The following will not operate or be considered as a waiver of any portion  
1091 of the contract, or any power herein reserved, or any right to damages provided  
1092 herein or by law:

1093

1094 (1) Any payment for, or acceptance of, the whole or any part of the  
1095 work.

1096

1097 (2) Any extension of time.

1098

1099 (3) Any possession taken by the Engineer.

1100

1101 A waiver of any notice requirement or of any noncompliance with the  
1102 contract will not be held to be a waiver of any other notice requirement or any  
1103 other noncompliance with the contract.

1104

1105 **8.19 Final Settlement of Contract.**

1106

1107           **(a) Closing Requirements.**   The contract will be considered settled  
1108 after the project acceptance date or, after the last acceptance date if there  
1109 is more than one acceptance date for different portions of the project, and  
1110 when the following items have been satisfactorily submitted, where  
1111 applicable:

1112  
1113                   **(1)**   Two accepted final as-built drawings as specified in  
1114 Subsection 5.8(a) Drawings and Special Provisions.

1115  
1116                   **(2)**   All written guarantees required by the contract.

1117  
1118                   **(3)**   Complete and certified weekly payrolls for the Contractor  
1119 and its subcontractors.

1120  
1121                   **(4)**   Certificate of plumbing and electrical inspection.

1122  
1123                   **(5)**   Certificate of building occupancy.

1124  
1125                   **(6)**   Certificate for soil treatment and wood treatment.

1126  
1127                   **(7)**   Certificate of water system chlorination.

1128  
1129                   **(8)**   Certificate of elevator inspection and boiler and pressure  
1130 pipe installation.

1131  
1132                   **(9)**   Certificates of Compliance for employment of State of Hawaii  
1133 residents by Contractor and applicable subcontractors per Section  
1134 7.2 Employment of State of Hawaii Residents.

1135  
1136                   **(10)** Tax clearance.

1137  
1138                   **(11)** All other documents required by the Contract or by law.

1139

1140

**(b) Failure to Meet Closing Requirements.** The Contractor shall

1141

meet the applicable closing requirements within 60 days from the date of

1142

Project Acceptance or the agreed to Punchlist complete date. Should the

1143

Contractor fail to comply with these requirements, the Engineer may

1144

terminate the contract for cause.

1145

1146

**END OF ARTICLE VIII**



33 the work for which payment is made, to protect against loss or damage, to insure  
34 the work, to insure and indemnify the State against claims, to maintain the  
35 required surety bonds, and to protect the work and the public.

36

### 37 **9.3 Measurement of Quantities.**

38

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

48

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

57

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

59

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

62

63 Every vehicle hauling material specified for measurement and  
64 payment by "loose measurement" or "measurement by vehicle" shall be

65 made available to the Engineer for verification of its load volume or  
66 capacity. A vehicle's full load shall be its water level capacity. The  
67 Engineer may direct that any load in a vehicle be leveled for purposes of  
68 measurement or payment.

69

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

75

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

78

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

81

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

85

86 **(3)** Material not unloaded from the transporting vehicle;

87

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

90

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

92

93 No compensation will be allowed for hauling any above-described  
94 material to or from the site.

95

96           **(c) Standards and Definitions.**           When identifying standard  
97 manufactured items by gage, unit weight, or section dimensions, such  
98 identification will be nominal weights or dimensions. Standard  
99 manufactured items shall be such items as fence, wire, plates, rolled  
100 shapes, and pipe conduit. Unless specific allowable tolerances are set by  
101 the contract documents, tolerances generally accepted or established by  
102 the industries involved in the manufacture of the product are acceptable.

103

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

106

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

109

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

113

114           **9.4 Full Compensation; Changes.**           The contract price is full compensation  
115 for the work.

116

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

119

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

124

125           **9.5 Allowances for Overhead and Profit.**           In determining the cost or credit  
126 to the State resulting from a change, the allowances for all overhead, including  
127 extended overhead resulting from adjustments to contract time (including home

128 office, branch office, and field overhead and related delay impact costs) and  
129 profit combined, shall not exceed the percentages set forth below:

130

131           **(1)**     20 percent of the direct cost for any work performed by the  
132 Contractor's own labor force.

