

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.
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 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
59 read 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.
86 (See 104.11 – Variations in Estimated Quantities).
87

88 **(IV) Amend 109.04 Extra and Force Account Work** to read as follows:
89

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

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

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

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

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

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

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

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

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

129
130 **(B) Labor.** For all hourly workers, the Contractor will receive the
131 rate of wage including fringe benefits when such amounts are required by
132 collective bargaining agreement or other employment contract generally
133 applicable to the classes of labor employed to that type of work.
134

135 All markups for overhead and profit shall be added subject to
136 limitations established in Subsection 109.04(A) - Allowances for
137 Overhead and Profit.
138

139 No allowance for overtime compensation will be given without the
140 written approval of the Engineer prior to performance of such work.
141

142 The Engineer will allow for overtime compensation only if
143 authorized by the Engineer in writing before performance of that work.
144 For authorized overtime, the Engineer will pay 1.5 times the hourly wage
145 rate plus the actual hours of overtime for fringe benefits, and/or as
146 required by collective bargaining agreement.
147

148 **(C) Insurance and Taxes.** The Contractor will receive the projected
149 average and/or actual rate for the required insurance and taxes including
150 property damage, liability, workers' compensation insurance premiums,
151 average tax rate, State unemployment contributions, Federal
152 unemployment taxes, social security and Medicare taxes. The Engineer
153 will add a markup of 6%.
154

155 **(D) Materials.** For materials accepted by the Engineer and used,
156 the Contractor and subcontractor(s) will receive the actual cost of such
157 materials delivered and incorporated into work. The Engineer will include
158 transportation charges and taxes paid by the Contractor if such cost is not
159 reflected in the prices of the materials. The Engineer will add a markup
160 allowed under Subsection 109.04(A) - Allowances for Overhead and
161 Profit.
162

163 For stock materials, used and/or incorporated the work, the
164 Contractor shall receive the actual cost as certified by the Contractor to
165 the cost paid by the Contractor. Provide to the satisfaction of the
166 Engineer all data used to calculate the actual cost. The Engineer will
167 include transportation charges and taxes paid by the Contractor if they
168 were not included in the cost of the material. The Engineer will add a
169 markup allowed under Subsection 109.04(A) - Allowances for Overhead
170 and Profit.
171

172 **(E) Subcontractors.** Subcontractor costs shall be the actual costs
173 of the Subcontractor calculated as defined in Subsection 109.04(B) -
174 Labor, Subsection 109.04(C) - Insurance and Taxes, Subsection
175 109.04(D) - Materials, Subsection 109.04(F) - Equipment, plus a markup
176 allowed under Subsection 109.04(A) - Allowances for Overhead and
177 Profit.
178

179 **(F) Equipment.**
180

(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:

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

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

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

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

225 paid for as a material item pursuant to Subsection 109.04(D) -
226 Materials.

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

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

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

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

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

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

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

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

271 **(9) Rental rates for idle and Stand-by Time.**
272

273 (a) The Contract defines idle time as the time period in
274 which the machinery and/or equipment designated for a
275 specific work is not in use for the work due to reasons
276 beyond the control of the Contractor. The maximum amount
277 of chargeable hours shall be 8 hours per working day.
278

279 (b) The Contract defines stand-by time as the time period
280 in which the machinery and equipment are standing by for
281 the specific work day due to reasons beyond the control of
282 the Contractor. The maximum chargeable hours per work
283 day shall not exceed 8 hours (stand-by time plus the time it
284 operated) per working day unless the Engineer authorizes
285 the overtime.
286

287 (c) The Engineer will pay, when the requirements of this
288 Section are met, for equipment that is idle and/or on stand-
289 by, 50% of the hourly rental rate excluding the estimated
290 operational cost per hour per working day.
291

292 (d) Storage of equipment on the project site for the
293 convenience of the Contractor shall not be paid for. Only
294 when the Contractor complies with the following reporting
295 requirements will the Engineer consider any compensation
296 to the Contractor:
297

