

**SECTION 109 - MEASUREMENT AND PAYMENT**

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3 **109.01 Schedule of Agreed Prices for Lump Sum Price Items.** After the  
4 award of contract, the Contractor shall submit a schedule of prices for the  
5 various items of work paid for by a lump sum price. For projects involving more  
6 than a single building, structure, or facility, the breakdown cost shall reflect a  
7 separate schedule of prices for the various items of work for each building,  
8 structure, and facility. The sum of the prices submitted for the various items  
9 must equal the lump sum bid in the bidder's proposal. This schedule will be  
10 subject to acceptance by the Engineer who may require the bidder to submit  
11 another or several other schedules if in the Engineer's opinion the prices are  
12 unbalanced or not sufficiently detailed. This schedule of prices **(1)** shall be  
13 used for the purpose of determining the value of monthly payments due the  
14 Contractor for work installed complete in place; and **(2)** may be used as the  
15 basis for determining cost and credit of added or deleted items of work,  
16 respectively.

17  
18 As a condition of payment, the Contractor shall estimate at the close of  
19 each month the percentage of work completed under each of the various  
20 construction items during such month and submit the estimate to the Engineer for  
21 review and approval. The Contractor shall be paid the percentage of the price,  
22 as approved by the Engineer established for each item, less any permissible  
23 retention.

24  
25 **109.02 Payment is not Acceptance.** No payment made to the Contractor  
26 prior to final acceptance is an acceptance by the State of the work or the portion  
27 of the work related to the payment; nor does a progress payment affect the  
28 State's rights to inspect, test or reject the work. A progress payment does not  
29 relieve the Contractor of the risk of loss or damage to the work for which payment  
30 is made. The Contractor still maintains the responsibility and duty with respect  
31 to the work for which payment is made, to protect against loss or damage, to  
32 insure the work, to insure and indemnify the State against claims, to maintain  
33 the required surety bonds, and to protect the work and the public.

34  
35 **109.03 Measurement of Quantities.** The work will be measured in  
36 accordance with United States standard measure, or as otherwise stated in this  
37 contract. Final measurement shall be verified or determined by the Engineer.  
38 If the Contractor has a dispute about the measurement of the work, the  
39 Contractor must demonstrate the existence of an error by actual physical  
40 measurement before the work has progressed in a manner that would make a  
41 proper verification of the contested measurements impractical. If the  
42 Contractor's claim cannot be physically verified, the Engineer's measurements  
43 will be deemed as correct.

44  
45 A station, when used as a definition or term of measurement, is 100  
46 linear feet.

47

### 109.03

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

56 Work will be measured to the pay limits shown in the contract documents.  
57

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

61 The term "gage" refers to the U. S. steel wire gage or U.S standard gage  
62 for uncoated hot and cold rolled sheets.  
63

64 The term "ton" will mean the short ton of 2,000 pounds avoirdupois weight.  
65 The Contractor shall weigh materials measured or proportioned by weight on  
66 properly certified scales.  
67

68 Every vehicle hauling material specified for measurement and payment by  
69 "loose measurement" or "measurement by vehicle" shall be made available to the  
70 Engineer for verification of its load volume or capacity. A vehicle's full load  
71 shall be its water level capacity. The Engineer may direct that any load in a  
72 vehicle be leveled for purposes of measurement or payment.  
73

74 The Contractor shall notify the Engineer 24 hours before hauling material,  
75 payment for which is based upon weight. Unless otherwise directed by the  
76 Engineer, the truck used to haul material paid by weight shall be weighed with  
77 no load on a properly certified scale before each load is added.  
78

79 When identifying standard manufactured items by gage, unit weight, or  
80 section dimensions, such identification will be nominal weights or dimensions.  
81 Standard manufactured items shall be such items as fence, wire, plates, rolled  
82 shapes, and pipe conduit. Unless specific allowable tolerances are set by the  
83 contract documents, tolerances generally accepted or established by the  
84 industries involved in the manufacture of the product are acceptable.  
85

86 **109.04 Full Compensation; Changes.** The contract price is full  
87 compensation for the work.  
88

89 Change order work as defined in Subsection 104.04 – Contract Change  
90 Orders, shall be paid for in the manner established by the related change order.  
91

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

96  
97 **109.05 Allowances for Overhead and Profit.** In determining the cost or  
98 credit to the State resulting from a change, the allowances for all overhead and  
99 profit combined shall not exceed the percentages set forth below:

100  
101 (1) 15 percent of the direct cost for any work performed by the  
102 Contractor's own labor force.

