

1 **SECTION 109 - MEASUREMENT AND PAYMENT**
2

3 Make the following amendments to said Section:
4

5 **(I) Amend 109.01 Measurement of Quantities** to read as follows:
6

7 **"109.03 Measurement of Quantities.** The work will be measured in
8 accordance with United States standard measure, or as otherwise stated in this
9 contract. Final measurement shall be verified or determined by the Engineer. If
10 the Contractor has a dispute about the measurement of the work, the Contractor
11 must demonstrate the existence of an error by actual physical measurement
12 before the work has progressed in a manner which would make a proper
13 verification of the contested measurements impractical. If the Contractor's claim
14 cannot be physically verified, the Engineer's measurements will be deemed as
15 correct.
16

17 A station, when used as a definition or term of measurement, is 100
18 linear feet.
19

20 Longitudinal measurements for area computations of the various surfaces
21 will be made in the horizontal projection of the actual surface. Transverse
22 measurements for area computations will be the neat dimensions shown in the
23 contract documents or the horizontal projection of the actual surface or as
24 ordered in writing by the Engineer. No deductions in measurement for unit price
25 payment purposes will be made for fixtures or structures in place having a
26 combined area of nine square feet or less.
27

28 Work will be measured to the pay limits shown in the contract documents.
29

30 Measurement of items that are measured by the linear foot will be made
31 parallel to the base or foundation.
32

33 The term 'gage' refers to the U. S. steel wire gage or U.S standard gage
34 for uncoated hot and cold rolled sheets.
35

36 The term 'ton' will mean the short ton of 2,000 pounds avoirdupois weight.
37 The Contractor shall weigh materials measured or proportioned by weight on
38 properly certified scales.
39

40 Every vehicle hauling material specified for measurement and payment by
41 "loose measurement" or "measurement by vehicle" shall be made available to
42 the Engineer for verification of its load volume or capacity. A vehicle's full load
43 shall be its water level capacity. The Engineer may direct that any load in a
44 vehicle be leveled for purposes of measurement and/or payment.
45

46 The Contractor shall notify the Engineer 24 hours before hauling material,
47 payment for which is based upon weight. Unless otherwise directed by the
48 Engineer, the truck used to haul material paid by weight shall be weighed with
49 no load on a properly certified scale before each load is added.
50

51 When identifying standard manufactured items by gage, unit weight, or
52 section dimensions, such identification will be nominal weights or dimensions.
53 Standard manufactured items shall be such items as fence, wire, plates, rolled
54 shapes, and pipe conduit. Unless specific allowable tolerances are set by the
55 contract documents, tolerances generally accepted or established by the
56 industries involved in the manufacture of the product are acceptable."
57

58 (II) Amend **109.02 Scope of Payment** by revising the first paragraph to read
59 as follows:
60

61 "**109.02 Scope of Payment.** The Contractor shall receive and accept the
62 compensation provided in the contract as full payment for:
63

64 (1) Furnishing materials, labor, equipment, tools and incidentals
65 necessary for the completed work;
66

67 (2) Doing work contemplated and embraced in the contract;
68

69 (3) Loss or damage arising out of the nature of the work, from the
70 action of the elements;
71

72 (4) Risks of descriptions connected with the prosecution of the work;
73

74 (5) Expenses incurred by the Contractor for the suspension or
75 discontinuance of the work;
76

77 (6) Costs arising from claims of infringement of a patent, trademark or
78 copyright;
79

80 (7) The completion of the work according to the contract; and
81

82 (8) All expenses incurred to restore areas affected by the Contractor's
83 work back to original condition if not specified otherwise."
84

85 (III) Delete **109.03 Compensation for Altered Quantities** in its entirety. (See
86 104.11 – Variations in Estimated Quantities)
87

88 (IV) Amend **109.04 Extra and Force Account Work** to read as follows:

89 **"109.04 Payment for Additional and Force Account Work.** The Engineer
90 will pay for work done according to Subsections 104.02 - Alterations of Plans or
91 Type of Work and 104.03 - Extra Work at the unit prices or lump sum (L.S.)
92 prices. Also, the Engineer may require the Contractor to do such work on a
93 force account (F.A.) basis. The following provisions shall govern in determining
94 the compensation to be paid to the Contractor for all work done on the F.A.
95 method and the calculation of new unit prices or L.S. prices.

