

## SECTION 105 - CONTROL OF WORK

**105.01 Authority of the Engineer.** The Engineer will decide questions that may arise regarding the following: \*|  
\*|

- (1) the quality and acceptability of materials furnished and work done: \*|
- (2) rate of progress of the work; \*|
- (3) interpretation of the contract: \*|
- (4) fulfillment of the contract; and \*|
- (5) compensation. \*|

The Engineer's estimates and decisions on claims, questions and disputes will be final and conclusive. \*|  
\*|

The Engineer will have the authority to enforce and make effective such decisions and orders that the Contractor fails to carry out promptly and diligently. The Engineer will have the authority to suspend the work wholly or in part for such periods as are necessary and to suspend progress payment wholly or in part: \*|

- (1) for failure of the Contractor to correct conditions unsafe for the workers or the public; \*|
- (2) for failure to carry out provisions of the contract;
- (3) for failure to carry out orders;
- (4) for unsuitable weather or other conditions considered unsuitable for the prosecution of the work; or
- (5) for other condition or reason deemed to be in the public interest.

**105.02 Contract Plans and Working and Shop Drawings.**

**(A) Contract Plans.** The contract plans consist of general drawings. \*|  
Also, the contract plans show details necessary to give a comprehensive \*|  
idea of the work involved. Roadway plans show alignment, profile, grade, \*|  
and typical cross-sections of improvement. Structural plans show in \*|  
detail dimensions of the work involved. Also, structural plans show \*|  
general features and details necessary to give a complete idea of the \*|  
structure. Building plans show exterior and interior elevations, plot \*|  
plan and details necessary to give a complete idea of the building. \*|  
Authorized alterations shall be in writing. The Contractor shall keep \*|  
one (1) set of plans available on the work site. |

**(B) Working and Shop Drawings.** The Contractor shall prepare, thoroughly check, and submit to the Engineer for review such shop and working drawings detailing the permanent and temporary work.

The Contractor shall include in the working and shop drawings cribs, cofferdams, falsework, centering, stress sheets, anchor bolt and shop details, bracing, masonry layouts, design and bending diagrams of reinforcing steel, and diagrams for concrete reinforcement erection plans, formwork, and methods of construction.

Also, the Contractor shall furnish working and shop drawing information for the details and dimensions of miscellaneous installation of materials or equipment furnished and installed by the Contractor.

The Contractor shall submit a minimum of six (6) complete sets of working and shop drawings for review. The Department will not make additional payment for furnishing the working and shop drawings. The Department will consider them incidental to the various contract items.

The Engineer shall review the working and shop drawings. The Engineer may take two (2) weeks to review the working and shop drawings depending on the complexity. The Contractor shall submit working and shop drawings for review on time and at the earliest possible date after the Notice to Proceed date to meet the construction schedule. The Contractor shall not make changes in the accepted working and shop drawings without the written comments of the Engineer. The Department will consider delays caused by the Contractor's failure to submit the working and shop drawings on time a justifiable reason for contract time extensions.

Review by the Engineer does not relieve the Contractor of its responsibility for the accuracy of the dimensions and details of the working and shop drawings. The Contractor shall be responsible for ensuring that the working and shop drawings conform with the contract. The review of the working and shop drawing shall not justify a waiver of errors, discrepancies or omissions.

The Contractor shall keep one (1) set of the accepted working and shop drawings available on the work site.

**105.03 Conformity with the Contract.** The Contractor shall complete the work in conformity with the specified values and dimensions set forth in the contract. The Engineer may allow deviations.

The Engineer may test samples and make measurements. If the Contractor is not meeting the specified values or dimensions, the Engineer will decide:

- (1) the degree of the non-conformance,
- (2) the effect on the project,

- (3) if the work will be accepted and remain in place, \*
- (4) the amount to pay the Contractor for such work, \*
- (5) if the Contractor should remove and replace or correct the work at no cost to the State. \*

**105.04 Furnishing and Coordination of the Contract.** The Department will furnish the Contractor ten (10) sets of the contract plans and special provisions. The contract plans will be the same size as that issued for bidding purposes. The Contractor shall keep available on the worksite one (1) set of the above items and one (1) set of the Standard Specifications and Standard Plans. \*

The specifications, standard plans, project plans, special provisions, and supplementary documents are essential parts of the contract. A requirement occurring in one is as binding as though occurring in all. The intent of the specifications, standard plans, project plans, special provisions, and supplementary documents is to complement, describe, and provide for the complete work. \*

If a conflict or discrepancy within a document occurs, the stricter requirement shall govern. If dimensional discrepancy occurs, calculated dimensions will govern over scaled dimensions. If discrepancy between documents occurs: \*

- (1) project plans will govern over Standard Plans; \*
- (2) Standard Plans and project plans will govern over the Standard Specifications; \*
- (3) special provisions will govern over Standard Specifications, Standard Plans and project plans. \*

