

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:
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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.
10 If the Contractor has a dispute about the measurement of the work, the
11 Contractor must demonstrate the existence of an error by actual physical
12 measurement before the work has progressed in a manner which would make a
13 proper verification of the contested measurements impractical. If the
14 Contractor's claim cannot be physically verified, the Engineer's measurements
15 will be deemed as 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
25 price 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.

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

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

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

- (1) Furnishing materials, labor, equipment, tools and incidentals necessary for the completed work;
- (2) Doing work contemplated and embraced in the contract;
- (3) Loss or damage arising out of the nature of the work, from the action of the elements;
- (4) Risks of descriptions connected with the prosecution of the work;
- (5) Expenses incurred by the Contractor for the suspension or discontinuance of the work;
- (6) Costs arising from claims of infringement of a patent, trademark or copyright;
- (7) The completion of the work according to the contract; and
- (8) All expenses incurred to restore areas affected by the Contractor's work back to original condition if not specified otherwise."

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

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

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

(A) **Allowances for Overhead and Profit.**

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

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

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

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

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

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

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

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

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

146 (C) **Insurance and Taxes.** The Contractor will receive the projected
147 average and/or actual rate for the required insurance and taxes including
148

property damage, liability, workers' compensation insurance premiums, average tax rate, State unemployment contributions, Federal unemployment taxes, social security and Medicare taxes. The Engineer will add a markup of 6%.

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

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

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

(F) Equipment.

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

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

If no rate is listed for a particular kind, type or size of machinery or equipment, then the monthly rental rates and hourly operating costs shall be as agreed upon in writing by the Contractor and the Engineer prior to the use of said machinery or equipment.

198 The hourly rental rate shall be determined as if the agreed upon
199 monthly rate had been obtained from the Blue Book. If there is no
200 agreement, the Engineer will set a rate. The Contractor may
201 contest the rate pursuant to Section 105.18 - Claims for Adjustment
202 and Disputes.
203

204 (2) Rental rates which are higher than those specified in the
205 aforesaid Rental Rate Blue Book publication may be allowed where
206 such higher rates can be justified by job conditions such as work in
207 water and work on lava. Request for such higher rates shall be
208 submitted in writing to the Engineer for approval prior to the use of
209 the machinery or equipment in question. The Contractor is
210 responsible for justifying rental rates that are higher than those
211 specified in the Rental Rate Blue Book. If the Contractor has not
212 justified the request for higher rental rates before the equipment is
213 needed or used, all rental rates for that equipment shall be paid for
214 at the rental rate unadjusted for that job conditions of the work until
215 the higher rental rate is approved by the Engineer. No adjustment
216 will be made to the rental rate of work already done or paid for,
217 unless the requested new rental rates are approved by the
218 Engineer in writing.
219

220 (3) The rental rate for trucks not owned by the Contractor or
221 subcontractor(s) or a related entity shall be those as established
222 under the Hawaii State Public Utilities Commission, which will be
223 paid for as a material item pursuant to Subsection 109.04(D) -
224 Materials.
225

226 Rental rates for Contractor or subcontractor(s) or a related
227 entity -owned trucks not listed in the Rental Rate Blue Book shall
228 be agreed upon in writing by the Contractor and Engineer prior to
229 the use of said trucks. If there is no agreement, the Engineer will
230 set the rate. The Contractor may contest the rate pursuant to
231 Section 105.18 - Claims for Adjustment and Disputes.
232

233 (4) All rental rates for machinery and equipment shall include
234 the cost of fuel, oil lubricants, supplies, small tools, necessary
235 attachments, repairs, maintenance, tire wear, depreciation,
236 storage, and all other incidentals.
237

238 For equipment used with more than one attachment, the
239 Engineer will pay only the attachment(s) being used. When the
240 attachment(s) is part of the rental rate listed in the Blue Book, the
241 Engineer will deduct the rental rate of the attachments(s) and
242 replace them with the rental rate of the attachment(s) being used.
243

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

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
269 (9) **Rental rates for idle and Stand-by Time.**
270

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

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

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

289
290
291 (d) Storage of equipment on the project site for the
292 convenience of the Contractor shall not be paid for. Only
293 when the Contractor complies with the following reporting
294 requirements will the Engineer consider any compensation
295 to the Contractor:
296

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

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

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

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

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

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

(a) Equipment on the Project Site.

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

(2) When moving the equipment other than on its own power, the Engineer will allow loading and transporting cost instead of moving time. When using the equipment at the site of the F.A. work on other than F.A. work, the Engineer will pay for

loading and transportation cost only to the site of the F.A. work.

(b) Equipment Not on the Project Site.