133

134           **(2)**     20 percent of the direct cost for any work performed by each  
135 subcontractor's own labor force.

136

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

141

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

145

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

150

151 **9.6 Force Account Provisions and Compensation.**     The contract  
152 documents may provide that certain work be compensated by force account  
153 method, or the Contractor may be directed to provide changes compensable  
154 under the price adjustment provision Subsection 4.6(a)(5). When performing  
155 force account work, the Contractor and its subcontractor(s) shall comply with the  
156 provisions of this section. Compensation by force account will not alter any  
157 rights, duties, and obligations under the contract. The Contractor shall follow  
158 these procedures:

159

160           **(a) The Contractor's Duties; Engineer's Authority.**           The  
161 Contractor has the duty to perform the work payable under this provision  
162 efficiently and economically. When the Engineer determines the  
163 Contractor is working inefficiently or uneconomically, the Engineer may  
164 direct the Contractor to stop, modify its means and methods, or the  
165 Engineer may specifically direct means and methods of doing the force  
166 account work. The Engineer will not pay for work that is unacceptable or  
167 for the cost of correcting work that fails to conform to contract  
168 requirements.

169  
170           **(b) Records.**    The Contractor shall maintain accurate daily records of  
171 all allowable costs. The records, as well as all work and costs, are subject  
172 to review, audit, and approval by the Engineer.

173  
174           The Contractor shall use the State's Force Account Form and  
175 obtain the Inspector's signature thereon each day the Contractor performs  
176 force account work. As the condition of payment of the force account  
177 work, the Contractor shall submit an original and two copies of the force  
178 account records, together with invoices, receipts, and other backup data to  
179 the Engineer.

180  
181           **(c) Allowable Costs.**    Allowable costs include labor, equipment and  
182 machinery, trucks, insurance, taxes and bonds, overhead, profit, and  
183 reimbursable expenses all as described herein. Other costs or items not  
184 covered under this section are subject to the Engineer's written approval.

185  
186           **(d) Labor.**    Allowable costs include Contractor and subcontractor(s)  
187 costs for hourly worker wages, and fringe benefits required by  
188 employment contracts, plus overhead and profit markup. The Contractor  
189 shall provide the information on the force account form regarding each  
190 worker and supervisor.

191

192 Overtime compensation, per diem costs, and other reimbursable  
193 costs are not allowed unless approved in writing by the Engineer prior to  
194 incurring the expense. Overhead and profit markup will not be allowed for  
195 such costs. Costs and time for employees to travel to and from the project  
196 site are not allowed unless approved in writing by the Engineer prior to  
197 performing the work.

198

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

208

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

214

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

220

221 Hourly rates shall include costs for fuel, oil, lubricants, supplies,  
222 necessary attachments, repairs, maintenance, tire wear, depreciation,  
223 storage, and other incidentals. The allowable hourly rates shall be the

224 Contractor's actual customary charges, e.g., shop rates, yard rates, or  
225 rental cost as verified by Contractor's records or invoices, provided that  
226 the maximum rate shall not exceed the current rates published in the Blue  
227 Book, effective at the time of equipment use. Blue Book hourly rates are  
228 calculated based upon the following formula:

229

230 Hourly Rates = [(Blue Book Monthly Rate ÷ 176) X (Regional  
231 Adjustment Factor) X (Rate Adjustment Table Factor)] + Hourly  
232 Operating Cost

233

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

236

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

239

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

246

247 **(g) Equipment Charges.** The rental period for equipment and  
248 machinery brought to the work site, specifically for the force account work,  
249 begins when the equipment or machinery reaches the work site, continues  
250 each day the equipment or machinery is at the site, and terminates at the  
251 end of the day when the equipment or machinery is no longer needed for  
252 the force account work or when the equipment or machinery leaves the  
253 project site, whichever comes first.

254

255 Rental times for all other equipment and machinery used for force  
256 account are paid for the time actually used. Prior to the performance of  
257 work, the Engineer must approve any hours of operation in excess of 8  
258 hours in any one day. No additional premium beyond the normal rates  
259 used will be paid for equipment or machinery over 8 hours per day or 40  
260 hours per week.