The Contractor shall not take advantage of apparent errors or omission in the contract. If the Contractor discovers such an error or omission, the Contractor shall notify the Engineer immediately. The Engineer will then make such corrections consistent with the intent of the contract. \*

**105.05 Cooperation with Utility Companies.** During the design stage, the Department will notify the utility companies, pipe line owners, and other affected parties regarding the adjustments of the public or private utility fixtures, pipe lines, and other appurtenances within or next to the limits of the project. \*

In submitting a proposal, each bidder shall consider the permanent and temporary utility in their present or relocated positions shown in the contract. The Engineer will not allow additional compensation for delays, inconvenience, or damage sustained by the Contractor due to interference from the utility work. \*

105.05

The contract may have various utility items. The utility owner, others \*|  
and the Contractor shall relocate or adjust these items. \*|

Water, gas, and wire lines; service connections; water and gas meter and \*|  
valve boxes, light standards; cableways; and signals shall move according to \*|  
contract. \*|

**105.06 Cooperation Between Contractors.** The Department reserves the right to \*|  
contract for and do other or additional work on or near the work covered by \*|  
the contract.

When letting separate contracts within the limits of one project, each \*|  
Contractor shall conduct work so as not to interfere with or hinder the \*|  
progress or completion of the work done by other Contractors. Contractors \*|  
working on the same project shall cooperate with each other. |

The Contractor shall assume liabilities regarding its contract. Also, the \*|  
Contractor shall protect, hold harmless, indemnify, defend and where \*|  
appropriate insure the State from damages or claims that may arise. \*|

The Contractor shall: \*|

- (1) arrange its work, \*|
- (2) place and dispose the materials used so as not to interfere with the \*|  
operation of the other Contractors within the limits of the same project, \*|
- (3) join the work with that of the others, and \*|
- (4) do the work in sequence to that of the others. \*|

**105.07 Construction Stakes, Lines and Grades.**

**(A) State and Federal-Aid Projects.** |

The Contractor shall do construction layout and reference staking \*|  
for the proper control and completion of structures, grading, paving, and \*|  
drainage required for the completion of the work. \*|

The Engineer will establish control points at the beginning and end \*|  
of the project, points of intersection, and intermediate points at \*|  
intervals of one thousand (1,000) linear feet. Also, the Engineer will \*|  
furnish bench marks and stake out monuments, property lines, and right- \*|  
of-way lines. \*|

The Engineer will stake out major structures if designated in the \*|  
contract and will stake out: \*|

- (1) the baseline bearing lines of abutments and piers; |

(2) the location of working points and working lines;

(3) furnishing grade elevations for the control of the work. (Transferring of grades to the finish elevation from control hubs shall be the Contractor's responsibility).

The Engineer will not give detailed stakeout. The Contractor shall be responsible for the laying out of falsework formwork and other necessary stakeouts from the given information.

The State will not be responsible for delays in setting stakes and marks. The Contractor shall notify the Engineer of its requirements at least three (3) working days of starting operations requiring stakes or marks.

The Contractor shall preserve control points and stakes or marks that the Engineer may have set. If the Contractor destroys or disturbs the control points, stakes or marks, the Department will charge the Contractor the cost of replacing the stakes or marks. Also, the Department will deduct payments due the Contractor.

The Contractor shall be responsible for the placement and preservation of adequate ties to control points whether established by the Contractor or by the Engineer.

The Contractor shall furnish, set and properly reference stakes, marks, references and batter-boards required for the construction operations. The Contractor shall be solely and completely responsible for the accuracy of the line and grade. The Contractor shall notify the Engineer of errors or discrepancies found in previous surveys and contracts before proceeding with the work.

The Contractor shall check the locations and grades of the existing structures or topographical features before construction starts.

The Contractor shall submit two (2) copies of data used in setting and referencing stakes and other layout markings used by the Contractor.

The Contractor shall provide safe and convenient access to control points, batter-boards and references.

The Contractor shall survey and stake out the work by qualified personnel under the direct supervision of a surveyor with experience in construction surveying, experienced on the control of that work, and acceptable by the Engineer.

Stakes and markers used for control staking shall be of the same quality as used by the Engineer for this purpose. For slope limits, pavement edges and gutter lines, "working" stakes of different quality may be acceptable.

The Engineer may check the Contractor's control of the work as the work progresses. The Engineer will inform the Contractor of the results of these checks. Such checks shall not relieve the Contractor of its responsibility for the accuracy of the layout work. The Contractor shall correct or replace deficient or inaccurate layout and construction work at no cost to the State. The Department will deduct from payments due to the Contractor expenses incurred by the Engineer due to the deficiencies or inaccuracies.

The Contractor shall furnish necessary personnel, engineering equipment and supplies, transportation and materials necessary to complete this work. The Department will consider the requirements imposed by this subsection and done by the Contractor incidental to the various contract items. The Engineer will not make separate or additional payment.

The Engineer will furnish copies of grade sheets (computations for finished pavement grades), supplementary profiles, and pavement grade plans when requested.

