

NOTICE

PLEASE BE ADVISED THAT THIS ARCHIVED SPECIAL PROVISIONS OF THE GENERAL PROVISIONS OF CONSTRUCTION CONTRACTS (GPCC) REVISED JULY 1973 IS FOR THE PURPOSE OF REFERENCE FOR CONTRACTS SOLICITED PRIOR TO THE ADOPTION OF THE REVISED GPCC DATED SEPTEMBER 2015.

SPECIAL PROVISIONS

1. GENERAL PROVISIONS OF CONSTRUCTION CONTRACTS

The "GENERAL PROVISIONS OF CONSTRUCTION CONTRACTS OF THE COUNTY OF KAUA'I", Department of Finance, County of Kaua'i, approved January 2, 1969 - May 1, 1972, revised July 1973 is by reference incorporated herein and made a part of these specifications. The term "General Provisions" used hereinafter refers to this "GENERAL PROVISIONS OF CONSTRUCTION CONTRACTS OF THE COUNTY OF KAUA'I". Copies of the general provisions are available at the County of Kaua'i Division of Purchasing web site at www.kauai.gov, using the following links: Government > Departments > Finance > Division of Purchasing.

2. STANDARD SPECIFICATIONS

The "HAWAI'I STANDARD SPECIFICATIONS FOR ROAD and BRIDGE CONSTRUCTION, 2005" with the latest amendments, is by reference incorporated herein and made a part of these specifications. The term "standard specifications" used hereinafter refers to these "Hawai'i Standard Specifications for Road and Bridge Construction, 2005." Copies of the standard specifications are available and may be purchased from the Department of Transportation, Highway Division at \$75.00 per set.

The work embraced herein shall be done in accordance with the standard specifications, insofar as they may apply and in accordance with the following special provisions. These special provisions supplement and modify the general provisions and standard specifications.

The General Provisions for Construction Contracts of the County of Kaua'i shall govern over the General Provisions in the Standard Specifications if there are any conflicts.

3. STANDARD DETAILS

The "STANDARD DETAILS, DEPARTMENT OF PUBLIC WORKS, SEPT. 1984" of the Department of Public Works, County of Kaua'i, is by reference incorporated herein and made a part thereof. The term "standard details" used hereinafter refers to these "STANDARD DETAILS, DEPARTMENT OF PUBLIC WORKS, SEPT. 1984". Copies of the standard details are on file and may be inspected and/or obtained at the County Clerk's Office (\$21.00 per set non-refundable) during regular business hours of the County.

The work embraced herein shall be done in accordance with the standard details, insofar as they may apply.

4. DETAILED SPECIFICATIONS

The Detailed Specifications shall be considered as a part of these Special Provisions and it supplements and/or modifies the standard specifications.

5. MEASUREMENTS

Figured dimensions and drawings take precedence over measurements by scale, and detail drawings. The Contractor must verify all measurements at the site and be responsible for the

accuracy of the same.

a. **BASIS OF PAYMENT**

Should there be a discrepancy between the basis of payment outlined in the Standard Specifications and that called for in the Bid, the Bid shall govern.

6. **OBSTRUCTIONS**

The Contractor shall remove all obstructions, the removal of which shall be necessary for the proper reception, performance, construction, installation, and completion of all work under this contract, as called for or implied in the plans and specifications.

7. **BASE LINES AND GRADES**

Drawings include site plan showing approximate existing and finish elevations. Contractor shall verify all grades, lines, levels and dimensions shown on drawings and shall report any errors or inconsistencies to the Officer-in-Charge before commencing work. Failure to do so shall make the Contractor responsible for any changes which may be required thereafter in connection therewith. The Contractor shall, at his own expense, furnish all stakes, templates, platforms, equipment, ranges and labor that may be required in setting and cutting or laying out any part of the work. The Contractor will be held responsible for the proper execution of the work to such lines and grades as may be indicated by the Officer-in-Charge and all stakes or other marks thus established shall be preserved by him until their removal is authorized by the Officer-in-Charge. Contractor shall lay out the project through the services of a Licensed Surveyor and pay for all costs involved with the work.

8. **STARTING AND COMPLETION TIME**

Work on the basic contract agreement is to be completed within stipulated completion time from the date of the "Notice to Proceed".

All work shall be done in co-operation with and coordinated with any other Contractors in a manner to allow completion of the entire construction within the scheduled time.

9. **DRAWINGS TO BE FURNISHED BY CONTRACTOR**

Fabricated material or equipment to be incorporated in the work shall be subject to the approval of the Officer-in-Charge. The Contractor shall, in ample time, permit compliance with the construction schedule, obtain and check manufacturer's shop drawings and other pertinent data for conformance with all requirements of the plans and specifications. The Contractor, at his expense, shall make such changes in the above drawings as may be found necessary to make the same conform to the plans and specifications. After completion of such checking, verification and revising, the General Contractor and his Subcontractors shall stamp and sign the drawings indicating their approval and submit the shop drawings and pertinent data to the Officer-in-Charge for approval.

In addition to the requirements of the General Provisions, shop and erection drawings shall include all necessary working and erecting plans, elevation details connected with other work, dimensioned and cross-referenced. The Contractor shall mark all submittals to indicate the specific data for the materials and equipment being installed.

Unless otherwise stated in specific sections of the specifications, a minimum of six (6) copies of black or blue line prints shall be submitted. Allow approximately 5" x 5" space in or near title block for approval stamp. Manufacturer's specifications, etc. may be submitted in place of shop drawings when so specified or approved by the Officer-in-Charge. Thermofax or similar copies will not be accepted.

Approval shall extend only to general conformance and shall not relieve the Contractor from his responsibility for coordinating his work with other trades and complying with the provisions of the contract documents for lengths, fit, quality of materials, quantities, applicable code requirements and other details. Approval does not authorize changes from the contract requirements unless stated in a separate letter or change order.

Prior to approval of such drawings, any work which the Contractor may do on fabrications covered by the same is at his risk, as the County will not be responsible for any expense incurred by the Contractor for changes to make the same conform to the drawings as finally approved.

Upon approval of the above drawings, lists, prints and other data, a copy of the same shall be kept with the job site plans, and the fabrication furnished shall be in conformance with the same. However, approval of the above drawings, lists, prints, specifications or other data shall in no way release the Contractor from his responsibility from the proper fulfillment of contract requirements nor for fulfilling the purpose of the installation nor from his liability to replace the same should it prove defective or fail to meet the specified requirements.

10. **AS-BUILT DRAWINGS**

Provide and keep up-to-date a complete set of as-built prints for the project which shall be corrected regularly, showing every change from the original contract set drawings, including all addenda, change orders, job decisions, etc. Prints for this purpose may be obtained from the Officer-in-Charge at cost. This record set of prints shall be kept on the job site and shall be used only as a record set.