96
97 **(A) Allowances for Overhead and Profit.**
98

99 **(1)** In determining the cost or credit to the Department resulting
100 from a change, the allowances for all overhead, including
101 extended overhead resulting from adjustments to contract time
102 (including home office, branch office and field overhead, and
103 related delay impact costs) and profit combined, shall not exceed
104 the percentages set forth below:

105
106 **(a)** For the Contractor, for any work performed by its
107 own labor forces, 15% of the direct cost;

108
109 **(b)** For each subcontractor involved, for any work
110 performed by its own forces, 15% of the direct cost;

111
112 **(c)** For the Contractor or any subcontractor, for work
113 performed by their subcontractors, 7% of the amount due
114 the performing subcontractor.

115
116 **(2)** Not more than three markup allowance line item additions
117 each of which not exceeding the maximum percentage shown
118 above will be allowed for profit and overhead, regardless of the
119 number of tier subcontractors.

120
121 **(3)** The allowance percentages will be applied to all credits and
122 to the net increase of direct costs where work is added and deleted
123 by the changes.

124
125 **(4)** Allowances for overhead and profit set forth above shall not
126 be used in the Calculation of Contractor or Subcontractor owned
127 equipment costs.

128
129 **(B) Labor.** For all hourly workers, the Contractor will receive the rate
130 of wage including fringe benefits when such amounts are required by
131 collective bargaining agreement or other employment contract generally
132 applicable to the classes of labor employed to that type of work.
133

134 All markups for overhead and profit shall be added subject to
135 limitations established in Subsection 109.04(A) - Allowances for Overhead
136 and Profit.
137

138 No allowance for overtime compensation will be given without the
139 written approval of the Engineer prior to performance of such work.
140

141 The Engineer will allow for overtime compensation only if
142 authorized by the Engineer in writing before performance of that work.
143 For authorized overtime, the Engineer will pay 1.5 times the hourly wage
144 rate plus the actual hours of overtime for fringe benefits, and/or as
145 required by collective bargaining agreement.
146

147 **(C) Insurance and Taxes.** The Contractor will receive the projected
148 average and/or actual rate for the required insurance and taxes including
149 property damage, liability, workers' compensation insurance premiums,
150 average tax rate, State unemployment contributions, Federal
151 unemployment taxes, social security and Medicare taxes. The Engineer
152 will add a markup of 6%.
153

154 **(D) Materials.** For materials accepted by the Engineer and used, the
155 Contractor and subcontractor(s) will receive the actual cost of such
156 materials delivered and incorporated into work. The Engineer will include
157 transportation charges and taxes paid by the Contractor if such cost is not
158 reflected in the prices of the materials. The Engineer will add a markup
159 allowed under Subsection 109.04(A) - Allowances for Overhead and
160 Profit.
161

162 For stock materials, used and/or incorporated the work, the
163 Contractor shall receive the actual cost as certified by the Contractor to
164 the cost paid by the Contractor. Provide to the satisfaction of the
165 Engineer all data used to calculate the actual cost. The Engineer will
166 include transportation charges and taxes paid by the Contractor if they
167 were not included in the cost of the material. The Engineer will add a
168 markup allowed under Subsection 109.04(A) - Allowances for Overhead
169 and Profit.
170

171 **(E) Subcontractors.** Subcontractor costs shall be the actual costs of
172 the Subcontractor calculated as defined in Subsection 109.04(B) - Labor,
173 Subsection 109.04(C) - Insurance and Taxes, Subsection 109.04(D) -
174 Materials, Subsection 109.04(F) - Equipment, plus a markup allowed
175 under Subsection 109.04(A) - Allowances for Overhead and Profit.
176

177 **(F) Equipment.**
178

179 (1) For any machinery or special equipment (other than small
180 tools as herein) owned by the Contractor or subcontractor(s) or a
181 related entity, the use of which has been authorized by the
182 Engineer, the Contractor will be paid at the per-hour rental rates
183 based on the monthly rate divided by 176, established for said
184 machinery or equipment in the then-current edition of the Rental
185 Rate Blue Book for Construction Equipment including the estimated
186 operating cost per hour and regional correction provided therein.
187 The rental rate shall be calculated using the following formula:
188

$$\begin{aligned} \text{Hourly Rental Rate} = & [(\text{Blue Book Monthly Rate} \div 176) \times \\ & (\text{Regional Adjustment Factor}) \times (\text{Rate Adjustment Table} \\ & \text{Factor})] + \text{Hourly Operating Cost} \end{aligned}$$