**(B) For County Projects.**

The Contractor shall lay out the work required to establish and maintain lines and grades according to the contract. Also, the Contractor shall do the engineering work and furnish the materials and equipment required to complete the work.

The Contractor is responsible for the errors in lines, grades or elevations. The Contractor shall correct the errors at no cost to the Department.

The Department will consider requirements imposed by this subsection and done by the Contractor incidental to the various contract items. The Engineer will not make separate or additional payment.

The Contractor shall survey and stake out the work by qualified personnel under the direct supervision of a surveyor with:

- (1) experience in construction surveying,
- (2) experienced on the control of that work, and
- (3) acceptable by the Engineer.

The Engineer shall furnish the required bench mark elevations and mark the lines and dimensions required by the plans. Also, the Engineer will check and pass upon engineering work. The Engineer's decision, methods, and performance of the above shall be final.

**105.08 Authority and Duties of Project Engineer.** The Project Engineer has immediate charge of the engineering details of its construction project and is responsible for the administration and completion of the project. Also, the Project Engineer may delegate authority, reject defective material, and order the suspension of unsatisfactory work.

**105.09 Duties of the Inspector.** Inspectors employed by the Department will be the Engineer's authorized representatives assigned to inspect work done and materials furnished. Such inspection may extend to the work and to the preparation, fabrication or manufacture of the materials to be used. The Inspector may not alter or waive the provisions of the contract, issue instructions contrary to the contract, or act as foreman for the Contractor.

**105.10 Inspection of Work.** Materials and each part or detail of the work shall be subject to inspection by the Engineer. The Contractor shall allow the Engineer access to the work. Also, the Contractor shall furnish the Engineer information and assistance to make a complete inspection.

When government or utility companies are to pay a portion of the cost of the work covered by this contract, they shall have the right to inspect the work. Such inspection shall not make that government or utility company a party to this contract. Also, that government or utility company shall not interfere with the rights of either party to the contract.

For detailed inspection, the Contractor shall remove or uncover such portions of the work as requested by the Engineer. After inspection, the Contractor shall restore that portion of the work to the standard required by the contract. The Department will pay the uncovering or removing and the replacing of the covering or making good of the portions removed as extra work if the work exposed and inspected is acceptable. If the work exposed is unacceptable, the work and the making good of the portions removed shall be at no cost to the State.

The Engineer or Inspector may order the work done or materials used without inspection removed and replaced at no cost to the State. The previous sentence does not cover sampling, testing and measurement normally done as a routine procedure by the Department.

The inspection of the work shall not relieve the Contractor of obligations to fulfill the contract as prescribed, to make good defective work, and to replace unsuitable or rejected materials. The Engineer may have previously overlooked such defective work and materials and accepted or estimated for payment.

**105.11 Bulletin Board.** For Federal-aid projects, the Contractor shall furnish, install, maintain, and remove upon final acceptance a bulletin board. The bulletin board shall be suitable for outside use. The Contractor shall enclose the bulletin board with a transparent window for posting the required posters. The Contractor shall install the bulletin board on the project site accessible to employees and applicants for employment. Also, the Contractor shall position the bulletin board so a minimum of sunshine will strike the posters displayed.

105.11

The bulletin board shall be of sufficient size so the posted material is clearly visible. The Contractor shall not cover or overlap posted material by other postings. If the required posted material has information on two (2) sides, the Contractor shall show both sides of the bulletin board. The Contractor shall install the bulletin board so the bottom of the board is approximately three and one-half (3-1/2) feet above the ground.

The Contractor shall submit the dimensions, construction and location of the bulletin board for acceptance in writing.

Contractors of joint venture contracts shall each post bulletin board. This applies only if these Contractors do different portions of the work or has separate office facilities.

The Department will consider the bulletin board incidental to the various contract items. The Department will not make separate or additional payment.

**105.12 Removal of Unacceptable and Unauthorized Work.** The Department will consider work not conforming to the contract unacceptable work. The Contractor is directed to Subsection 105.03 - Conformity with the Contract.

The Contractor shall remove unacceptable work found to exist before the final acceptance of the work. The Contractor shall replace the work according to the contract. Unacceptable work includes poor workmanship and use of defective materials.

The Department will consider work done contrary to the orders of the Engineer, work done beyond the lines as given, or extra work done without authority unauthorized. The Department will not make payment for such work. The Department may order such work removed or replaced at no cost to the State.

The Engineer may remedy such unacceptable work and deduct the costs from monies due or to become due the Contractor if the Contractor fails to comply to the Engineer's orders.

**105.13 Load Restrictions.** The Contractor shall comply with legal load restrictions in the hauling of materials on public roads. A special permit will not relieve the Contractor of liability for damage that may result from the moving of material or equipment.

The Contractor shall limit hauling of materials over the base course or surface course under construction according to the contract. The Engineer will not permit loads on a concrete pavement, base or structure before the expiration of the curing period. The Contractor shall not exceed the legal load limits. The Contractor shall be responsible for damages done while hauling equipment.