At the time of final inspection, the Contractor shall furnish the Officer-in-Charge with one reproducible and two blueline sets of as-built drawings showing all changes from the original contract drawings. The "As-Built Drawings" will be required prior to final acceptance.

11. **SAMPLES**

Where called for in the respective specifications sections, furnish duplicate samples of each material or system, clearly labeled as to name of job, contractor, manufacturer and quality of material. After approval, keep one of each sample on the job at all times.

12. **SUBSTITUTIONS**

- a. The materials or products specified herein by trade name shall be provided as specified. Notwithstanding any reference in the specifications to any article, device, product, material, fixture, form or type of construction by name, make or catalog number, such references shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition. Brand names where used on the plans or in the specifications shall be presumed to be followed by the words "or approved equal". Such approval will be granted only under the following conditions:

Substitution of a brand other than specifically named in the contract documents will be approved by the Officer-in-Charge if it meets the following conditions:

That it is equal or superior to the brand named in the specifications in construction, efficiency and utility.

That it is equal or less in cost to the Owner.

That during the construction period, the material or product specified cannot be delivered to the job in time to complete the work in proper sequence due to conditions beyond the control of the Contractor.

- b. To receive consideration, request for substitutions must be accompanied by documentary proof of the quality, difference in price and delivery, if any, in the form of certified quotations from suppliers of both specified and proposed materials or products. In case of a difference in price, the County shall receive all-benefit of the difference in cost involved by change order or credit the County with any savings so obtained.
- c. If substitution of any brand other than the one specifically named requires changes to work detailed or specified under other headings, then the Contractor assumes all responsibility for this work.
- d. Substitution request must be received ten (10) days prior to opening date of bids.

13. **STORAGE, WORK ZONE, CONSTRUCTION ACCESS**

Officer-in-Charge shall assume the responsibility to approve and locate storage areas, work zones, construction traffic pattern in and out of the project site.

14. **PRESERVATION OF PROPERTY**

Due care shall be exercised to avoid injury to existing roadway improvements or facilities, utility facilities, adjacent property and roadside trees, shrubs and other plants that are not to be removed.

Roadside trees, shrubs and other plants that are not to be removed, and pole lines, fences, walls, signs, markers and monuments, buildings and structures, conduits, pipelines under or above ground, drain and water lines, all roadway facilities and any other improvements or facilities within or adjacent to the project shall be protected from injury or damage and if ordered by the Officer-in-Charge, the Contractor shall provide and install suitable safeguards, approved by the Officer-in-Charge, to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the work, or as good as required by specifications accompanying the contract. The Officer-in-Charge may require the Contractor to make or cause to be made such temporary repairs as are necessary to restore service to any property. The cost of such repairs shall be borne by the Contractor and may be deducted from any moneys due or to become due to the Contractor under the contract.

The fact that any underground facility is not shown upon the plans shall not relieve the Contractor of his responsibility. It shall be the Contractor's responsibility to ascertain the existence of any

underground improvements or facilities which may be subject to damage by reason of this operation.

Full compensation for furnishing all labor, materials, tools, equipment and incidentals, and for doing all the work involved in protecting or repairing property shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

15. **EXTRA WORK**

No work of any kind in connection with the work covered by these specifications and plans shall be considered as extra work, or entitles the Contractor to extra compensation, except when the work has been ordered in writing by the Officer-in-Charge, and specifically referred to as EXTRA WORK and the amount of compensation stated in the change order.

16. **BUILDING LAWS**

The Contractor shall comply with the local laws, ordinances, rules and regulations bearing on the work and he must obtain and pay for all permits, licenses, certificates and give all notices required thereby.

17. **TEMPORARY FACILITIES**

- a. Contractor to provide and pay for all utilities and devices required for any trade, as necessary during construction.
- b. Telephone. Contractor **will not** install and maintain telephone for the County. The County is not liable for telephone charges of Contractor, subcontractor or their employees.
- c. Offices. Contractor **will not** provide and maintain field office for the County. A complete set of drawings, specifications, approved shop drawings, and all other pertinent data pertaining to this project shall be kept on site at all times. A tool and equipment shed shall not constitute an office.
- d. Barricades. The General Contractor shall erect, install and maintain all temporary warning signs, barricades, or other protective means as necessary for effectual protection of the public or of workmen employed on the project site.
- e. Toilets. Contractor **will** provide, maintain and locate sanitary temporary toilets as directed by the Officer-in-Charge. Comply with Department of Health Regulations.

18. **TEMPORARY UTILITIES**

- a. Water. All temporary lines and appurtenances within and beyond the contract limit required for any branch of the construction work shall be supplied and paid for by the General Contractor. Contractor shall notify the Officer-in-Charge if there is any water shut-off prior to installing plumbing work.
- b. Electricity. All temporary electric wiring and connection to Power Company's line and all electric current used for any construction operation, shall be furnished and paid for by the General Contractor. Contractor shall notify the Officer-in-Charge if there is any electrical

shut-off prior to installing electrical work.

19. **DELIVERY OF MATERIALS AT SITE**

Have all materials delivered at the site in such quantities as will ensure the uninterrupted progress of the work and the least obstruction of the premises and the adjoining property.

20. **DEFECTIVE MATERIALS**

When requested, furnish, without charge, samples of all materials entering into the work. All materials not conforming to the requirements of these specifications shall be considered as defective and all such materials, whether in place or not, shall be rejected.

21. **CLEAN UP**

On completion of the work of each and every Section of these specifications, or by each trade, on a daily basis. Remove from the site all debris, tools and excess material resulting from the work and leave the area of the work and any affected surroundings broom clean.

In addition, the finished project shall be prepared by occupancy and all finished surfaces, hardware, fixtures, trim, etc., shall be cleaned without the use of harmful solutions.

22. **SUBCONTRACTORS**

Under the terms of this contract, no Subcontractor will be recognized. His dealings shall be with the General Contractor; however, each and every subcontractor shall manage and take care of his materials and waste as part of the work to be performed by him.

The County of Kaua'i will hold the General Contractor responsible for all acts of a subcontractor; and it will deal only with the General Contractor in any matter that may affect a subcontractor.

23. **INSPECTION FEE**

The inspection fee for a legal holiday, Saturday or Sunday, shall be based on the hourly wage rate of the inspector times the number of hours and a **63.99** percent markup for fringe benefits.

24. **HOURS OF LABOR**

No work shall be done in excess of eight (8) hours in any day or Saturdays, Sundays or legal holidays of the State, Federal or County without the written consent of the Officer-in-Charge and should permission be granted by the Officer-in-Charge to work at such times, the Contractor shall pay for all inspection and administrative costs thereof at the rate set by the Officer-in-Charge.

25. **PROJECT SIGN**

The Contractor, as part of the contract, shall erect a sign identifying the project at the location as directed by the Officer-in-Charge. The sign shall not exceed a dimension of 16 square feet and shall meet the requirements of the County's sign ordinance as amended.