261

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

276

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

279

280 **(h) Idle and Standby Equipment.** In the event the equipment or  
281 machinery must standby due to work being delayed or halted by reasons  
282 beyond the Contractor's control, the rental rate shall be: Standby/Idle  
283 Hourly Rental Rates = [(Blue Book Monthly Rate ÷ 176) X (Regional  
284 Adjustment Factor) X (Rate Adjustment Table Factor)] X 0.50 or the  
285 Contractor's shop rates or yard rates, whichever is lower. The Engineer  
286 may order the demobilization of standby/idle equipment or may direct that

287 equipment that was located at the jobsite at the start of the force account  
288 work cease to be used for force account work.

289

290 Payment will be made only when:

291

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

295

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

304

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

308

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

314

315 **(j) Trucks and Utility Items.** The Contractor's cost for utility  
316 vehicles and other items such as pickup trucks, vans, flatbed trucks,  
317 storage trailers, containers, etc. that are already in use or planned for use  
318 on the entire project will not be allowed except for the time that, in the

319 opinion of the Engineer, they: (1) are directly and necessarily used for the  
320 performance of the force account work; and (2) the use of such items has  
321 not been included within the Contractor's total project overhead costs.

322

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

327

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

330

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

333

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

337

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

343

344 The cost to transport the equipment or machinery shall not exceed  
345 the rates established by the Hawaii State Public Utilities Commission. If  
346 the rates are nonexistent, then the rates will be determined by the  
347 Engineer based upon the prevailing rates charged by established haulers  
348 within the locale.

349

350                   If the Contractor uses the equipment or machinery for other than  
351 force account work, the costs to mobilize and transport may be disallowed  
352 or prorated depending on the non-force account work.

353

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

358

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

365

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

369

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

374

375                   Costs incurred by the Contractor for air transportation and  
376 associated ground transportation and per diem or subsistence allowance  
377 costs (lodging and meals) are allowed as reimbursable expenses when  
378 the project conditions require special skilled workers not readily available  
379 on the island of the project site. Air transportation shall not exceed the  
380 actual cost of coach class airfare. Whenever possible, Contractor shall  
381 take advantage of advance purchase discount air fares. Ground

382 transportation shall not exceed the actual cost of renting a compact-sized  
383 vehicle. Rental vehicles shall be shared among Contractor's employees  
384 to the greatest extent possible. Insurance coverage is not a reimbursable  
385 expense.

386

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

392

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

399

400 The actual bond premium, not to exceed 1 percent is allowed on  
401 items covered by Subsections 9.6(d) Labor, 9.6(e) Materials, 9.6(f)  
402 Equipment and Machinery, 9.6(j) Trucks and Utility Items, 9.6(l)  
403 Subcontractors, 9.6(m) Insurance and Taxes, 9.6(n) Other Costs, and  
404 9.6(o) Reimbursable Expenses when applicable. When the original  
405 contract price includes a bond premium for an allowance item to be paid  
406 by force account, no additional bond premium for such allowance items  
407 will be paid until the allowance amount is exhausted.

408

409 **9.7 Assignment of Payments.** The Contractor may not assign its right to  
410 receive monies due under the contract without the written consent of the State  
411 and the surety.

412

413 **9.8 Progress Payments.**

414

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

426

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

429

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

432

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

435

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

438

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

442

443           **(1)**     If acceptance of submittals of such materials are required by  
444 the contract documents, the submittal processes have been

445 completed and the materials for which payment is requested  
446 conform to the accepted submittal.

447

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

451

452 **(3)** Payments shall be made only if:

453

454 **(A)** All materials are acceptable to the Engineer.

455

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

459

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

463

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

468

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

473

474 Payment for the material does not relieve the Contractor of its  
475 obligations to furnish material acceptable to the Engineer and to properly

476 incorporate the material into the project in accordance with the contract  
477 documents.

478  
479 The State will not make material payment on living or perishable  
480 plant material or any material that may deteriorate or is not insurable.