**105.14 Maintenance.** The Contractor shall maintain the work until the Engineer grants relief of maintenance or until completion or acceptance of the project. \*

In the case of a contract for the placing of a course upon a course or subgrade previously constructed, the Contractor shall maintain the previous course or subgrade during construction operations. \*

The Department will consider costs of the above maintenance work incidental to the various contract items. The Department will not make separate or additional payment. \*

**105.15 Failure to Maintain Roadway or Structure.** The Engineer will notify the Contractor of non-compliance if the Contractor fails to comply with Subsection 105.14 - Maintenance. If the Contractor fails to remedy the unsatisfactory maintenance within twenty-four (24) hours after receipt of such notice, the Engineer may proceed to maintain the project. The Department will deduct the entire cost of such maintenance from monies due or become due to the Contractor. \*

**105.16 Final Cleaning Up.** The Contractor shall clean the project sites and material sites before final inspection of the work is made. The Contractor shall leave the work in a neat and presentable condition. The Department will consider final cleaning up incidental to the various contract items of work. The Department will not make separate or additional payment. \*

The Contractor shall not remove warning, regulatory or guide signs before formal acceptance by the Engineer.

**105.17 Acceptance.**

**(A) Partial Acceptance.** If the Contractor completes a structure or a section of road or pavement, the Contractor may request a final inspection for that portion of the project. If upon inspection the Engineer finds that: \*

(1) portion is complete according to contract; and \*

(2) there is public benefit from the use of that completed portion \*

the Engineer may declare the unit completed and accepted. The Department may relieve the Contractor of further maintenance responsibility for that portion of the project. Such partial acceptance shall not void or alter the terms of the contract. \*

The Contractor shall repair, replace, or restore units that become damaged by its use at no cost to the State. \*

(B) **Final Acceptance.** Upon notification from the Contractor of completion of the project, the Engineer will make an inspection. If the Engineer finds the work completed according to the contract, the inspection is final. The Department will notify the Contractor in writing of its acceptance as of the date of the final inspection.

The Engineer will notify the Contractor in writing if the inspection discloses non-conforming work. The Contractor shall correct and complete the non-conforming work. Upon completion the Contractor shall notify the Engineer. The Engineer shall make another inspection. If the Engineer finds the work completed according to the contract, the inspection is final. The Department will notify the Contractor in writing of its acceptance as of the date of the final inspection. The Contractor shall repair, replace, and restore work that becomes damaged by the Contractor through its use at no cost to the State.

Pending written notification of the Engineer's acceptance, the Contractor may be wholly or partially relieved further responsibility for maintenance of the project work.

**105.18 Claims for Adjustment and Disputes.** The Contractor shall:

(1) notify the Engineer in writing of its intention to make claim for extra compensation before beginning the work that the Contractor bases the claim,

(2) keep and maintain accurate and detailed records of actual cost of the work acceptable to the Engineer, and

(3) afford the Engineer every facility for verifying the strict account of actual cost of the work including field and office inspections;

If the Contractor fails to:

(1) give such notification;

(2) to keep and maintain satisfactory records;

(3) to afford the Engineer proper facilities for verifying the strict account of actual cost,

the Contractor waives its right to claim such additional compensation.

The notification, the keeping of cost by the Contractor and the verification efforts by the Engineer shall not establish the validity of the claim.

If the Engineer considers the claim justified, the Engineer will pay the claim as extra work according to the force account. This subsection shall not establish claims contrary to Subsection 104.02 - Alterations of Plans or Type of Work.

The Contractor shall notify the Engineer in writing of its intention to make such request for extension of time according to Subsection 108.07 - Determination and Extension of Contract Time and herein if the Contractor deems that additional compensation in time is due for work not covered in the contract or ordered by the Engineer as extra work.

The Contractor shall make claims and time extension requests for compensation the Contractor deems is due in which the Contractor disagrees with the decision made by the Engineer and wishes to appeal according to Subsection 105.20 - Disputes Review Board whenever such Dispute Review Board (Board) is established. The Contractor shall do the disputes or claim appeals administratively if a Dispute Review Board is not established.

If a Disputes Review Board is established, the Contractor shall apply the following paragraph:

(1) If the Contractor disagrees with the decision made by the Engineer and wishes to appeal, the Contractor shall appeal such decision to the Board in writing within thirty (30) calendar days of the decision. The Contractor shall not make further administrative review of the decision if failure to file such appeal within thirty (30) calendar days of the decision. The Contractor shall consider such failure an acceptance of the decision.

(2) The Engineer will submit the records to the Board of such decision. The Contractor and the Department may submit additional data, written and oral statements, or may agree to have the Board base its decision on the claims data previously submitted.

(3) The Engineer may present written and oral statement to the Board for its recommendation to mitigate the Contractor's dispute.