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

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

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

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

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

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

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

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

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

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

447
448 **(G) State Excise (Gross Income) Tax and Bond.** A sum equal to
449 the current percentage rate for the State excise (Gross Income) tax on the
450 total sum determined in Subsections B, C, D, E, and F, of Subsection
451 109.04, - Payment for Additional and Force Account Work and any
452 required bond premium shall be added as compensation to the
453 Contractor. The payment for the bond premium not to exceed 1% on
454 the total sum determined in Subsections B, C, D, E, and F of
455 Subsection 109.04 - Payment for Additional and Force Account Work,
456 when applicable.
457

458 The compensation as determined in Subsections B, C, D, E, F, and
459 G of Subsection 109.04 - Payment for Additional and Force Account Work
460 shall be deemed to be payment in full for work paid on a F.A. basis or any
461 calculation of new unit prices or L.S. prices.
462

463 **(H) Records.** The Contractor and the Engineer shall compare
464 records of the labor, materials and equipment rentals paid by the F.A.
465 basis at the end of each day. These daily records, if signed by both
466 parties, shall be used as a reference to come to the agreed amount to be
467 paid for work done under the F.A. method. The Contractor shall not be
468 entitled to payment for F.A. records not signed by the Engineer.
469

470 **(I) Statements.** No payment will be made for work on a F.A. basis
471 until the Contractor has submitted to the Engineer triplicate, itemized
472 statements of the cost of such F.A. work detailed as follows:
473

474 **(1) Laborers -** Name, Identification Number (If available),
475 classification, date, daily hours, total hours, rate, and extension
476 for each laborer and foreman and also the amount of fringe
477 benefits payable if any.
478

479 **(2) Equipment -** Designation, year of manufacture,
480 attachments, dates, daily hours, total hours, rate, and extension
481 for each unit of machinery and equipment.
482

483 **(3) Materials -**
484

485 **a.** Quantities of materials, prices and extensions
486

487 **b.** Costs of transporting materials, if such cost is not
488 reflected in the prices of the materials
489

490 **c.** Statements shall be accompanied and supported by
491 legible receipted invoices for all materials used and
492 transportation charges if such cost is not reflected in the
493 prices of the materials. A detail description of all the
494 material shall accompany the statement so that the Engineer
495 may determine if proper material is on the invoice.
496 However, if materials used on the F.A. work are not

specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractor shall submit an affidavit certifying that such materials were taken from stock and that the amount claimed represents the actual cost to the Contractor according to Subsection 109.04(D) - Materials.

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

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

"109.09 Progress Payments. The Engineer will prepare a monthly estimate of the progress of the project based on the items of work done and materials incorporated in the work at the unit prices or lump sum prices set forth in the contract. Progress estimates and 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 sixteenth day of the month to the fifteenth day of the succeeding month. The Engineer and the Contractor may agree on a different monthly period.

The Engineer will not make progress payment if the total value of the work done since the last estimate is less than \$1,000. If the progress 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 progress payment if the total value of the work done since the last estimate is less than \$500.

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

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

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

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

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

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

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

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

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

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

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

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

"The documents required before making final payment are:

(A) For State and Federal Projects.

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

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

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

(4) Certificate of release from each subcontractor.

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

(B) For County Projects.

(1) Tax clearance.

(a) Clearance Certificate (Income Assessment and Audit Division).

(b) Division of Taxation.

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

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

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

(5) Certificate of release from each subcontractor.

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

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

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

(9) Other documents as required by the contract.

(VII) Add the following Section:

"109.13 Prompt Payment.

(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

646 under which the Subcontractor is to perform a portion of the work
647 for the Contractor.

648
649 **(2) Bona Fide Disputes.** The following are examples of 'bona
650 fide disputes':

651
652 (a) When a Subcontractor delays the project to the extent
653 that liquidated damages may be imposed on the Contractor
654 and the Subcontractor with written justification for such
655 delay;

656
657 (b) When work done by a Subcontractor is paid for and
658 later found to be non-conforming or unacceptable and the
659 amount previously paid by the State is deducted from
660 subsequent payment request;

661
662 (c) When the Subcontractor fails to promptly correct any
663 and all deficiencies and/or non-conforming work cited by the
664 State; or

665
666 (d) When the Subcontractor fails to fulfill any term,
667 condition or requirement of its subcontract.

668
669 **(B) Filing Of Complaint And Verification Of Its Validity.**
670 Complaints by Subcontractors of late or non-payment must be submitted
671 in writing to the Director stating:

672
673 (1) the amount past due for work performed and already paid
674 for by the State,

675
676 (2) that all the terms, conditions or requirements of its
677 subcontract have been met, and

678
679 (3) that no bona fide dispute over its performance exists.

680
681 The Director or authorized representative will hear and receive
682 evidence to determine the validity of the complaint and the Director's
683 decision on the matter shall be final.

684
685 **(C) Follow-Up Action.** If the Director or authorized representative
686 determines that the Contractor failed to make payment required under the
687 subcontract to Subcontractor with whom the Contractor has no 'bona fide
688 dispute' within the time period specified above, the Director shall inform
689 the Contractor of the findings and request the Contractor make payment
690 accordingly.

691
692 If the Contractor does not act promptly, the Director or authorized
693 representative shall take appropriate action as allowed under this contract
694 and/or refer the matter to the Contractor Licensing Board for appropriate
695 action according to 444-17(15), HRS, regarding the Revocation,
696 Suspension and Renewal of (Contractor) Licenses.

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

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

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

END OF SECTION 109