103  
104 (2) 15 percent of the direct cost for any work performed by each  
105 subcontractor's own labor force.

106  
107 (3) For the Contractor or any subcontractor for work performed  
108 by their respective subcontractor or tier subcontractor, 7 percent of  
109 the amount due to the performing subcontractor or tier  
110 subcontractor.

111  
112 **(A) Allowance Percentages.** The allowance percentages will be  
113 applied to all credits and to the net increase of direct costs where work is  
114 added and deleted by the changes.

115  
116 **(B) Allowed Markup.** Not more than three markup allowance line  
117 item additions not exceeding the maximum percentage noted in  
118 Subsections 109.05(1), 109.05(2), and 109.05(3) are allowed for profit  
119 and overhead, regardless of the number of tier subcontractors.

120  
121 **109.06 Force Account Provisions and Compensation.** The contract  
122 documents may provide that certain work be compensated by force account  
123 method, or the Contractor may be directed to provide changes compensable  
124 under the price adjustment provision of paragraph (5) of Subsection 104.06 –  
125 Methods of Price Adjustment. When performing force account work, the  
126 Contractor and its subcontractor(s) shall comply with the provisions of this  
127 section. Compensation by force account will not alter any rights, duties, and  
128 obligations under the contract. The Contractor shall follow these procedures:

129  
130 **(A) The Contractor's Duties; Engineer's Authority.** The  
131 Contractor has the duty to perform the work payable under this provision  
132 efficiently and economically. When the Engineer determines the  
133 Contractor is working inefficiently or uneconomically, the Engineer may  
134 direct the Contractor to stop, modify its means and methods, or the  
135 Engineer may specifically direct means and methods of doing the force  
136 account work. The Engineer will not pay for work that is unacceptable or  
137 for the cost of correcting work that fails to conform to contract  
138 requirements.

139  
140 **(B) Records.** The Contractor shall maintain accurate daily records of  
141 all allowable costs. The records, as well as all work and costs are  
142 subject to review, audit, and approval by the Engineer.

## 109.06

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

150

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

155

156 **(D) Labor.** Allowable costs include Contractor and subcontractor(s)  
157 costs for hourly worker wages, and fringe benefits required by  
158 employment contracts, plus overhead and profit markup. The  
159 Contractor shall provide the information on the force account form  
160 regarding each worker and supervisor.

161

162 Overtime compensation, per diem costs and other reimbursable  
163 costs are not allowed unless approved in writing by the Engineer prior to  
164 incurring the expense. Overhead and profit markup will not be allowed  
165 for such costs. Costs and time for employees' to travel to and from the  
166 project site are not allowed unless approved in writing by the Engineer  
167 prior to performing the work.

168

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

178

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

184

185 **(F) Equipment and Machinery.** For equipment and machinery  
186 necessary and actually used (other than small tools defined under  
187 Subsection 109.06(l) – Small Tools) that are owned or leased or rented,  
188 the Contractor is allowed costs for use of equipment or machinery at a per  
189 hour rate.

190

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

199  
200 Hourly Rates = [(Blue Book Monthly Rate ÷ 176) X (Regional  
201 Adjustment Factor) X (Rate Adjustment Table Factor)] + Hourly  
202 Operating Cost

203  
204 Equipment and machinery costs are not subject to any additional  
205 overhead and profit markup.

206  
207 Equipment and machinery shall be in good condition and suitable  
208 for the purpose for which the equipment and machinery are to be used.

209  
210 For equipment and machinery that is not listed in the Blue Book,  
211 the Contractor shall obtain the Engineer's written approval of the monthly  
212 and hourly rates prior to using the equipment or machinery. If there is  
213 no agreement on the rates, the Engineer will set the rate. Engineer  
214 may, prior the use of rental equipment, approve in writing rates that are  
215 higher than the published rates, if justified by special circumstance.

216  
217 **(G) Equipment Charges.** The rental period for equipment and  
218 machinery brought to the work site specifically for the force account work,  
219 begins when the equipment or machinery reaches the work site, and  
220 continues each day the equipment or machinery is at the site and  
221 terminates at the end of the day when the equipment or machinery is no  
222 longer needed for the force account work, or when the equipment or  
223 machinery leaves the project site, whichever comes first.