(4) The Board will submit a written recommendation as to the disposition of the appeal or dispute after investigating and assembling the facts applicable to the appeal. Within fourteen (14) calendar days of receiving the Board's recommendation, the Department and Contractor shall respond to the other and to the Board in writing, signifying either acceptance or rejection of the Board's recommendation. If the Department and the Contractor are able to resolve their dispute with the aid of the Board's recommendation, the Department will process the required contract change order within sixty (60) calendar days from the settlement.

(5) If the dispute remain unresolved after forty (40) calendar days of the Board's recommendation, the Department and the Contractor shall submit in writing the final appeal to the Board or may resort to other methods of settlement. The final appeal shall contain the monetary and time extension value. Within forty (40) calendar days, the Board will establish and submit a recommendation of the equitable monetary or time extension value.

The Department and the Contractor shall notify the Board in writing of the acceptance or rejection of the Board's final recommendation within seven (7) calendar days. If the Department and the Contractor cannot agree on the Board's recommendation, the Board shall make a referral of the disputes and its recommendation to the First Circuit Court of the State of Hawaii according to Subsection 105.20 - Disputes Review Board.

**105.19 Value Engineering.** Projects shall be eligible for Value Engineering Change Proposals (VECP). To qualify as a VECP, \*

- (1) the Contractor shall develop and submit a proposal, \*
- (2) a proposal involves changes in the contract, and \*
- (3) a proposal results in an estimated net savings in project cost of at least four thousand dollars (\$4,000). Net savings are those savings in project costs realized by the Department as the result of a VECP after deducting the Contractor's share of the cost savings. \*

The Contractor shall apply the following to allow the Contractor to share in the cost savings ensuing from VECPs accepted by the Department:

(1) This VECP clause applies to VECPs developed and submitted by the Contractor and accepted by the Department. This VECP applies only to a proposal qualifying as a VECP at the time of submission to the Engineer.

(2) A VECP:

(a) shall result in a quantifiable cost savings or identifiable benefits acceptable to the Department and provide a system, structure, procedure or process equivalent or better than the design specified in the contract;

(b) shall not impair the essential or desirable functions and characteristics of a system, structure, procedure or process, including durability, service life, reliability, economy of operation, ease of maintenance, desired appearance, design, safety standards and impacts due to construction; and

(c) shall require a modification to the contract or a contract change order.

(3) The Contractor shall submit the following with each proposal:

(a) A statement identifying the proposal as a VECP and briefly describing the portion(s) of the project work involved or affected;

(b) A description of the differences between the existing contract requirements and the proposed VECP and the comparative advantages and disadvantages of each, including durability, service life, reliability, economy of operation, ease of maintenance, desired appearance, design, safety standards, impacts due to construction, and other essential or desirable functions and characteristics;

(c) Complete final contracts showing the proposed revisions similar to the original contract design and features including submittal of:

1. design calculations;
2. the design criteria used; and
3. a detailed breakdown of costs and expenses to construct or implement such revisions.

Before accepting the submission of final contracts for a proposed VECP, the Department may require submittal of conceptual and preliminary plans, specifications, estimate and breakdown of related costs and expenses;

(d) An itemization of contract changes required by the proposed VECP and recommendations to implement or effect each change;

(e) A detailed breakdown of the total quantifiable cost savings to the State resulting from the proposed VECP, including the estimated reduction in its performance costs and breakdown of the respective shares in such savings realized by the Department and the Contractor. The calculation of cost savings shall include the costs incurred by the Contractor to develop, design, construct and carry out the proposed VECP, including costs attributable to subcontractors and incurred by the Department in reviewing and processing the proposed VECP;

(f) An itemized cost analysis showing the original contract costs and quantities to be revised or replaced by the proposed VECP, the new costs and quantities generated by or attributable to the proposed VECP and the cost impacts of the proposed VECP on operational, maintenance, and other considerations;

(g) A detailed description of the time savings to be realized by using the proposed VECP, including identifying and quantifying the corresponding reduction in the contract completion time;

(h) A statement identifying the time periods within which carrying out the proposed VECP for the Department. Include implementation time for the Department to review the proposed VECP and complete the contract or contract change order. Lack of sufficient review and processing time will be basis for rejecting the proposed VECP;

(i) A listing of proposed VECPs previously submitted by the Contractor on other projects including the conditions, results, project name, number, type, location, duration, responses, and actions by the Department;

(j) Data to verify the accuracy of the proposed VECPs; and

(k) Additional information requested by the State.

(4) The following is not a VECP:

(a) Basic design of a bridge or other elevated structure or facility; and

(b) Type, size, elevation or structural requirements of footings or other types of foundations.

The determination of the proposed VECP shall be at the Department's sole discretion and final.

The State shall not be liable for costs or delays incurred by the Contractor regarding the Department's determination with respect to a proposed VECP including development costs, anticipated profits, and increased material or labor costs.

If a proposed VECP is similar to a change in the contract before submittal of the proposed VECP, the Department will be under no obligation to accept such proposed VECP. The Department may carry out such changes to the contract without compensating the Contractor for such proposed VECP.