- a. **Workmanship.** All workmanship shall be of the first class and best known for the various trades required for the installation of the sign.

- b. Material. Sign panel shall be of new 3/4-inch thick waterproof fir plywood.
- c. Posts. Shall be 4" x 4" and shall be of new Douglas Fir, dry, undamaged, well-seasoned free from defects which may impair its strength and durability.
- d. Nails. Shall be galvanized.
- e. Painting. Sign panel and posts shall be painted with one (1) prime coat and two (2) finish coats of exterior enamel paint.
- f. Lettering. Shall be of size called for by Officer-in-Charge in block type lettering; paint shall be bulletin board sign enamel.
- g. Contractor. Shall check with Officer-in-Charge regarding the color of the sign and the information necessary to be displayed on the project sign.
- h. Responsibility. The Contractor shall assume all responsibilities in maintaining the sign in good legible condition and free from any damage during the entire construction period, and shall make good all such repairs at no cost to the County of Kaua'i.

26. SUBMISSION OF BIDS

Before submission of bids, bidders must read and examine the Special Provisions, Specifications, General Conditions and all other bid documents attached hereto and by reference made a part hereof. Submission of bids shall be deemed a verification of such reading and examination. Bidders must time stamp and deposit their bid envelopes at the designated location in the Office of the Division of Purchasing, Department of Finance, County Building Annex located at Līhu'e Civic Center Complex, 4444 Rice Street, Suite 303, Līhu'e, Kaua'i, Hawai'i. All bid envelopes must bear the Department of Finance time stamp mark. Envelopes without the said mark or time stamped after the bid opening time and date specified in the Notice to Contractors will be rejected.

27. VALUE ENGINEERING INCENTIVE

The following clause is applicable only if this contract exceeds **\$250,000.00**. Whenever VECP is mentioned in the following paragraphs, it shall mean "Value Engineering Change Proposals".

- a. This clause applies to all VECP initiated and developed by the Contractor for changing the drawings, designs, specifications or other requirements of this contract. This clause does not, however, apply to any VECP unless it is identified as such by the Contractors at the time of its submission to the Contracting Officer.
- b. All VECP must:
 - (1) result in a savings to the County by providing less costly items than those specified herein without impairing any of their essential functions and characteristics such as service life, reliability, economy of operations, ease of maintenance, and desired appearance, and
 - (2) require, in order to be applied to this contract, a change order to this contract.

- c. The VECP will be processed expeditiously and in the same manner as prescribed for any other proposal which would likewise necessitate issuance of a contract change order. As a minimum, the following information will be submitted by the Contractor with each proposal:
- (1) a description of the difference between the existing contract requirements and the VECP and the comparative advantages and disadvantages of each;
 - (2) an itemization of the requirements of the contract which must be changed if the VECP is adopted and a recommendation as to how to make each such change;
 - (3) an estimate of the reduction in performance costs that will result from adoption of the VECP taking into account the costs of implementation by the Contractor, including any amounts attributable to subcontracts, and the basis of the estimate;
 - (4) a prediction of any effects that VECP would have on other costs to the County, such as County furnished property costs, costs of related items, and costs of maintenance and operation;
 - (5) a statement of the time by which a change order adopting the VECP must be issued so as to obtain the maximum cost reduction during the remainder of this contract, noting any effect on the contract time; and
 - (6) the dates of any previous submissions of the VECP, the numbers of any Government contracts under which submitted and the previous actions by the Government, if known.
- d. The County shall not be liable for any delays in acting upon, or for any proposal submitted pursuant to this clause. The decisions of the Contracting Officer as to the acceptance of any VECP under this contract shall be final. Unless and until a change order applies a VECP to this contract, the Contractor shall remain obligated to perform in accordance with the terms of the existing contract. The Contracting Officer may accept in whole or in part any VECP submitted pursuant to this clause by issuing a change order which will identify the VECP on which it is based.
- e. If a VECP submitted pursuant to this clause is accepted under this contract, an equitable adjustment in the contract price and in any other affected provisions of this contract shall be made in accordance with this clause and the "Changes" clause of this contract. The equitable adjustment shall first be established by determining the effect on the Contractor's cost of performance, taking into account the Contractor's cost of implementing the change (including any amount attributable to subcontracts). The contract price shall then be reduced by the total estimated decrease in the cost of performance minus fifty percent (50%) of the difference between the amount of such total estimated decrease and any ascertainable costs to the County which must be incurred to apply to VECP to this contract.
- f. Cost of reduction proposals submitted under the provisions of any other contract also may be submitted under this contract for consideration pursuant to the terms of this clause.
- g. The Contractor may restrict the Government's right to use any sheet of a VECP or of the supporting data, submitted pursuant to this clause, in accordance with the terms of the following legend if it is marked on such sheet. "This data furnished pursuant to a value

engineering incentive clause shall not be disclosed outside the Government, or be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under said clause. This restriction does not limit the Government's right to use information contained in this data if this is or has been obtained from another source, or is otherwise available without limitations. If such a proposal is accepted by the County by issuance of a change order under the "Changes" clause of said contract after the use of this data in such an evaluation, the Government shall have the right to duplicate, use and disclose any data pertinent to the proposal as accepted, in any manner and for any purpose whatsoever, and have others so do".

In the event of acceptance of value engineering proposal, the Contractor hereby grants to the Government all rights to use, duplicate or disclose in whole or part, in any manner and for any purpose whatsoever, and to have or permit others to do so, any data reasonably necessary to fully utilize such proposal. Contract modifications made as a result of this clause will state that they are made pursuant to it.

28. ENVIRONMENTAL PROTECTION

The Contractor shall comply with the following requirements for pollution control in performing all construction activities.

GENERAL. Environmental pollution control shall consist of the protection of the environment from pollution during and as a result of construction operations under the contract. The control of environmental pollution requires the consideration of air, water and land and involves noise, dust, solid waste management as well as other pollutants. It is the responsibility of the Contractor to investigate and comply with all applicable Federal, State and County laws and regulations concerning environmental pollution control and abatement.

a. Rubbish Disposal

- (1) No burning of debris and/or waste materials shall be permitted on the project site.
- (2) No burying of debris and/or waste materials except for materials which are specifically indicated elsewhere in these specifications as suitable for backfill shall be permitted on the project site.
- (3) All unusable debris and waste materials shall be hauled away to an appropriate off-site dump area. During loading operations, debris and waste materials shall be watered down to allay dust.
- (4) No dry sweeping shall be permitted in cleaning rubbish and fines which can become airborne from floors or other paved areas. Vacuuming, wet mopping or wet or damp sweeping is acceptable.
- (5) Enclosed chutes and/or containers shall be used for conveying debris from above to ground floor level.
- (6) Cleanup shall include the collections of all waste paper and wrapping materials, cans, bottles, construction waste materials and other objectionable materials, and removal as required.