224  
225 Rental times for all other equipment and machinery used for force  
226 account are paid for the time actually used. Prior to the performance of  
227 work, the Engineer must approve any hours or operation in excess of 8  
228 hours in any one day. No additional premium beyond the normal rates  
229 used will be paid for equipment or machinery over 8 hours per day or 40  
230 hours per week.

231  
232 The total of all force account rental charges minus the operating  
233 cost accrued over the duration of the contract for a specific item of  
234 equipment or machinery (same make, model or kind of equipment or  
235 machinery doing the same kind of force account work) shall not exceed  
236 the replacement cost of that equipment. The Contractor shall provide  
237 the cost of replacement to the Engineer prior to using the equipment or  
238 machinery. If the Engineer does not agree with the replacement cost

239 provided by the Contractor or if the Contractor does not provide the  
240 replacement cost, the Engineer shall set the replacement cost. The  
241 Contractor may contest the replacement cost set by the Engineer in  
242 accordance with Subsection 107.15 – Disputes and Claims. The  
243 Engineer will pay only the hourly operating cost should the replacement  
244 cost be reached. This provision shall not apply to the accrued rental  
245 charges for barricades and other traffic control devices, or while  
246 undergoing maintenance.

247

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

250

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

260

261 Payment will be made only when:

262

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

266

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

275

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

279

280 **(I) Small Tools.** Contractor and subcontractor(s) are not allowed  
281 costs for depreciation or use of small tools, even if the small tools are  
282 consumed by use. Small tools are individual pieces of equipment, tools  
283 or other terms having a purchase price for that new item or equivalent  
284 replacement value of \$500.

285

286 **(J) Trucks and Utility Items.** The Contractor's cost for utility  
287 vehicles and other items such as pickup trucks, van, flatbed trucks,  
288 storage trailers, containers, etc. that are already in use or planned for  
289 use on the entire project will not be allowed except for the time that, in the  
290 opinion of the Engineer, they: (1) are directly and necessarily used for  
291 the performance of the force account work; and (2) the use of such items  
292 has not been included within the Contractor's total project overhead costs.  
293

294 Allowable rental rates for trucks not owned or leased by the  
295 Contractor shall not exceed the listed rates in the Blue Book or those  
296 established under the Hawaii State Public Utilities Commission,  
297 whichever is less.  
298

299 The Contractor shall provide points of origin, destinations,  
300 mileage, and hourly rates for each travel segment.  
301

302 Payment for use of trucks shall be in accordance with the  
303 provisions of Subsection 109.06(F) – Equipment and Machinery.  
304

305 **(K) Transportation, Mobilization, and Demobilization.**  
306 The Contractor shall obtain the Engineer's approval of the location from  
307 which the equipment or machinery will be moved or transported.  
308

309 Where the equipment or machinery must be transported to the work  
310 site, the Contractor will be paid the reasonable costs to mobilize and  
311 demobilize, load and unload, and transport the equipment or machinery,  
312 to and from its original location to the work site, or upon completion of the  
313 work to another location, whichever cost is less.  
314

315 The cost to transport the equipment or machinery shall not exceed  
316 the rates established by the Hawaii State Public Utilities Commission. If  
317 the rates are nonexistent, then the rates will be determined by the  
318 Engineer based upon the prevailing rates charged by established haulers  
319 within the locale.  
320

321 If the Contractor uses the equipment or machinery for other than  
322 force account work, the costs to mobilize and transport may be disallowed  
323 or prorated depending on the non-force account.  
324

325 **(L) Subcontractors.** Subcontractor's costs are allowed plus a  
326 markup limited under Subsection 109.05 – Allowances for Overhead and  
327 Profit, and applicable State excise tax. Costs for insurance and taxes  
328 shall comply with the provisions of Subsections 109.06(M) – Insurance  
329 and Taxes.  
330

331 **(M) Insurance and Taxes.** Contractor and subcontractor(s) are  
332 allowed actual additional costs attributable exclusively to the force account  
333 work for property damage, liability, workers compensation insurance

## 109.06

334 premiums, State unemployment contributions, Federal unemployment  
335 taxes, social security and medicare taxes, plus an allowable markup of 6  
336 percent.

337

338 **(N) Other Costs.** Any other costs or items not covered under this  
339 Subsection 109.06 – Force Account Provisions and Compensation are  
340 subject to the Engineer’s written approval and conditions.