481

482 **9.9 Prompt Payment.**

483

484 **(a) Contractor's Duty.**

485

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

495

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

500

501 The following are examples of 'bona fide disputes':

502

503 **(A)** When work done by a subcontractor is paid for and  
504 later found to be non-conforming or unacceptable and the  
505 amount previously paid by the State is deducted from the  
506 Contractor's subsequent payment request.

507

508                   **(B)** When the Contractor and subcontractor disagree as  
509 to whether the subcontractor has failed to promptly correct  
510 any deficiencies or non-conforming work.

511  
512                   **(C)** When the Contractor and subcontractor disagree as  
513 to whether the subcontractor has failed to fulfill any material  
514 term, condition, or requirement of its subcontract.

515  
516           **(b) Filing Of Non-Payment Complaint And Verification Of Its**  
517 **Validity.** Subcontractors and material suppliers may file, in writing, a  
518 complaint with the Engineer regarding non-payment by the Contractor.  
519 Such a complaint must state:

520  
521                   **(1)** The amount past due for work performed and already paid  
522 for by the State;

523  
524                   **(2)** The date the work was completed;

525  
526                   **(3)** The date payment was due from the Contractor;

527  
528                   **(4)** That all the terms, conditions, or requirements of its  
529 subcontract have been met; and

530  
531                   **(5)** That no bona fide dispute over its performance exists.

532  
533                   The Engineer will investigate, hear and receive evidence, and  
534 determine the validity of the complaint, and the Engineer's decision on the  
535 matter shall be final. It is not the Engineer's responsibility to determine  
536 how a bona fide dispute should be resolved.

537  
538           **(c) Follow-Up Action.** If the Engineer determines that the  
539 Contractor failed to make prompt payment required under the subcontract

540 or these contract documents to a subcontractor or material supplier with  
541 whom the Contractor has no bona fide dispute within the time period  
542 specified above, the Engineer shall inform the Contractor of the findings  
543 and direct the Contractor to make payment accordingly.  
544

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

547  
548 **(1)** Withholding from future progress payment amounts to cover  
549 any sums paid to the Contractor for work performed by a  
550 subcontractor if the State finds that the subcontractor's complaint  
551 regarding non-payment by the Contractor has merit.

552  
553 **(2)** Refer the matter to the Contractor Licensing Board for  
554 appropriate action.

555  
556 **(3)** Initiate a petition for debarment.

557  
558 **(d) Penalty.** The Contractor will be subject to a penalty of one and  
559 one-half percent per month upon outstanding amounts due that were not  
560 timely paid by the Contractor under the following conditions.

561  
562 Where a subcontractor has provided evidence to the Contractor of  
563 satisfactorily completing all work under their subcontract and has provided  
564 a properly documented final payment request, and:

565  
566 **(1)** Has provided to the contractor an acceptable  
567 performance and payment bond for the project executed by a surety  
568 company authorized to do business in the State; or

569  
570 **(2)** The following has occurred:

571

572 (A) A period of ninety days after the day on which  
573 the last of the labor was done or performed and the  
574 last of the material was furnished or supplied has  
575 elapsed without written notice of a claim given to  
576 contractor and the surety, as provided for in section  
577 103D-324; and

578  
579 (B) The subcontractor has provided to the  
580 Contractor an acceptable release of retainage bond,  
581 executed by a surety company authorized to do  
582 business in the State, in an amount of not more than  
583 two times the amount being retained or withheld by  
584 the Contractor; any other bond acceptable to the  
585 Contractor; or any other form of mutually acceptable  
586 collateral,

587  
588 then, all sums retained or withheld from a subcontractor and otherwise  
589 due to the subcontractor for satisfactory performance under the  
590 subcontract shall be paid by the Engineer to the Contractor and  
591 subsequently, upon receipt from the Engineer by the Contractor, to the  
592 subcontractor within ten days after receipt of payment from the Engineer.

593  
594 The penalty may be withheld from future payment due to the  
595 Contractor if the Contractor was the responsible party. If a Contractor has  
596 a violation three or more times within two years of the first violation, the  
597 Contractor shall be referred by the Engineer to the Contractors License  
598 Board for action under Section 444-17(14), HRS.