Frequency of cleanup shall coincide with rubbish producing events.

b. Dust

- (1) The cost for all dust control sprinkling shall be paid for by the Contractor and shall extend for the entire period of construction.
- (2) Unless otherwise directed by the Officer-in-Charge, dust shall be kept down to an acceptable level at all times, including non-working hours, weekends and holidays by sprinkling water.
- (3) Sprinkling or watering work which shall also be paid by the Contractor and which shall be a part of the lump sum bid:
 - a) Areas planted with ground cover and/or grass
 - b) Areas outside the Contract Zone Limits such as adjacent roads and streets.

c. Noise

- (1) All internal combustion engine-powered equipment shall have mufflers to minimize noise and shall be properly maintained to reduce noise to acceptable levels.
- (2) No blasting and use of explosives shall be permitted without prior approval of the Officer-in-Charge.
- (3) Pile driving operations shall be confined to the period between 8:00 a.m. to 5:30 p.m., Monday through Friday. Pile driving will not be permitted on weekends and legal State and Federal holidays.
- (4) Starting up non-highway vehicular equipment shall not be done prior to 6:45 a.m. without prior approval of the Officer-in-Charge.

d. Erosion

During interim grading operations, the grade shall be maintained so as to preclude any damages to adjoining property from water and eroding soil. Temporary berms, cut-off ditches, and other provisions which may be required because of the Contractor's method of operation shall be installed at no cost to the County. Drainage outlets and silting basins shall be constructed and maintained as shown on the plans to minimize erosion and pollution of waterways during construction.

e. Others

- (1) Wherever trucks and/or vehicles leave the site and enter surrounding paved streets, the Contractor shall prevent any materials from being carried onto the pavements. Waste water shall not be discharged into existing streams, waterways, or drainage systems such as gutters and catch basins unless treated to comply with Department of Health water pollution regulations.

- (2) Trucks hauling debris shall be covered as required by PUC regulations. Truck hauling fine materials shall be covered.
- (3) No dumping of waste concrete will be permitted at the job site unless otherwise permitted in the Special Provisions.
- (4) Except for rinsing of the hopper and delivery chute, and for wheel washing where required, concrete trucks shall not be cleaned on the job site.
- (5) Except in an emergency, such as mechanical breakdown, all vehicle fueling and maintenance shall be done in designated area. A temporary berm shall be constructed around the area when runoff can cause problems.
- (6) Spray painting will not be allowed unless done by the "airless spray" process.

f. Protection of Land Resources

Land resources within the project area and outside the limits of permanent work performed under the contract shall be preserved in their present condition or be restored to a natural condition that will not detract from the appearance of the surrounded area. Except in areas marked on the drawings to be cleared, the Contractor shall not deface, injure or destroy trees or shrubs nor remove or cut them without approval. Any tree or other landscape features scarred or damaged by the Contractor's equipment or operation shall be restored as nearly as possible to its original condition at the Contractor's expense.

g. Historical and Archeological Finds

All items having any apparent historical or archeological interest discovered in the course of the construction activities shall be preserved. The Contractor shall leave the archeological finds undistributed and immediately report the finds to the Officer-in-Charge so that the proper authorities may be notified.

h. Water Pollution

The Contractor shall not pollute water resources including streams and drainage systems with fuel, oils, bituminous materials, calcium chloride, acids, construction wastes, wash waters or other harmful materials. Surface drainages from cuts and fills whether or not complete, and from borrow and waste disposal areas shall if turbidity producing materials are present, be held in suitable sedimentation ponds or shall be graded to control erosion to meet acceptable limits. Objectionable construction discharges shall be processed, filtered, ponded or otherwise treated prior to their discharge into a waterway or drainage system. Disposal of any material, garbage, oil, grease, chemicals, trash and other similar materials on areas adjacent to streams or drainage systems shall not be allowed.

i. Protection of Fish and Wildlife

The Contractor shall at all times perform all work and take such steps to prevent any interference or disturbance to fish and wildlife.

j. Subcontractors

Compliance with the provisions of this section by the subcontractors will be the responsibility of the Contractor.

k. Non-compliance

The Officer-in-Charge will notify the Contractor of any non-compliance with the foregoing provisions and the action to be taken. If the Contractor fails or refuses to comply promptly, the Officer-in-Charge, with the approval of the Contracting Officer, may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No extension of time or payment for excess costs or damage shall be made for the time lost due to such stop action.

If no corrective action is taken by the Contractor within 72 hours after a suspension is ordered by the Officer-in-Charge, the County of Kaua‘i reserves the right to take whatever action is necessary to correct the situation and to deduct all costs incurred by the County in taking such action from moneys due the Contractor.

The Officer-in-Charge may also suspend any operations which he feels are creating pollution problems although they may not be in violation of the above-mentioned requirements. In this instance, the work shall be done by force account as described in Subsection 5.2 "MODIFICATION" of the County General provisions and paid for in accordance with Subsection 7.3 "FORCE ACCOUNT" therein. The count of elapsed working days to be charged against the contract in this situation shall be determined by the Contracting Officer upon recommendation of the Officer-in-Charge."

l. Payment

The cost of environmental pollution control shall be considered incidental and included in the price of bid for the various items of work.

29. **INDIGENOUS AND POLYNESIAN INTRODUCED PLANTS; USE IN PUBLIC LANDSCAPING**

Wherever and whenever feasible, all plans, designs, and specifications for new or renovated landscaping of any building, complex of buildings, facility, complex of facilities, or housing developed by the County with public moneys shall incorporate indigenous land plant species as defined in section 195D-2, and plant species brought to Hawai‘i by Polynesians before European contact, such as the kukui, noni, and coconut; provided that:

- a. Suitable cultivated plants can be made available for this purpose without jeopardizing wild plants in their natural habitat; and
- b. Wherever and whenever possible, indigenous plants shall be used for landscaping on the island or islands on which the species originated.

Each indigenous or Polynesian introduced plant or group of plants used pursuant to this section shall be clearly identified with signs for the edification of the general public.

30. **AMENDMENTS TO THE GENERAL PROVISIONS OF CONSTRUCTION CONTRACTS, COUNTY OF KAUA‘I**

Section 1.3 CONTRACTING OFFICER. Paragraph A of section 1.3 is hereby deleted and replaced in its entirety as follows:

"The Chief Procurement Officer or designee of the Chief Procurement Officer of the County."

Section 1.7 REFERENCE SPECIFICATIONS. The abbreviation "ASA" is hereby amended to read:

"ANSI - American National Standards Institute".

The abbreviation "BPR" is hereby amended to read:

"FHWA - Federal Highway Administration, U.S. Department of Transportation".