192 If no rate is listed for a particular kind, type or size of
193 machinery or equipment, then the monthly rental rates and hourly
194 operating costs shall be as agreed upon in writing by the Contractor
195 and the Engineer prior to the use of said machinery or equipment.
196 The hourly rental rate shall be determined as if the agreed upon
197 monthly rate had been obtained from the Blue Book. If there is no
198 agreement, the Engineer will set a rate. The Contractor may
199 contest the rate pursuant to Section 105.18 - Claims for Adjustment
200 and Disputes.
201
202

203 (2) Rental rates which are higher than those specified in the
204 aforesaid Rental Rate Blue Book publication may be allowed where
205 such higher rates can be justified by job conditions such as work in
206 water and work on lava. Request for such higher rates shall be
207 submitted in writing to the Engineer for approval prior to the use of
208 the machinery or equipment in question. The Contractor is
209 responsible for justifying rental rates that are higher than those
210 specified in the Rental Rate Blue Book. If the Contractor has not
211 justified the request for higher rental rates before the equipment is
212 needed or used, all rental rates for that equipment shall be paid for
213 at the rental rate unadjusted for that job conditions of the work until
214 the higher rental rate is approved by the Engineer. No adjustment
215 will be made to the rental rate of work already done or paid for,
216 unless the requested new rental rates are approved by the
217 Engineer in writing.
218

219 (3) The rental rate for trucks not owned by the Contractor or
220 subcontractor(s) or a related entity shall be those as established
221 under the Hawaii State Public Utilities Commission, which will be

222 paid for as a material item pursuant to Subsection 109.04(D) -
223 Materials.
224

225 Rental rates for Contractor or subcontractor(s) or a related
226 entity -owned trucks not listed in the Rental Rate Blue Book shall
227 be agreed upon in writing by the Contractor and Engineer prior to
228 the use of said trucks. If there is no agreement, the Engineer will
229 set the rate. The Contractor may contest the rate pursuant to
230 Section 105.18 - Claims for Adjustment and Disputes.
231

232 (4) All rental rates for machinery and equipment shall include
233 the cost of fuel, oil lubricants, supplies, small tools, necessary
234 attachments, repairs, maintenance, tire wear, depreciation,
235 storage, and all other incidentals.
236

237 For equipment used with more than one attachment, the
238 Engineer will pay only the attachment(s) being used. When the
239 attachment(s) is part of the rental rate listed in the Blue Book, the
240 Engineer will deduct the rental rate of the attachments(s) and
241 replace them with the rental rate of the attachment(s) being used.
242

243 (5) All machinery and equipment shall be in good working
244 condition and suitable for the purpose for which the machinery and
245 equipment is to be used.
246

247 (6) Individual pieces of equipment or tools having a replacement
248 value of \$500 or less, whether or not consumed by use, shall be
249 considered to be small tools, and included in the allowed markup
250 for overhead and profit, and no separate payment will be made
251 therefor.
252

253 (7) The total of all force account rental charges accrued over
254 the duration of the contract for a specific item of equipment will not
255 exceed the replacement cost of that equipment. The Engineer will
256 pay only the hourly operating cost.
257

258 The Contractor shall provide the cost of replacement to the
259 Engineer prior to using the equipment. When the Engineer does
260 not agree with or the Contractor does not provide the replacement
261 cost, the Engineer shall set the replacement cost. The Contractor
262 may contest the replacement cost pursuant to Section 105.18 -
263 Claims for Adjustment and Disputes.
264

265 (8) Should the item of equipment be rented from an unrelated
266 entity, the rental cost will be treated as a material cost under
267 Subsection 109.04(D) - Materials.

268 (9) **Rental rates for idle and Stand-by Time.**
269

270 (a) The Contract defines idle time as the time period in
271 which the machinery and/or equipment designated for a
272 specific work is not in use for the work due to reasons
273 beyond the control of the Contractor. The maximum amount
274 of chargeable hours shall be 8 hours per working day.
275

276 (b) The Contract defines stand-by time as the time period
277 in which the machinery and equipment are standing by for
278 the specific work day due to reasons beyond the control of
279 the Contractor. The maximum chargeable hours per work
280 day shall not exceed 8 hours (stand-by time plus the time it
281 operated) per working day unless the Engineer authorizes
282 the overtime.
283