The Contractor shall do the contract work until the Department grants final acceptance. The Department will consider that work unauthorized if the Contractor does work on the proposed VECP before such final acceptance. The Department will not pay for such work. The Contractor shall remove and repair or restore the area or facility at no cost to the State.

(5) The Department may accept the proposed VECP, in whole or in part. The Engineer shall issue a contract change order or modify the contract to identify and describe the accepted proposed VECP.

The Department and the Contractor shall each share in the cost savings resulting from the VECP equally according to the following formula:

$$S = \frac{(A - B - C)}{2}$$

where S = Share in quantifiable cost savings from the VECP.

A = Revised and replaced cost by the VECP of the original contract bid items.

B = The cost of the development, design and construction and implementation of the accepted VECP.

C = The costs incurred by the Department in reviewing and processing the proposed VECP.

The Department will pay the Contractor's share of the cost savings resulting from the VECP as a separate item under the contract.

(6) Also, submittal of proposed VECPs or other reduction proposals under other State projects may be permissible.

(7) The Contractor shall note the following on the sheets of the VECP:

"The Department shall not reveal, duplicate, or use for purposes other than to evaluate the data in connection with a value engineering incentive proposal. This restriction does not limit the State's right to use this data if the data is available from another source. The Department has the right to use, reveal, permit others to use, duplicate and reveal the accepted VECP.

Contract modifications and contract change orders carrying out the VECP shall reference this contract clause.

(8) Proposed VECPs shall conform to applicable Federal, State or County laws, statutes, ordinances, rules and regulations.

(9) The Department may revoke its review of the VECP if the current work is non-conforming. Upon such revocation, the Engineer may order the Contractor to:

(a) Remove non-conforming work,

(b) Immediately stop the use of that process or procedure used with such VECP, and

(3) Restore and repair the affected portions of the project to a condition from which the original contract requirements may be carried out at no cost to the State.

Non-conforming work and the annulment of VECP review shall not be the basis of claim against the State including claims for delay.

(10) If the Department accepts modifications to VECP previously reviewed by the Department, the Department will pay the Contractor for the work done according to the contract change order.

(11) If the VECP involves new plan sheets, the Contractor shall submit master tracings according to the current "Guidelines for Preparation of Plans for State Highway Projects". The Contractor shall coordinate the preparation and submission of the master tracings with the Engineer. The Contractor shall submit the master tracings to the Engineer within two (2) months after execution of the contract or contract change order.

(12) The Contractor shall provide fifteen (15) copies of documents relating to the proposed VECP including plans, specifications, working plans, calculations, computer data, time schedules, cost estimates, and supporting data.

(13) The Contractor shall provide the Department the following documents relating to the accepted VECP:

(a) Thirty (30) copies of the full-sized plans, reduced-sized plans and specifications.

(b) Six (6) copies of accepted calculations including working sketches and computer data).

#### 105.20 Disputes Review Board.

(A) **General.** The Contractor and the Department will establish a Disputes Review Board (Board) when the proposal amount is more than ten (10) million dollars or the completion time is more than three hundred and sixty (360) working days. The Contractor and the Department will establish the Board to review disputes between the Department and the Contractor as to the disposition of appeals or disputes according to Subsection 105.18 - Claims for Adjustments and Disputes.

(B) **Purpose.** The purpose of the Board is to consider the unresolved disputes placed before the board and to provide written recommendations to the Engineer, for resolution of these disputes. By providing special expertise, the Board is expected to assist in the resolution of appeals made by the Contractor according to Subsection 105.18 - Claims for Adjustments and Disputes.

(C) **Establishing the Board.** Within thirty (30) calendar days after the date of the Award of Contract, the Contractor and the Department shall commence to establish the Board. The Board consists of three (3) members: the first member selected by the Contractor and accepted by the Department, the second member selected by the Department and accepted by the Contractor, and the third member selected by the first two members without further acceptance. When the State's selected member and the Contractor's selected member are not able to agree upon the third member of the board within thirty (30) days, the State Judiciary's Center for



Alternative Dispute Resolution shall administer the selection and appoint the third member. The Contractor and the Department will consider the Board established when the three (3) members, the Contractor, and the Department have executed the agreement specified herein.

A copy of the form of the three (3) party agreement for the Board is attached to this subsection.

**(D) Board Members.** The Board members shall be experienced in the construction processes used on the project. The Board members shall not have financial interest in the project, except for payments to be received as Board members. The Contractor and the Department shall not employ Board members for this project within a period of two (2) years before being selected as Board member, except as a member of a previous Board. The Contractor and the Department shall not employ the Board members during the life of the contract, except as a Board member. The Board members shall consider the facts related to the matters under consideration and the contract provisions. The services of a Board member may terminate with not less than thirty (30) calendar days advance notice, as follows:

(1) The Contractor may terminate the services of the Contractor-selected Board member;

(2) The Department may terminate the services of the Department-selected Board member;

(3) By mutual agreement between the Department-selected and Contractor-selected Board members the services of the third Board member may be terminated; or

(4) A Board member may resign at any time.