Section 2.2 QUALIFICATIONS OF BIDDERS. The second paragraph of section 2.2 is hereby deleted and replaced in its entirety as follows:

"If the Contracting Officer requires additional information, the prospective bidder shall promptly supply such information. Failure to supply the requested information at least forty-eight (48) hours prior to the time advertised for the opening of bids shall be considered unreasonable and may be grounds for a determination of nonresponsibility. (auth: 3-122-110(b), P.D. 6/24/94)

Notwithstanding the paragraph immediately above, the Contracting Officer shall not be precluded from requesting additional information. (auth: 3-122-110(c), P.D. 6/24/94)

Upon determination that a prospective bidder is not fully qualified to perform the work, the Contracting Officer shall afford the prospective bidder an opportunity to be heard. Upon conclusion of the hearing and if still of the opinion that the bidder is not fully qualified to perform the work, the Contracting Officer shall refuse to receive or consider any bid offered by the prospective bidder. (auth: 3-122-110(d), P.D. 6/24/94)

A written determination of nonresponsibility of a bidder shall be made by the Contracting Officer. The prospective bidder shall be immediately notified of the determination. The decision of the Contracting Officer shall be final unless the bidder applies for administrative review pursuant to chapter 126, subtitle 11, title 3, Hawai'i Administrative Rules. (auth: 3-122-110(e), P.D. 6/24/94)"

Section 2.3 BID FORM. The third paragraph of section 2.3 is hereby deleted and replaced in its entirety as follows:

"The bids shall be deposited at the Department of Finance, Purchasing Division, not later than the time specified for such bid opening. Bids received after the specified time for bid opening in the notice of bid shall be considered late" and rejected; however, a late bid shall not be considered late if received before contract award and would have been timely but for the action or inaction of personnel within the procurement activity. A late bid that will not be considered for award shall be returned to the bidder unopened as soon

as practicable and accompanied by a letter from the procurement activity stating the reason for its return. (auth: 3-122-29(1)-(2), P.D. 6/24/94)"

The following paragraph is hereby added as the last paragraph to section 2.3:

"Bids transmitted via facsimile are unacceptable and will be rejected and returned to the bidder."

Section 2.5 ESTIMATED QUANTITIES. The following paragraph is hereby added to this section:

"Variations requiring adjustments. Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than fifteen percent (15%) above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above one-hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the procurement officer shall, upon receipt of a timely written request for an extension of time, prior to the date of final settlement of the contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the procurement officer the findings justify.

Adjustment in price. Any adjustment in contract price made pursuant to the paragraph immediately above shall be determined according to the price adjustment clause of this contract. (auth: 3-125-10, P.D. 6/24/94)"

Section 2.6 BID PRICES TO COVER ENTIRE CONTRACT. The following paragraph is hereby added to this section:

"It is understood and agreed that whenever unit price(s) is/are called for on the bid page(s); all bidders must indicate their unit price(s) on the blank space(s) provided thereon. Failure to comply may be grounds for rejection of bid."

Section 2.7 BID DEPOSIT. Section 2.7 is hereby deleted in its entirety and replaced as follows:

- "A. Acceptable bid security. Acceptable bid security shall be limited to:
 - 1. Surety bond underwritten by a company licensed to issue bonds in the State of Hawai'i;
 - 2. Legal tender; or
 - 3. A certificate of deposit; share certificate; or cashier's, treasurer's, teller's, or official check drawn by, and payable on demand to the County of Kaua'i by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
 - a. These instruments may be utilized only to a maximum of \$100,000.
 - b. If the required security totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be accepted.
- B. Bid Security.

1. Bid security shall be required for:
 - a. Construction contracts when the price offered is \$25,000 or more;
 - b. Construction contracts of less than \$25,000 when the head of the purchasing agency has secured the approval of the chief procurement officer;
 2. Bid security, when required, shall be in an amount equal to at least five percent (5%) of the amount of the bid.
 3. If a Contractor fails to accompany its bid with the bid security where such bid security is required, the bid shall be rejected as non-responsive, unless the failure to comply is determined by the Contracting Officer to be non-substantial where:
 - a. Only one bid is received, and there is not sufficient time to re-bid the contract;
 - b. The amount of the bid security submitted, though less than the amount required by the invitation for bids, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or
 - c. The bid guarantee becomes inadequate as a result of the correction of a mistake in the bid or bid modification pursuant to Sec. 3-122-31, Interim Draft, Hawai'i Administrative Rules, chapter 122, subtitle 11, title 3 (State of Hawai'i Procurement Directive No. 94-05, June 24, 1994), if the bidder increases the amount of guarantee to required limits within forty-eight (48) hours after the opening of bids.
 4. When it is determined that failure to comply with required bid security is non-substantial, the Contracting Officer shall indicate the reasons for that determination in writing and a copy of the determination shall be kept in the contract file and made available to the public upon request.
- C. Alternate Bids. In case alternate bids are required or permitted, the amount of the bid deposit shall be based on the highest possible total bid, considering all alternatives.
- D. Return of Bid Deposits. All bid deposits which have not been forfeited as prescribed by section 3.6 shall be returned to the bidders who furnished them after either the contract is entered into and the bond for the faithful performance is furnished or the Contracting Officer decides to publish another call for bids.
- E. Bond forms. The following required bond forms for bid security, performance and payment bonds are attached to this Bid: (Reference Exhibits A through F.)
1. For bid security: surety [bid] [proposal] bond;
 2. For performance bond:
 - a. Performance bond (surety); or
 - b. Performance bond for types of bonds submitted pursuant to Paragraph E, Subparagraphs 2 & 3 of Section 3.5, as amended.
 3. For payment bond:
 - a. Labor and material payment bond (surety); or
 - b. Labor and material payment bond for types of bonds submitted pursuant to Paragraph E, Subparagraphs 2 & 3 of Section 3.5, as

amended.

- F. Certified copies of bonds may be requested and obtained from the County upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original. (auth: 3-122-222, 3-122-223, 3-122-228, P.D. 6/24/94)"

Section 2.8 PUBLIC OPENING OF BIDS. Section 2.8 is hereby deleted and replaced in its entirety as follows:

"Bids shall be opened and read publicly at the time and place indicated in the Notice to Bidders. Bidders or their authorized agents may be present.

"Bidders are advised to consult Sec. 3-122-30, Interim Draft, Hawai'i Administrative Rules, chapter 122, subtitle 11, title 3 (State of Hawai'i Procurement Directive No. 94-05, June 24, 1994) should they wish to designate material in their bids as confidential trade secrets or proprietary documents. Bidders may submit requests to the Contracting Officer for non-disclosure of such material pursuant to Sec. 3-122-30 Interim Draft, Hawai'i Administrative Rules, chapter 122, subtitle 11, title 3 (State of Hawai'i Procurement Directive

No. 94-05, June 24, 1994). (auth: 3-122-30, P.D. 6/24/94)"

Section 2.11 PREFERENCE FOR HAWAI'I PRODUCTS. Section 2.11 is hereby deleted and replaced in its entirety as follows:

"Pursuant to the provisions of Sec. 103D-1002, H.R.S., as amended, all bidders requesting a preference shall complete the form attached to the bid form relating to preference for Hawai'i Products. Any claim for preference of a product on the County of Kaua'i Interim Hawai'i Products List established and administered by the Director of Finance shall be made on the form and the manufacturer/supplier and the cost thereof shall be stated thereon."