284 (c) The Engineer will pay, when the requirements of this
285 Section are met, for equipment that is idle and/or on stand-
286 by, 50% of the hourly rental rate excluding the estimated
287 operational cost per hour per working day.
288

289 (d) Storage of equipment on the project site for the
290 convenience of the Contractor shall not be paid for. Only
291 when the Contractor complies with the following reporting
292 requirements will the Engineer consider any compensation
293 to the Contractor:
294

295 1. Notifies the Engineer in writing that
296 compensation is expected for the individual piece of
297 equipment located on the project site at the beginning
298 of the idle period and
299

300 2. Submits to the Engineer every week on
301 Monday a list of the equipment that is expected to be
302 idle and a list of the equipment that was idle the past
303 week. On this list shall have all information
304 necessary to determine the hourly rental rate and the
305 date and time it became idle. The list shall also have
306 when any maintenance was performed on the
307 equipment during the period the equipment was idle.
308

309 (e) Only when the Contractor complies with the reporting
310 requirements will the Engineer consider any compensation
311 to the Contractor.
312

313 (10) The Engineer will pay for authorized overtime for each hour
314 over the normal 8 hours shift work day, legal holidays, Saturdays,
315 and Sundays if approved by the Engineer prior to the performance
316 of the work. The Engineer will not pay for additional premium
317 beyond the normal rates used for the equipment.
318

319 (11) **Transportation and/or Mobilization.** The location from
320 which the equipment is to be moved or transported shall be
321 approved by the Engineer.
322

323 The cost of transporting the equipment shall not exceed the
324 rates established by the Hawaii State Public Utilities Commission.
325 If such rates are nonexistent, then the Engineer will determine the
326 rates based upon the prevailing rates charged by established
327 haulers within the locale.
328

329 (a) **Equipment on the Project Site.**
330

331 (1) The rental time shall be the time the equipment
332 is in operation on the F.A. work. Also, the rental
333 includes the time required to move the equipment to
334 the location of the F.A. work and to return the
335 equipment to the original location or another location
336 requiring the equipment. When using the equipment
337 at the site of the F.A. work on other than F.A. work,
338 the Engineer will not pay for moving time.
339

340 (2) When moving the equipment other than on its
341 own power, the Engineer will allow loading and
342 transporting cost instead of moving time. When using
343 the equipment at the site of the F.A. work on other
344 than F.A. work, the Engineer will pay for loading and
345 transportation cost only to the site of the F.A. work.
346

347 (b) **Equipment Not on the Project Site.**
348

349 (1) The Engineer will confirm the location from
350 which the equipment is to be moved or transported.
351

352 (2) When transporting the equipment to the site for
353 exclusive use of F.A. work, the Engineer will pay the
354 cost of mobilizing and transporting the equipment
355 from its original location to the site of the F.A. work.
356 This includes loading and unloading. Also, the
357 Engineer will pay the cost of demobilizing and

transporting the equipment back to its original location or another location, whichever cost less.

(3) For self-propelled equipment, the Engineer will pay the cost of moving the equipment by its own power from its original location to the site of the F.A. work. Also, the Engineer will pay the cost of moving the equipment back to its original location or another location, whichever cost less.

(4) When the Contractor desires the return of the equipment to another location, the Engineer will pay the cost of transportation according to the above provisions, provided such payment does not exceed the cost of moving the equipment to the project site.

(5) When using the equipment on the project site in ways other than on F.A. work, the Engineer will pay the cost of transporting the equipment to the jobsite. Returning the equipment shall be at no cost to the State.

(12) Rental.

(a) The Engineer will begin the rental period at the time the equipment is unloaded at the site of work or at the time specified, whichever is later. After that, the Engineer will pay for the equipment for the time actually used unless the equipment is considered idle or on standby by the Engineer according to Subsection 109.04(F)(9).

(b) In the event the equipment must standby due to work being delayed or halted by reason of design, traffic, or other related problems uncontrollable by the Contractor, excluding Saturdays, Sundays and Legal Holidays, unless the equipment is used to perform work on such days, the Engineer will pay for the rental according to Subsection 109.04(F)(9).

(c) When the equipment goes 'idle' from the event of the previous work day, the Engineer will make the rental rate and rental period under 'idle time' excluding Saturday, Sundays, and legal holidays until the Engineer orders the Contractor to discontinue or demobilize the machinery or equipment. The Engineer will pay for the rental rate according to Subsection 109.04(F)(9).