When a termination or resignation notice is given, transmit a copy to the Contractor, the Department, and other Board members.

After the termination or resignation notice of a Board member is given, the Contractor and the Department will start the selection of a new Board member in the same manner as the member to be replaced was selected.

**(E) Board Operation.**

(1) **General.** Within thirty (30) calendar days after the establishment of the Board, each Board member shall furnish to the other two (2) Board members as address and telephone number where the member may be contacted for the purposes of Board business. The Board shall meet at a mutually agreeable location to:

(a) Formulate its own rules of operation, select a chairperson, and obtain copies of the contract documents for each of the Board members.

(b) Agree on the location of future meetings. The location shall be close to the project site.

(c) Before or during the initial Board meeting, the Department shall furnish each Board member one (1) copy of contract documents including the specifications, plans, addenda, progress schedule, and update of contract change orders.

(d) The Department will arrange for or provide conference facilities at or near the site. Also, the Department will provide secretarial and copying services and other pertinent administrative necessities.

(2) **Regular Meetings.** The Board will hold regular meetings about every four (4) months throughout the life of the contract. The Contractor's and Department's representatives shall attend regular meetings. The Engineer, with inputs from the Contractor and the Board members, shall establish an agenda for each meeting which includes items the Board members considers necessary to keep them abreast of the project, such as construction status, schedule, potential claims and disputes. The Engineer will submit copies of agenda to the Contractor, the Department, and the Board members at least seven (7) calendar days before the meeting date. The Department and the Contractor shall make oral and written presentations as necessary to give the Board the data the Board requires to do its functions. The Engineer will prepare minutes of each meeting, circulate the minutes to participants for comments and acceptance, and issue the revised minutes before the next meeting. As a part of each regular meeting, the Board, the Contractor, and the Department may make a field inspection trip of active segments and if necessary completed segments of the work at the project site.

(3) **Special Meeting.** The Board may hold a special meetings as approved by the Contractor and the Department, and as specified hereinafter.

(4) **Handling of Appeals.** When an appeal is referred to the Board, the Board shall first decide when to meet. If the matter is urgent, the Board may schedule the appeal for the next regular meeting. For urgent matters, the Board will hold a special meeting at the earliest convenience.

In addition to the data submitted by the Department, according to Subsection 105.18, the Contractor and the Department shall submit such other data and make presentations as the Board may require.

The Contractor and the Department shall have opportunity to discuss the dispute and present rebuttals until aspects of the appeal are fully covered. The Contractor and the Department shall devote sufficient time to accomplish this purpose. During these meetings, the Board shall not express opinions concerning the merit or lack of merit of facets of the appeal.

After the open meeting, the Board shall meet in private session and reach a conclusion supported by at least two (2) members. The Board shall submit the findings and a written recommendation to the Department and the Contractor.

**(F) Cost and Payments.**

**(1) General Administrative Costs.** The Department will provide for and bear the entire cost of the following to support the Board's operations at regular and special meetings:

- (a) Meeting space and facilities;
- (b) Secretarial services;
- (c) Telephone;
- (d) Mail;
- (e) Reproduction; and
- (f) Filing.

**(2) Board Member Costs.** The Contractor and the Department will share fees and expenses of the Board members equally.

**(3) Payments to Board Members.** The Contractor shall make payments in full to the Board members. The Contractor shall submit to the Department an itemized statement for half (1/2) of such payments on a force account basis according to Subsection 109.04 under the item "Payments to Disputes Review Board Members". The Contractor shall receive an additional five (5) percent of the total force account cost of each payment statement for its administrative expense.

Payment to each Board member shall be at the fee rates appended to the agreement signed by the Board members, the Contractor, and the Department; plus applicable expenses as specified hereinafter. The Contractor and the Department will pay for time spent selecting the third Board member, at Board meetings, travel to and from Board meetings, and at the Board member's home base on Board business.

The Department and the Contractor shall reimburse expenses at the actual cost to the Board member. These expenses include automobile mileage, parking, travel expenses from the Board member's point of origin to the initial point of arrival, automobile rental, food and lodging, printing, long distance telephone, postage, and courier delivery directly applicable to the Board's functions. Air travel between the Board member's home base and Hawaii shall be by Coach Class when available for transcontinental flights and transoceanic flights. When such class is not available, the Board may utilize First Class subject to approval of the Department and the Contractor.

Each Board member submits an invoice to the Contractor for fees and applicable expenses incurred each month following a month in which the Board member participated in Board functions. Such invoices shall be in the format established by the Contractor. The Board shall support applicable expenses for major items such as travel expense, lodging, automobile rental and printing by ticket vouchers or receipts.

The Contractor shall pay each Board member within sixty (60) calendar days after the Contractor has received the billing data, verified the data, submitted by that Board member, and submitted an itemized statement to the Department.