341

342 **(O) Reimbursable Expenses.** All costs are subject to HAR §3-123 –  
343 Cost Principles. Reimbursable expenses are subject to the Engineer’s  
344 written approval and conditions. Overhead and profit markups are not  
345 permitted on reimbursable expenses.

346

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

358

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

364

365 **(P) State Excise Tax and Bond.** The Contractor will be reimbursed  
366 for State excise taxes paid or payable on the allowable force account  
367 work. The actual bond premium, not to exceed 1 percent is allowed on  
368 items covered by Subsections 109.06(D) - Labor, 109.06(E) – Materials,  
369 109.06(F) – Equipment and Machinery, 109.06(J) – Trucks, 109.06(L) –  
370 Subcontractors, 109.06(M) – Insurance and Taxes, 109.06(N) - Other  
371 Costs, and 109.06(O) - Reimbursable Expenses when applicable.  
372 When the original contract price includes a bond premium for an  
373 allowance item to be paid by force account, no additional bond premium  
374 for such allowance items will be paid until the allowance amount is  
375 exhausted.

376

377 **109.07 Assignment of Payments.** The Contractor may not assign its right  
378 to receive monies due under the contract without the written consent of the State  
379 and the surety.

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381 **109.08 Progress Payments.**



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**(A) Monthly Payment.** The Contractor shall be paid progress payments monthly upon approval of a monthly payment estimate by the Engineer. The monthly payment estimate shall be based upon the value of the items of work that appear to be satisfactorily completed, including the value of materials incorporated in the work. Materials not yet incorporated in the work will be paid in accordance with Subsection 109.08(B) – Payment for Material On Hand. Monthly payments will be approximate only and shall be subject to correction before or in the final estimate and payment. Monthly shall mean the period between the 16th day of the month to the 15th day of the succeeding month. The Engineer and the Contractor may agree on a different monthly period.

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

- (1) The failure of the Contractor to meet a requirement of law or the contract that is a condition precedent of payment.
- (2) The exercise of any right granted the Engineer to withhold money due the Contractor established by law or the contract.

No monthly payment will be made if the total value of the work done since the last estimate is less than \$2,000. If the monthly payment includes work from Sections 617 - Planting Soil, 618 - Grassed Surfaces, 619 - Planting and Transplanting and 641 - Hydro-Mulch Seeding, the Engineer will not make a monthly payment if the total value of the work done since the last estimate is less than \$500.

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

- (1) If acceptance of submittals of such materials are required by the contract documents, the submittal processes have been completed and the materials for which payment is requested conform to the accepted submittal.
- (2) The materials shall be stored and handled in accordance with Subsection 105.23 – Storage and Handling of Materials and Equipment.
- (3) Payments shall be made only if:
  - (a) All materials are acceptable to the Engineer.

## 109.08

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

432  
433 (c) The materials are insured for their full replacement  
434 value to the benefit of the State against theft, fire, damages  
435 incurred in transportation to the site, and other hazards.

436  
437 (d) In case of materials stored off the project site, the  
438 materials are clearly marked and identified for the project,  
439 and are not commingled with other materials not to be  
440 incorporated into the project.

441  
442 The payment authorized in this subsection will not exceed the  
443 contract price of that item. Payment for the material under this  
444 subsection is not final acceptance of the material nor shall any such  
445 payment shift the risk of loss or damage from the Contractor to the State.

446  
447 Payment for the material does not relieve the Contractor of its  
448 obligations to furnish material acceptable to the Engineer and to properly  
449 incorporate the material into the project in accordance with the contract  
450 documents.

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

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## 109.09 Prompt Payment.

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### (A) Contractor's Duty.

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

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

The following are examples of 'bona fide disputes':

(a) When work done by a subcontractor is paid for and later found to be non-conforming or unacceptable and the

477 amount previously paid by the State is deducted from the  
478 Contractor's subsequent payment request.

479

480 **(b)** When the subcontractor fails to promptly correct any  
481 deficiencies or non-conforming work.

482

483 **(c)** When the subcontractor fails to fulfill any material  
484 term, condition or requirement of its subcontract.

485

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

490

491 **(1)** The amount past due for work performed and already paid  
492 for by the State.

493

494 **(2)** The date the work was completed.

495

496 **(3)** The date payment was due from the Contractor.

497

498 **(4)** That all the terms, conditions or requirements of its  
499 subcontract have been met.