404
405 (d) Any hours of operation in excess of 8 hours in any one
406 day must be approved by the Engineer prior to the
407 performance of such work.
408

409 (e) The Engineer will not allow or credit the rental time for
410 any day on which machinery or equipment is inoperative due
411 to its breakdown or cannot work. On such days, the
412 Engineer will pay only for the actual hours, If any, that the
413 machinery or equipment was in operation.
414

415 (f) In the event the force account work is completed in
416 less than 8 hours, equipment rental shall nevertheless be
417 paid for a minimum 8 hours only if:
418

419 (1) the equipment had been mobilized from a
420 location not on the project site for the specific work
421 the equipment had performed that day and
422

423 (2) the equipment had a total rental period
424 charged since its mobilization to the project site of
425 less than 8 hours and the equipment will be removed
426 by the end of the next business day.
427

428 (g) For the purpose of determining the rental period the
429 continuous and consecutive days shall be the normal 8-hour
430 shift work day, Monday through Friday excluding legal State
431 of Hawaii holidays. Any work day to be paid less than 8
432 hours will not be considered as continuous, except for
433 equipment removed from rental for fuel and lubrication.
434

435 (h) The Engineer will not pay additional premium beyond
436 the normal rates used for equipment used over 8 hours per
437 day or 40 hours per week or Saturdays or Sundays or
438 Holidays.
439

440 (13) Pickup trucks, flatbed trucks, vans, storage trailers, and
441 containers, unless specifically requested by the State for the F.A.
442 work, shall be considered incidental to the F.A. work and the costs
443 therefor are included in the markup allowed under Section 109.04
444 (A) - Allowances for Overhead and Profit.
445

446 (G) **State Excise (Gross Income) Tax and Bond.** A sum equal to the
447 current percentage rate for the State excise (Gross Income) tax on the
448 total sum determined in Subsections B, C, D, E, and F, of Subsection
449 109.04, - Payment for Additional and Force Account Work and any

required bond premium shall be added as compensation to the Contractor. The payment for the bond premium not to exceed 1% on the total sum determined in Subsections B, C, D, E, and F of Subsection 109.04 - Payment for Additional and Force Account Work, when applicable.

The compensation as determined in Subsections B, C, D, E, F, and G of Subsection 109.04 - Payment for Additional and Force Account Work shall be deemed to be payment in full for work paid on a F.A. basis or any calculation of new unit prices or L.S. prices.

(H) Records. The Contractor and the Engineer shall compare records of the labor, materials and equipment rentals paid by the F.A. basis at the end of each day. These daily records, if signed by both parties, shall be used as a reference to come to the agreed amount to be paid for work done under the F.A. method. The Contractor shall not be entitled to payment for F.A. records not signed by the Engineer.

(I) Statements. No payment will be made for work on a F.A. basis until the Contractor has submitted to the Engineer triplicate, itemized statements of the cost of such F.A. work detailed as follows:

(1) Laborers - Name, Identification Number (If available), classification, date, daily hours, total hours, rate, and extension for each laborer and foreman and also the amount of fringe benefits payable if any.

(2) Equipment - Designation, year of manufacture, attachments, dates, daily hours, total hours, rate, and extension for each unit of machinery and equipment.

(3) Materials -

a. Quantities of materials, prices and extensions

b. Costs of transporting materials, if such cost is not reflected in the prices of the materials

c. Statements shall be accompanied and supported by legible receipted invoices for all materials used and transportation charges if such cost is not reflected in the prices of the materials. A detail description of all the material shall accompany the statement so that the Engineer may determine if proper material is on the invoice. However, if materials used on the F.A. work are not specifically purchased for such work but are taken from the Contractor's

496 stock, then in lieu of the invoices the Contractor shall submit
497 an affidavit certifying that such materials were taken from
498 stock and that the amount claimed represents the actual
499 cost to the Contractor according to Subsection 109.04(D) -
500 Materials.
501

502 (4) Insurance - Cost of property damage, liability and workers'
503 compensation insurance premiums, unemployment insurance
504 contributions, and social security tax according to Subsection
505 109.04(C) - Insurance and Taxes.
506

507 (V) Amend **109.09 Progress Payments** to read as follows:
508

509 "**109.09 Progress Payments.** The Engineer will prepare a monthly
510 estimate of the progress of the project based on the items of work done and
511 materials incorporated in the work at the unit prices or lump sum prices set forth
512 in the contract. Progress estimates and payments will be approximate only and
513 shall be subject to correction before or in the final estimate and payment.
514 Monthly shall mean the period between the sixteenth day of the month to the
515 fifteenth day of the succeeding month. The Engineer and the Contractor may
516 agree on a different monthly period.
517