DISPUTES REVIEW BOARD THREE PARTY AGREEMENT

THIS THREE-PARTY AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_, by and between: the Department of Transportation, Highways Division, State of Hawaii, hereinafter called the "Department" and

\_\_\_\_\_

\_\_\_\_\_

hereinafter called the "Contractor"; and

\_\_\_\_\_

\_\_\_\_\_

and

\_\_\_\_\_

hereinafter

called the "Disputes Review Board" or "Board".

WHEREAS, the Department is now engaged in the construction of

\_\_\_\_\_

\_\_\_\_\_

and WHEREAS, the contract provides for the establishment of a board according to Subsections 105.18 - Claims for Adjustments and 105.20 - Disputes Review Board.

NOW THEREFORE, it is hereby agreed:

ARTICLE I  
DESCRIPTION OF WORK AND SERVICES

The Department and the Contractor shall form a board according to this agreement and the provisions of Subsections 105.18 - Claims for Adjustments and 105.20 - Disputes Review Board.

The intent of the Board is to consider the disputes and to provide written recommendations for resolution of these disputes.

**ARTICLE II  
SCOPE OF WORK**

The scope of work of the Board includes the following:

- a. **Construction Site Visits.** The Board members shall visit the project site to keep abreast of construction activities and to become familiar with progress schedule of the Contract. The Board members shall become familiar with State Laws, Department Policies and Department Construction Administrative Procedures.
- b. **Establish Procedures.** The Board shall upon its initial meeting, with the agreement of parties, establish a procedure for the conduct of its routine site visits and its hearing disputes. The procedure can be written or verbal. Changes to the procedures shall be a mutual agreement with the Department and Contractor.
- c. **Recommend Settlement of Disputes.** Receipt of a written appeal of a dispute, from the Department or the Contractor, the Board as required by specification convene a hearing to review and consider the dispute.
- d. **Member Replacement.** If the need arise for a replacement of the Board member, the replacement member shall be appointed in the same manner according to Subsection 105.20 - Disputes Review Board.

**ARTICLE III  
BOARD RESPONSIBILITIES**

The Board is to recommend settlements for disputes, claims, and other controversies between the Department and Contractor arising from the contract. Primary matters involving disputes, claims and other controversies shall include interpretation of contract documents, delays, acceleration of work, scheduling, extra work, differing in site conditions, and design changes.

The Board will encourage the settlement of the differences at the job level instead of addressing each disputes, claims and controversies to the Board.

**ARTICLE 1V  
ASSIGNMENT**

Board members shall not assign the work to be done by them under this agreement.

The Contractor and Department shall not solicit advisement or consultation from the Board or its members on matters dealing with the conduct of the work or resolution of the disputes. The Contractor and

Department shall furnish to each Board member documents pertinent to the performance of the Board as described in Subsection 105.18 - Claims for Adjustment and Disputes.

**ARTICLE V  
COMMENCEMENT AND COMPLETION OF SERVICES**

The Board shall be active throughout the duration of the construction contract. The Board shall begin operation upon written authorization of the Department following the execution of this agreement. The Board shall terminate its activities on completion of the construction contract or upon a written notification by the Department.

**ARTICLE VI  
LEGAL RELATIONS**

The parties hereto mutually agree that each Board member in performance of its duties on the Board is acting as an independent Contractor and not as an employee of the Department or the Contractor.

The parties hereto shall not bear a greater responsibility for damages or personal injury than is normally provided by the Federal and State of Hawaii law. The board members are absolved of personal liability arising from the recommendations of the Board.

**ARTICLE VII  
DISPUTES, APPLICABLE LAW, VENUE**

Disputes between the parties, hereto, arising out of the performance of the Board or items of this agreement, which cannot be resolved by negotiation and mutual agreement between the parties hereto shall be referred to the First Circuit Court of the State of Hawaii. The parties hereto hereby agree that such disputes shall be resolved by the application of the laws of the State of Hawaii, and that the parties to such action shall have the right to appeal from such decisions of the First Circuit of the State of Hawaii according to the laws of the State of Hawaii.

**ARTICLE VIII  
COMPENSATION**

Compensation to the board members shall be as specified in Subsection 105.20 - Disputes Review Board. A copy of the rates agreed to by each board member and the party or parties which selected each Board member are appended hereto and made part of this agreement. Changes in such rates shall be subject to agreement by the Board member and the party or parties who selected the board member, and shall be authorized by a written supplement to this agreement.

105.20

Board members shall keep available for inspection by representatives of the State and the Contractor for a period of three (3) years after the termination of the Board members services according to Subsection 105.20 - Disputes Review Board, fees and expense records pertaining to this agreement. IN WITNESS HEREOF, the parties have caused this agreement to be executed the day and year first written above.

BOARD MEMBER: \_\_\_\_\_

BY: \_\_\_\_\_

BOARD MEMBER: \_\_\_\_\_

BY: \_\_\_\_\_

BOARD MEMBER: \_\_\_\_\_

BY: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_