500

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

502

503 The Engineer will investigate, hear and receive evidence and  
504 determine the validity of the complaint and the Engineer's decision on the  
505 matter shall be final.

506

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

513

514 If the Contractor does not act promptly, the Engineer may:

515

516 **(1)** Take appropriate action as allowed under this contract.

517

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

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521                   (3) Initiate a petition for debarment.

522  
523                   The State may withhold from future progress payments amounts to  
524 cover any sums paid to the Contractor for work performed by a  
525 subcontractor if the State finds that the subcontractor's complaint  
526 regarding non-payment by the Contractor has merit.

527  
528 **109.10 Withholding of Payment for Unsatisfactory Progress.** If the  
529 Contractor is progressing or performing the work unsatisfactorily, the Engineer,  
530 upon written notice to the Contractor, may withhold sums not exceeding 5  
531 percent of the total contract price from subsequent progress payments.

532  
533                   The Engineer may deduct from any amounts due to the Contractor sums  
534 assessed as liquidated damages as well as any other charges against the  
535 Contractor allowed by law or the contract documents.

536  
537                   If the Contractor refuses or fails to comply with the equal employment  
538 opportunity, affirmative action, non-discrimination, labor compliance, training,  
539 implementing and maintaining satisfactorily the BMP and NPDES standards  
540 and disadvantaged business enterprise requirements, the Engineer at its sole  
541 discretion and upon written notice to the Contractor may withhold any or all of the  
542 monthly progress payments that are due or to become due.

543  
544                   With the approval of the State, the Contractor may withdraw from time to  
545 time the whole or any portion of the sum withheld after endorsing over to the  
546 State and depositing with the State any general obligation bond of the State or its  
547 political subdivisions suitable to the State. But in no case will the bond have a  
548 face value less than the value of the amount to be withdrawn. The State may  
549 sell the bond and use monies directly withheld from progress payments or the  
550 final payment.

551  
552 **109.11 Final Payment.** The Engineer will prepare the final estimate when  
553 the State accepts the project in accordance with Subsection 108.14 – Final  
554 Acceptance. Prior progress estimates and payments shall be subject to  
555 correction in the final estimate and payment.

556  
557                   Upon final settlement, the State will pay the entire sum due less all  
558 previous payments and less any sums that may have been or may be deducted  
559 in accordance with the provisions of the contract upon receipt of the following  
560 documents in a format acceptable to the Engineer:

561  
562                   (1) Consent of the surety to payment of the final estimate and  
563 certificate of release from the surety.

564

565 (2) Evidence by affidavit that the Contractor fully paid the debts  
566 resulting from the contract.

567

568 (3) Original tax clearance certificates from the State Director of  
569 Taxation and the Federal Internal Revenue Service. The clearance  
570 certificates must be certified by the appropriate agency not more than 60  
571 days before delivery to the Engineer.

572

573 (4) Certification of Compliance for Final Payment (SPO Form-22),  
574 attached, will be required for final payment. A copy of the form is also  
575 available at [www.spo@hawaii.gov](http://www.spo@hawaii.gov). Select 'Forms for  
576 Vendors/Contractors' from the HRS Chapter 103D, pop-up menu.

577

578 Sums necessary to meet the claims of any governmental agencies may be  
579 withheld from the sums due the Contractor until said claims have been fully and  
580 completely discharged or otherwise satisfied.

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582 **109.12 Records, Accounts, And Documents.** The Contractor shall retain  
583 and preserve its bid documents and estimates, contract records, accounts,  
584 data and documents of the Contractor and its subcontractors for not less than  
585 three years from the date of final payment or the final voucher of the project is  
586 submitted to FHWA which ever is longer. If any lawsuit or claim relating to the  
587 work is pending before the expiration of the three year period, the Contractor  
588 shall retain the documents until it is resolved. The Contractor shall provide  
589 written notice to the Engineer not less than 30 days of its intent to dispose of the  
590 contract records. The Engineer may direct in writing the Contractor to retain  
591 such records for an additional period of time at no increase in contract price or  
592 contract time. The documents shall be available for inspection and auditing by  
593 the State and other government agencies at the offices of the Contractor and its  
594 subcontractors upon 24 hours notice to the Contractor. The Contractor shall  
595 cooperate during such inspection and auditing of the documents at no increase in  
596 contract price or contract time.

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**END OF SECTION 109**