518 The Engineer will not make progress payment if the total value of the work
519 done since the last estimate is less than \$1,000. If the progress payment
520 includes work from Sections 617 - Planting Soil, 618 - Grassed Surfaces, 619 -
521 Planting and Transplanting and 641 - Hydro-Mulch Seeding, the Engineer will
522 not make progress payment if the total value of the work done since the last
523 estimate is less than \$500.
524

525 For Federal-Aid Project, the 'Monthly Report of DBE Participation' must
526 be submitted with the progress payment. (A sample of the "Monthly Report of
527 DBE Participation' is in the forms section of the contract.)
528

529 (A) **Retainage.** If the Engineer finds that the Contractor is progressing
530 satisfactorily in completing the project work and:
531

532 (1) less than 50 percent of the whole contract cost is complete,
533 the Engineer shall retain 5 percent of the value of the work done
534 until the Engineer makes final payment;
535

536 (2) more than 50 percent of the whole contract cost is complete,
537 the Engineer may make the remaining progress payments in full.
538

539 (3) After satisfactory completion of work other than landscaping
540 items, the Engineer may adjust the amount of retainage to 15
541 percent of the landscaping items or 2-1/2 percent of the total
542 contract amount whichever is less. Do not use this subsection if
543 the contract is only landscaping.
544

545 (B) **Additional Withholding.** If the Contractor is progressing
546 unsatisfactorily in completing the project work, the Engineer, upon written
547 notice to the Contractor, may withhold an additional 5 percent of
548 subsequent progress payments.
549

550 If the Contractor refuses or fails to comply with the equal
551 employment opportunity, affirmative action, non-discrimination, labor
552 compliance, training, and disadvantaged business enterprise
553 requirements, the Engineer at its sole discretion and upon written notice
554 to the Contractor may withhold the entire or portion of the monthly
555 progress payments.
556

557 In accordance with Section 103-32.1, HRS, where a subcontractor has
558 provided evidence to the Contractor that the Subcontractor has obtained:
559

560 (1) A valid performance and payment bond for the project that is
561 acceptable to the Contractor and executed by a surety company
562 authorized to do business in this State; or
563

564 (2) Any other bond acceptable to the Contractor; or
565

566 (3) Any other form of collateral acceptable to the Contractor,
567

568 the retention amount withheld by the Contractor from its Subcontractor shall be
569 the same percentage of retainage as that of the Contractor. This section shall
570 apply to all tiers of Subcontractors.
571

572 (VI) Amend 109.10 Acceptance and Final Payment by revising the third
573 paragraph to read as follows:
574

575 "The documents required before making final payment are:
576

577 (A) **For State and Federal Projects.**
578

579 (1) Consent of the surety to payment of the final estimate and
580 certificate of release from the surety.
581

582 (2) Evidence by affidavit that the Contractor fully paid or
583 received the debts resulting from the contract.
584

585 (3) Tax clearances from both the Hawaii Department of
586 Taxation and the Internal Revenue Service.

587
588 (4) Certificate of release from each subcontractor.

589
590 (5) Certification of Compliance for Final Payment (SPO Form-
591 32), attached, will be required for final payment. A copy of the
592 form is also available at www.spo.hawaii.gov. Select 'Forms for
593 Vendors/Contractors' from the Chapter 103D, HRS, pop-up menu
594

595 (B) For County Projects.

596
597 (1) Tax clearance.

598
599 (a) Clearance Certificate (Income Assessment and Audit
600 Division).

601
602 (b) Division of Taxation.

603
604 (2) Certificate of plumbing inspection, electrical inspection and
605 building occupancy as required.

606
607 (3) Make guarantees required by the contract in writing.

608
609 (4) Evidence that the Contractor paid or secured claims for
610 persons, firms or corporations who have done work or supplied
611 materials, tools, equipment, machinery or other services.

612
613 (5) Certificate of release from each subcontractor.

614
615 (6) Certificate of release from surety or bonding company.

616
617 (7) Furnish as-built plans according to the contract.

618
619 (8) Certification of Compliance for Final Payment (SPO Form-
620 32), attached, will be required for final payment. A copy of the form
621 is also available at www.spo.hawaii.gov. Select 'Forms for
622 Vendors/Contractors' from the Chapter 103D, HRS, pop-up menu
623

624 (9) Other documents as required by the contract.