Section 2.12 BIDS, WITHDRAWAL OF. Section 2.12 is hereby retitled and replaced in its entirety as follows:

"2.12 MODIFICATION OR WITHDRAWAL OF BIDS.

- A. Pre-opening modification of withdrawal of offers. Offers may be modified or withdrawn prior to the deadline for submittal of offers, by the following documents:
 - 1. Withdrawal of offers:
 - a. A written notice received in the office designated in the solicitation;
 - b. A written notice sent via facsimile to the office designated in the solicitation;
 - c. A telegraphic message received by telephone by the office designated in the solicitation from the receiving telegraph company office, provided the telegraph company confirms the telephone message by sending a written copy of the telegram showing that the message was received at

- such office prior to the time and date set for opening.
2. Modification of offers:
 - a. A written notice received in the office designated in the solicitation, stating that a modification of the offer is submitted; and
 - b. The actual modifications securely sealed in a separate envelope or container, accompanying the written notice. (auth: 3-122-28, P.D. 6/24/94)
 - B. Late bids, late withdrawals, and late modifications. Any notice of withdrawal, notice of modification, or any bid received at the place designated for receipt and opening of a bid after the time and date set for receipt and opening of bids is late.
 1. A late bid, late modification, or late withdrawal shall not be considered late if received before contract award and would have been timely but for the action or inaction of personnel within the procurement activity.
 2. A late bid or late modification that will not be considered for award shall be returned to the bidder unopened as soon as practicable and accompanied by a letter from the procurement activity stating the reason for its return.
 3. A late withdrawal request shall be responded to with a statement of the reason for non-acceptance of the withdrawal. (auth: 3-122-29, P.D. 6/24/94)
 - C. After the time fixed for opening of bids, a bid may be withdrawn only if the County fails to award the contract within sixty (60) calendar days after the date on which the bids were opened."

Section 2.13 LISTING OF JOINT CONTRACTORS AND SUBCONTRACTORS. Section 2.13 is hereby deleted and replaced in its entirety as follows:

"Pursuant to Chapter 103D, Haw. Rev. Stat., as amended, all bidders shall state in their bids the name of each person or firm that will be engaged as a joint venture, partner, or subcontractor and the nature and scope of the work to be performed by each such joint venture, partner, or subcontractor.

The Contractor shall be responsible under the contract for acts and omissions of his subcontractors, suppliers and persons either directly or indirectly employed by them, as fully as he is for acts and omissions of his own employees. Nothing in the contract shall create any contractual relation between any subcontractor or supplier and the County or any obligation on the part of the County to pay or cause be paid any money to any subcontractor or supplier."

Section 2.14 BIDS, DISQUALIFICATION OF. Section 2.13 is hereby deleted and replaced in its entirety as follows:

"A. Bids which are conditional or not in compliance with the bidding instructions provided for in section 2 may be rejected.

B. Rejection of bids. Bids may be rejected for the following reasons including, but not limited to:

1. The bidder that submitted the bid is "nonresponsible", as determined by subchapter 13, chapter 122, subtitle 11, title 3,

- Interim Draft, Hawai'i Administrative Rules, (State of Hawai'i Procurement Directive No. 94-05, June 24, 1994);
2. The bid is "not responsive", that is, does not conform in all material respects to the invitation for bids under the provisions of subchapter 13, chapter 122, subtitle 11, title 3, Interim Draft, Hawai'i Administrative Rules, (State of Hawai'i Procurement Directive No. 94-05, June 24, 1994); or
 3. The good, service, or construction item offered in the bid is unacceptable because of its failure to meet the requirements of the specifications or permissible alternatives or other acceptability criteria set forth in the invitation for bids under the provisions of sec. 3-122-33, Interim Draft, Hawai'i Administrative Rules, chapter 122, subtitle 11, title 3 (State of Hawai'i Procurement Directive No. 94-05, June 24, 1994). (auth: 3-122-97(a)(1)-(3), P.D. 6/24/94)
- C. Conditioning bids upon other awards not acceptable. Any offer which is conditioned upon receiving award of both the particular contract being solicited and another County contract shall be deemed unresponsive and not acceptable. (auth: 3-122-6, P.D. 6/24/94)"

Section 2.15 MISTAKES IN BIDS. There is hereby created a new section 2.15 titled "MISTAKES IN BIDS", which shall read as follows:

"2.15 MISTAKES IN BIDS.

- A. Judgmental and non-judgmental mistakes in bids.
 1. If the mistake is, in the discretion of the Contracting Officer, attributable to an error in judgment, the bid may not be corrected.
 2. If the mistake is, in the discretion of the Contracting Officer, attributable to a non-judgmental mistake, the bid may be withdrawn or corrected; provided that any correction shall be allowed only to the extent that the correction is not contrary to the interests of the County or the fair treatment of other bidders.
- B. A bidder may correct a mistake in bid discovered before the time and date set for bid opening by withdrawing or correcting the bid pursuant to section 3-122-28, Interim Draft, Hawai'i Administrative Rules, chapter 122, subtitle 11, title 3 (State of Hawai'i Procurement Directive No. 94-05, June 24, 1994).
- C. When, after bid opening but before award, the Contracting Officer knows or has reason to conclude that a mistake has been made, including obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids is submitted, the Contracting Officer should request the bidder to confirm the bid, and if the bidder alleges mistake, the bid may be corrected or withdrawn by the bidder if the following conditions and the conditions under paragraphs D and E of this section are satisfied:
 1. If the mistake is a minor informality which is a matter of form rather than substance evident from the bid document, or an insignificant mistake that can be waived by the Contracting Officer or corrected by the bidder without prejudice to other bidders depending on which is in the best interest of the County; that is, the effect on price, quantity, quality, delivery, or contractual conditions

- is negligible. Examples include the failure of a bidder to:
- a. Return the number of signed bids required by the invitation for bids;
 - b. Sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound; or
 - c. Acknowledge receipt of an amendment to the invitation for bids, but only if:
 - I. It is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or
 - II. The amendment involved had a negligible effect on price, quantity, quality, or delivery.
2. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of such mistakes include:
 - a. Typographical errors;
 - b. Errors in extending unit prices;
 - c. Transposition errors;
 - d. Arithmetical errors.
 3. A bidder may be permitted to withdraw a low bid if:
 - a. A mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - b. The bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.
- D. A bidder may not correct a mistake in bid discovered after award of the contract except where the Contracting Officer makes a written determination that it would be unconscionable not to allow the mistake to be corrected.
- E. When a bid is corrected or withdrawn, or correction or withdrawal is denied, under subsections C or D of this section, the Contracting Officer shall prepare a written determination showing that the relief granted or denied pursuant to subchapter 5, Interim Draft, Hawai'i Administrative Rules, chapter 122, subtitle 11, title 3 (State of Hawai'i Procurement Directive No. 94-05, June 24, 1994), except that the Contracting Officer shall prepare the determination required under C.1. of this section. (auth: 3-122-31, P.D. 6/24/94)"