298 1. Notifies the Engineer in writing that
299 compensation is expected for the individual piece of
300 equipment located on the project site at the beginning
301 of the idle period and
302

303 2. Submits to the Engineer every week on
304 Monday a list of the equipment that is expected to be
305 idle and a list of the equipment that was idle the past
306 week. On this list shall have all information
307 necessary to determine the hourly rental rate and the
308 date and time it became idle. The list shall also have
309 when any maintenance was performed on the
310 equipment during the period the equipment was idle.
311

312 (e) Only when the Contractor complies with the reporting
313 requirements will the Engineer consider any compensation
314 to the Contractor.
315

316 (10) The Engineer will pay for authorized overtime for each hour
317 over the normal 8 hours shift work day, legal holidays, Saturdays,
318 and Sundays if approved by the Engineer prior to the performance
319 of the work. The Engineer will not pay for additional premium
320 beyond the normal rates used for the equipment.
321

322 (11) **Transportation and/or Mobilization.** The location from
323 which the equipment is to be moved or transported shall be
324 approved by the Engineer.
325

326 The cost of transporting the equipment shall not exceed the
327 rates established by the Hawaii State Public Utilities Commission.
328 If such rates are nonexistent, then the Engineer will determine the
329 rates based upon the prevailing rates charged by established
330 haulers within the locale.
331

332 (a) **Equipment on the Project Site.**
333

334 (1) The rental time shall be the time the equipment
335 is in operation on the F.A. work. Also, the rental
336 includes the time required to move the equipment to
337 the location of the F.A. work and to return the
338 equipment to the original location or another location
339 requiring the equipment. When using the equipment
340 at the site of the F.A. work on other than F.A. work,
341 the Engineer will not pay for moving time.
342

343 (2) When moving the equipment other than on its
344 own power, the Engineer will allow loading and
345 transporting cost instead of moving time. When
346 using the equipment at the site of the F.A. work on
347 other than F.A. work, the Engineer will pay for
348 loading and transportation cost only to the site of the
349 F.A. work.
350

351 (b) **Equipment Not on the Project Site.**
352

353 (1) The Engineer will confirm the location from
354 which the equipment is to be moved or transported.
355

356 (2) When transporting the equipment to the site
357 for exclusive use of F.A. work, the Engineer will pay
358 the cost of mobilizing and transporting the equipment
359 from its original location to the site of the F.A. work.
360 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 Saturdays, 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 Subsection 109.04(A) - Allowances for Overhead and Profit.

450 **(G) State Excise (Gross Income) Tax and Bond.** A sum equal to
451 the current percentage rate for the State excise (Gross Income) tax on the
452 total sum determined in Subsections B, C, D, E, and F, of Subsection
453 109.04, - Payment for Additional and Force Account Work and any
454 required bond premium shall be added as compensation to the
455 Contractor. The payment for the bond premium not to exceed 1% on the
456 total sum determined in Subsections B, C, D, E, and F of Subsection
457 109.04 - Payment for Additional and Force Account Work, when
458 applicable.
459

460 The compensation as determined in Subsections B, C, D, E, F, and
461 G of Subsection 109.04 - Payment for Additional and Force Account Work
462 shall be deemed to be payment in full for work paid on a F.A. basis or
463 any calculation of new unit prices or L.S. prices.
464

465 **(H) Records.** The Contractor and the Engineer shall compare records
466 of the labor, materials and equipment rentals paid by the F.A. basis at
467 the end of each day. These daily records, if signed by both parties, shall
468 be used as a reference to come to the agreed amount to be paid for work
469 done under the F.A. method. The Contractor shall not be entitled to
470 payment for F.A. records not signed by the Engineer.
471

472 **(I) Statements.** No payment will be made for work on a F.A. basis
473 until the Contractor has submitted to the Engineer triplicate, itemized
474 statements of the cost of such F.A. work detailed as follows:
475

476 **(1) Laborers -** Name, Identification Number (If available),
477 classification, date, daily hours, total hours, rate, and extension
478 for each laborer and foreman and also the amount of fringe
479 benefits payable if any.
480