625
626 (VII) Add the following Section:

627
628 "109.13 Prompt Payment.

629

(1) In accordance with Section 103-10.5, HRS, any money, other than retainage, paid to a Contractor shall be dispersed to Subcontractors within 10 consecutive calendar days after receipt of the money in accordance with the terms of the subcontract, provided that the Subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes, and

(2) Upon final payment to the Contractor, full payment to the Subcontractor, including retainage, shall be made within 10 consecutive calendar days after receipt of the money, provided there are no bona fide disputes over the Subcontractor's performance under the subcontract.

(A) Definition.

(1) **Subcontract** - Any written agreement between the Contractor and its Subcontractors which contains the conditions under which the Subcontractor is to perform a portion of the work for the Contractor.

(2) **Bona Fide Disputes.** The following are examples of 'bona fide disputes':

(a) When a Subcontractor delays the project to the extent that liquidated damages may be imposed on the Contractor and the Subcontractor with written justification for such delay;

(b) When work done by a Subcontractor is paid for and later found to be non-conforming or unacceptable and the amount previously paid by the State is deducted from subsequent payment request;

(c) When the Subcontractor fails to promptly correct any and all deficiencies and/or non-conforming work cited by the State; or

(d) When the Subcontractor fails to fulfill any term, condition or requirement of its subcontract.

(B) Filing Of Complaint And Verification Of Its Validity. Complaints by Subcontractors of late or non-payment must be submitted in writing to the Director stating:

675 (1) the amount past due for work performed and already paid
676 for by the State,

677
678 (2) that all the terms, conditions or requirements of its
679 subcontract have been met, and

680
681 (3) that no bona fide dispute over its performance exists.

682
683 The Director or authorized representative will hear and receive
684 evidence to determine the validity of the complaint and the Director's
685 decision on the matter shall be final.

686
687 (C) **Follow-Up Action.** If the Director or authorized representative
688 determines that the Contractor failed to make payment required under the
689 subcontract to Subcontractor with whom the Contractor has no 'bona fide
690 dispute' within the time period specified above, the Director shall inform
691 the Contractor of the findings and request the Contractor make payment
692 accordingly.

693
694 If the Contractor does not act promptly, the Director or authorized
695 representative shall take appropriate action as allowed under this contract
696 and/or refer the matter to the Contractor Licensing Board for appropriate
697 action according to 444-17(15), HRS, regarding the Revocation,
698 Suspension and Renewal of (Contractor) Licenses.

699
700 **109.13 Schedule of Agreed Prices for Lump Sum Price Items.** After the
701 award of contract, the Contractor shall submit a schedule of prices for the
702 various items of work paid for by a lump sum price. For projects involving more
703 than a single building, structure, and/or facility, the breakdown cost shall reflect a
704 separate schedule of prices for the various items of work for each building,
705 structure, and/or facility. The sum of the prices submitted for the various items
706 must equal the lump sum bid in the bidder's proposal. This schedule will be
707 subject to acceptance by the Engineer who may require the bidder to submit
708 another or several other schedules if in the Engineer's opinion the prices are
709 unbalanced or not sufficiently detailed. This schedule of prices (1) shall be used
710 for the purpose of determining the value of monthly payments due the Contractor
711 for work installed complete in place; and (2) may be used as the basis for
712 determining cost and credit of added or deleted items of work, respectively.

713
714 As a condition of payment, the Contractor shall estimate at the close of
715 each month the percentage of work completed under each of the various
716 construction items during such month and submit the estimate to the Engineer
717 for review and approval. The Contractor shall be paid the percentage of the
718 price, as approved by the Engineer established for each item, less any
719 permissible retention.

721 **109.14 Payment is not Acceptance.** No payment made to the Contractor
722 prior to final acceptance is an acceptance by the State of the work or the portion
723 of the work related to the payment; nor does a progress payment affect the
724 State's rights to inspect, test or reject the work. A progress payment does not
725 relieve the Contractor of the risk of loss or damage to the work for which
726 payment is made. The Contractor still maintains the responsibility and duty with
727 respect to the work for which payment is made, to protect against loss or
728 damage, to insure the work, to insure and indemnify the State against claims,
729 to maintain the required surety bonds, and to protect the work and the public.”
730
731

732 **END OF SECTION**
733