Section 3.1 AWARD OF CONTRACT. Section 3.1 is hereby deleted and re-placed in its entirety as follows:

"The award shall be based only on the criteria set forth in the invitation for bids and shall be made to the lowest responsible and responsive bidder or offeror. "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance. "Responsive bidder or offeror" means a person who has submitted a bid or offer which conforms in all material respects

with the invitation for bids. (auth: 3-122-33(a) & 3-120-3, P.D. 6/24/94)

Evaluation of bids shall be conducted pursuant to Sec. 3-122-33, chapter 122, Interim Draft, Hawai'i Administrative Rules, subtitle 11, title 3 (State of Hawai'i Procurement Directive No. 94-05, June 24, 1994). (auth: 3-122-33, P.D. 6/24/94)"

The successful vendor will be notified via electronic transmission of the letter of award that the vendor is being awarded the contract; provided that if the amount of the award is less than \$25,000.00, a purchase order incorporating the terms and conditions herein, may be issued. Award information will also be posted on the County of Kaua'i Division of Purchasing web site under "Tabulations, Awards, and Other Information.

Pursuant to HRS 103D-701, an actual or prospective offeror who is aggrieved in connection with solicitation or award of a contract may submit a protest. Any protest shall be submitted in writing to the Director of Finance of the County.

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract.

The notice of award letter resulting from this solicitation shall be posted on the County of Kaua'i Division of Purchasing web site at www.kauai.gov.

The Contracting Officer reserves the right to reject any or all bids and to waive any defect as, in his judgment, may be in the best interest of the County."

Section 3.2 CANCELLATION OF AWARD. Section 3.2 is hereby retitled and replaced in its entirety as follows:

"3.2 CANCELLATION OF SOLICITATION OR AWARD.

- A. Cancellation of solicitations and rejection of bids.
 - 1. An invitation for bids or any other solicitation may be canceled, or may be rejected in whole or in part as may be specified in the solicitation, according to the provisions of this section.
 - 2. The reasons for the cancellation or rejection shall:
 - a. Include, but not be limited to, cogent and compelling reasons why the cancellation or rejection of the solicitation is in the County's best interest; and
 - b. Be made part of the procurement file.
 - 3. An invitation for bids or solicitation may be canceled or rejected in whole or in part when in the best interest of the County, pursuant to the provisions of this section. (auth:

3-122-95, P.D. 6/24/94)

- B. A solicitation may be canceled prior to or after bid opening:
 - 1. If canceled prior to opening, the following reasons for cancellation shall apply but not be limited to:
 - a. The agency no longer requires the goods, services, or construction;
 - b. The agency no longer can reasonably expect to fund the procurement; or
 - c. Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
 - 2. If canceled after opening but prior to award, the following reasons for cancellation shall apply, but not be limited to:
 - a. The goods, services, or construction being procured are no longer required;
 - b. Ambiguous or otherwise inadequate specifications were part of the solicitation;
 - c. The solicitation did not provide for consideration of all factors of significance to the agency;
 - d. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - e. All otherwise acceptable bids received are at clearly unreasonable prices; or
 - f. There is reason to believe that the bids may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
- C. A notice of cancellation shall be sent to all businesses solicited and the notice shall include:
 - 1. Identify of the solicitation;
 - 2. A brief explanation of the reason(s) for the cancellation; and
 - 3. Where appropriate, an explanation that an opportunity will be given to compete on any re-solicitation or any future procurements of similar goods, services, or construction.
- D. Documentation on the reasons for cancellation shall be made a part of the procurement file and shall be available for public inspection. (auth: 3-122-96, P.D. 6/24/94)
- E. The Contracting Officer reserves the right to cancel the award of a contract at any time before a contract is executed by the County and the Contractor."

Section 3.3 FUNDS, AVAILABILITY OF. Section 3.3 is hereby deleted and replaced in its entirety as follows:

- "A. County funds. No contract award shall be binding or of any force and effect without an endorsement by the Director of Finance certifying that there is an appropriation sufficient to cover the amount of the contract.
- B. State and/or federal funds. Unless otherwise specified, any contract supplemented by state and/or federal funds shall contain a statement that parties to the contract agree that, as to any portion of the obligation under the contract to be payable out of state and/or federal funds, the contract shall be construed to be an agreement to pay such portion to the Contractor

only out of state and/or federal funds to be received from the state and/or federal government when the state and/or federal funds are so received and shall not be construed as a general agreement to pay such portion at all events out of any funds other than those which are received from the state and/or federal government. (auth: 3-122-103(b), P.D. 6/24/94)

- C. Contracts utilizing one-hundred percent (100%) federal funds. Unless otherwise specified, any contract funded one-hundred percent by federal funds shall be construed as an agreement to pay the contract price only out of federal funds to be received from the federal government when the federal funds are so received and shall not be construed as a general agreement to pay such amount at all events out of any funds other than those which are received from the federal government. (auth: 3-122-104, P.D. 6/24/94)

Section 3.5 BOND FOR FAITHFUL PERFORMANCE. Section 3.5 is hereby re-titled and replaced in its entirety as follows:

"3.5 PERFORMANCE AND PAYMENT BONDS.

- A. Performance and payment bonds shall be required for construction contracts:
 - 1. When the contract price is \$25,000 or more; and
 - 2. less than \$25,000 when the head of the purchasing agency has secured the approval of the chief procurement officer.
- B. The amount of the performance and payment bonds, when required, shall be in an amount equal to one-hundred percent (100%) of the contract price.
- C. Performance and payment bonds, if required, shall be delivered by the Contractor to the County when the contract is executed. If the Contractor fails to deliver the required performance and payment bonds, the Contractor's award shall be canceled, its bid security enforced, and award of the contract shall be made to the next lowest bidder pursuant to subchapter 11, Chapter 122, Interim Draft, Hawai'i Administrative Rules, subtitle 11, title 3 (State of Hawai'i Procurement Directive No. 94-05, June 24, 1994) (auth: 3-122-224, P.D. 6/24/94)
- D. Performance and payment bonds, if required, shall continue for twelve (12) calendar months after final acceptance of the performance of work under the contract, and/or until all of the Contractor's obligations under the contract have been satisfied.
- E. Acceptable forms of performance and payment bonds. Acceptable performance and payment bonds shall be limited to:
 - 1. Surety bond underwritten by a company licensed to issue bonds in the State of Hawai'i;
 - 2. Legal tender of the United States of America; or
 - 3. A certificate of deposit; share certificate; or cashier's, treasurer's, teller's, or official check drawn by, and payable upon demand to the County by a bank, savings institution, or credit union insured by either the United States Federal Deposit Insurance Corporation or the National Credit Union Administration.
 - a. These instruments may be utilized only to a maximum of \$100,000.
 - b. If the required security or bond amount is over \$100,000, more than one instrument not exceeding \$100,000 each

and issued by different financial institutions which meet the requirements of this section shall be accepted. (auth: 3-122-222, P.D. 6/24/94)