599  
600 (e) **Documented Subcontractor Final Payment Request.** A  
601 properly documented final payment request from a subcontractor shall  
602 include:

603

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- (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.**

635 This section shall not be construed to impair the right of a  
636 contractor or a subcontractor, at any tier, to negotiate and to include in  
637 their respective subcontracts provisions that provide for additional terms  
638 and conditions that are requested to be met before the subcontractor shall  
639 be entitled to receive final payment, provided that any such payments  
640 withheld shall be withheld by the Engineer.

641

642 **9.10 Retainage; Withholding of Payment for Unsatisfactory Progress.**

643

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

651

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

657

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

661

662 If the Contractor refuses or fails to comply with the laws and  
663 regulations dealing with equal employment opportunity, affirmative action,  
664 non-discrimination, labor compliance, implementing and maintaining the  
665 BMP and NPDES standards, and disadvantaged business enterprise  
666 requirements, the Engineer, at its sole discretion and upon written notice

667 to the Contractor, may withhold any or all of the monthly progress  
668 payments that are due or to become due.

669  
670 With the approval of the State, the Contractor may withdraw, from  
671 time to time, the whole or any portion of the sum withheld after endorsing  
672 over to the State and depositing with the State any general obligation  
673 bond of the State or its political subdivisions suitable to the State. But in  
674 no case will the bond have a face value less than the value of the amount  
675 to be withdrawn. The State may sell the bond and use monies directly  
676 withheld from progress payments or the final payment.

677  
678 **9.11 Final Payment.** The Engineer will prepare the final estimate when the  
679 State accepts the project in accordance with Section 8.14 Final Acceptance.  
680 Prior progress estimates and payments shall be subject to correction in the final  
681 estimate and payment.

682  
683 Upon final settlement, the State will pay the entire sum due, less all  
684 previous payments and less any sums that may have been or may be deducted  
685 in accordance with the provisions of the contract, upon receipt of the following  
686 documents in a format acceptable to the Engineer:

687  
688 **(1)** Consent of the surety to payment of the final estimate and  
689 certificate of release from the surety.

690  
691 **(2)** Evidence by affidavit that the Contractor fully paid the debts  
692 resulting from the contract.

693  
694 **(3)** A current "Certificate of Vendor Compliance" issued by the Hawaii  
695 Compliance Express (HCE). The Certificate of Vendor Compliance is used  
696 to certify the Contractor's compliance with (a) Section 103D-328, HRS (for  
697 all contracts \$25,000 or more) which requires a current tax clearance  
698 certificate issued by the Hawaii State Department of Taxation and the

699 Internal Revenue Service; (b) Chapters 383, 386, 392, and 393, HRS; and  
700 (c) Subsection 103D-310(c), HRS. The State reserves the right to verify  
701 that compliance is current prior to the issuance of final payment.  
702 Contractors are advised that non-compliance status will result in the  
703 rejection of the submission and the final payment being withheld until  
704 compliance is attained.

705

706 Sums necessary to meet the claims of any governmental agencies may be  
707 withheld from the sums due the Contractor until said claims have been fully and  
708 completely discharged or otherwise satisfied.

709

710 **9.12 Records, Accounts, And Documents.** The Contractor shall retain and  
711 preserve its bid documents and estimates, contract records, accounts, data, and  
712 documents of the Contractor and its subcontractors, including all records  
713 regarding the employment of State of Hawaii residents , for not less than three  
714 years from the date of final payment. If any lawsuit or claim relating to the work  
715 is pending before the expiration of the three year period, the Contractor shall  
716 retain the documents until it is resolved. The Contractor shall provide written  
717 notice to the Engineer not less than 30 days of its intent to dispose of the  
718 contract records. The Engineer may direct, in writing, the Contractor to retain  
719 such records for an additional period of time at no cost to the State. The  
720 documents shall be available for inspection and auditing by the State and other  
721 government agencies at the offices of the Contractor and its subcontractors upon  
722 24 hours notice to the Contractor. The Contractor shall cooperate during such  
723 inspection and auditing of the documents at no cost to the State.

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**END OF ARTICLE IX.**