481 **(2) Equipment -** Designation, year of manufacture,
482 attachments, dates, daily hours, total hours, rate, and extension
483 for each unit of machinery and equipment.
484

485 **(3) Materials -**
486

487 **a.** Quantities of materials, prices and extensions
488

489 **b.** Costs of transporting materials, if such cost is not
490 reflected in the prices of the materials
491

492 **c.** Statements shall be accompanied and supported by
493 legible receipted invoices for all materials used and
494 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 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% of the whole contract cost is complete, the Engineer shall retain 5% of the value of the work done until the Engineer makes final payment;

(2) more than 50% 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% of

the landscaping items or 2½% 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% 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-32), 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-32), 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.

630 (1) In accordance with Section 103-10.5, HRS, any money,
631 other than retainage, paid to a Contractor shall be dispersed to
632 Subcontractors within 10 consecutive calendar days after receipt of
633 the money according to the terms of the subcontract, provided that
634 the Subcontractor has met all the terms and conditions of the
635 subcontract and there are no bona fide disputes, and
636

637 (2) Upon final payment to the Contractor, full payment to the
638 Subcontractor, including retainage, shall be made within 10
639 consecutive calendar days after receipt of the money, provided
640 there are no bona fide disputes over the Subcontractor's
641 performance under the subcontract.
642

643 (A) **Definition.**
644

645 (1) **Subcontract** - Any written agreement between the
646 Contractor and its Subcontractors which contains the conditions
647 under which the Subcontractor is to perform a portion of the work
648 for the Contractor.
649

650 (2) **Bona Fide Disputes.** The following are examples of 'bona
651 fide disputes':
652

653 (a) When a Subcontractor delays the project to the
654 extent that liquidated damages may be imposed on the
655 Contractor and the Subcontractor with written justification for
656 such delay;
657

658 (b) When work done by a Subcontractor is paid for and
659 later found to be non-conforming or unacceptable and the
660 amount previously paid by the State is deducted from
661 subsequent payment request;
662

663 (c) When the Subcontractor fails to promptly correct any
664 and all deficiencies and/or non-conforming work cited by the
665 State; or
666

667 (d) When the Subcontractor fails to fulfill any term,
668 condition or requirement of its subcontract.
669

670 (B) **Filing Of Complaint And Verification Of Its Validity.**
671 Complaints by Subcontractors of late or non-payment must be submitted
672 in writing to the Director stating:
673

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

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

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

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

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

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

698
699 **109.13 Schedule of Agreed Prices for Lump Sum Price Items.** After the
700 award of contract, the Contractor shall submit a schedule of prices for the
701 various items of work paid for by a lump sum price. For projects involving more
702 than a single building, structure, and/or facility, the breakdown cost shall
703 reflect a separate schedule of prices for the various items of work for each
704 building, structure, and/or facility. The sum of the prices submitted for the
705 various items must equal the lump sum bid in the bidder's proposal. This
706 schedule will be subject to acceptance by the Engineer who may require the
707 bidder to submit another or several other schedules if in the Engineer's opinion
708 the prices are unbalanced or not sufficiently detailed. This schedule of prices
709 (1) shall be used for the purpose of determining the value of monthly payments
710 due the Contractor for work installed complete in place; and (2) may be used as
711 the basis for determining cost and credit of added or deleted items of work,
712 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.

723 **109.14 Payment is not Acceptance.** No payment made to the Contractor
724 prior to final acceptance is an acceptance by the State of the work or the portion
725 of the work related to the payment; nor does a progress payment affect the
726 State's rights to inspect, test or reject the work. A progress payment does not
727 relieve the Contractor of the risk of loss or damage to the work for which
728 payment is made. The Contractor still maintains the responsibility and duty with
729 respect to the work for which payment is made, to protect against loss or
730 damage, to insure the work, to insure and indemnify the State against claims,
731 to maintain the required surety bonds, and to protect the work and the public."
732
733
734

END OF SECTION