- F. The County shall not pay interest on any security provided.
- G. All alterations, extensions of time, extra and additional work and other changes authorized in the specifications or in any part of the contract may be without securing the consent of the surety or sureties on the performance and payment bonds.
- H. Surety shall be subject to the approval of the Contracting Officer and shall be required to justify, as prescribed by law, provided that the Contracting Officer in his discretion may require each surety to justify in the prescribed amount at any time. If the surety is found to be insufficient, the Contractor shall furnish a new bond with sufficient surety within ten (10) calendar days after the day it is notified of the insufficiency or within such further time as the Contracting Officer may in writing allow."

Section 3.6 FAILURE TO ENTER INTO CONTRACT. Section 3.6 is hereby re-titled and replaced in its entirety as follows:

"3.6 REDUCTION OF CONTRACT PERFORMANCE AND PAYMENT BONDS.

- A. Reduction of performance and payment bonds prior to solicitation. Prior to solicitation, the amounts of a performance bond and a payment bond may be reduced, provided that the Contracting Officer approves a written determination. For construction contracts only, reduction of the:
 - 1. Performance bond amount shall be limited to not less than fifty percent (50%) of the contract price if, after completing appropriate analysis, it is determined to be less costly or more advantageous to the County to self-insure a part of the performance of the Contractor. An analysis may be made for groups of contracts, for example, contracts in excess of \$100 million, or may be made on particular contracts, as the Contracting Officer chooses. A copy of the analysis shall be available for public inspection.
 - 2. Payment bond amount shall be limited to not less than fifty percent (50%) of the contract price if a written determination is made that it is in the best interest of the County to do so. Factors to be considered in making such a determination shall include, but not be limited to, the value and number of subcontractors to be awarded by the Contractor and the value of the contract. (auth: 3-122-225, P.D. 6/24/94)
- B. Reduction of performance and payment bonds during performance.
 - 1. If permitted by the contract and solicitation, the Contracting Officer may reduce the amount of the performance bond as work is completed if the Contracting Officer determines, in writing, that the reduction is in the best interests of the County.
 - 2. During performance, the Contracting Officer may reduce the required coverage of the payment bond as payments are made by the Contractor. (auth: 3-122-226, P.D. 6/24/94)"

Section 3.7 PAYMENT CLAIMS AGAINST THE BOND. There is hereby created a new section 3.7 titled "PAYMENT CLAIMS AGAINST THE BOND", which shall read as follows:

"3.7 PAYMENT CLAIMS AGAINST THE BOND.

- A. Any person or entity who has furnished labor or material to the Contractor for the work provided in the contract, in respect of which a payment bond is furnished under the General Provisions of Construction Contracts of the County of Kaua'i, as amended, may institute an action against the Contractor and its sureties, and have their rights and claims adjudicated in the action and judgment rendered thereon; subject to the County's priority on its performance bond.
- B. If the full amount of the liability of the sureties on the bond is insufficient to pay the full amount of the claims, then, after paying the full amount due the County, the remainder shall be distributed pro rata among the claimants.
- C. Every suit instituted upon a payment bond shall be brought in the circuit court of the circuit in which the contract was to be performed, but no suit shall be commenced after the expiration of one year after the completion and final settlement of the contract. The obligee named in the bond need not be joined as a party in any suit. (auth: 3-122-227, P.D. 6/24/94)"

Section 3.8 BOND FORMS. There is hereby created a new section 3.8 titled "BOND FORMS", which shall read as follows:

"3.8 BOND FORMS.

- A. Bond forms for performance and payment bonds shall comply with the requirements of paragraph E, Sec. 2.7, of the General Provisions of Construction Contracts of the County of Kaua'i, as amended.
- B. Certified copies of bonds may be requested and obtained from the County pursuant to paragraph E, Sec. 2.7, General Provisions of Construction Contracts of the County of Kaua'i, as amended. (auth: 3-122-228, P.D. 6/24/94)"

Section 3.9 FAILURE TO ENTER INTO CONTRACT. There is hereby created a new section 3.9 titled "FAILURE TO ENTER INTO CONTRACT", which shall read as follows:

"3.9 FAILURE TO ENTER INTO CONTRACT. If the bidder to whom the contract is awarded fails or neglects to enter into the contract and furnish to bonds a prescribed in subsections 3.4 and 3.5 and the copies of insurance policies prescribed in subsection 4.4, the bid deposit which accompanied the bid of such bidder pursuant to subsection 2.7 shall be forfeited or in the case where such bid deposit was in the form of a surety bond, the proceeds representing the bid deposit shall be collected under the surety bond and the amount so forfeited or collected shall be paid to the County. Upon such failure or neglect, the Contracting Officer may award the contract to the next lowest responsible bidder or publish another call for bids as, in his judgment, may be in the best interests of the County."

Section 4.1 INDEPENDENT CONTRACTOR. The following paragraph is hereby added to this section:

"The Contractor shall agree to defend, indemnify and save harmless the County against any and all deaths, injuries, losses and damages to persons or property, and any and all claims, demands, costs, liabilities, suits, judgments, actions or proceedings of every name, character and description which may be

suffered or incurred by or brought against the County arising from Contractor's performance of its duties and responsibilities pursuant to this Contract except where said liability, loss or damage results from the negligence or misconduct of County, its employees or representatives."

Section 4.2 LAWS, REGULATIONS. The following paragraph is hereby added to this section:

"H. Chapter 103D, Hawai'i Revised Statutes, relating to the Hawai'i Public Procurement Code."

Section 4.4 INSURANCE. This section is hereby deleted and replaced in its entirety as follows:

"Section 4.4 INSURANCE. The Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the contractor or the contractor's agents, representatives, employees or subcontractors.

The County, its officers, officials, employees, and volunteers shall be added as an additional insured with respect to the work contracted for herein, and the Contractor shall submit proof of the insurance coverage(s) by providing to the County a certificate of insurance prior to the commencement of the work.

The insurance policies required herein shall not be cancelled, limited in scope of coverage, or non-renewed by the contractor on the applicable policies during the contract period. Provided, should any policy required herein be canceled and not immediately replaced, the County, in addition to other remedies, reserves the right to procure the canceled insurance and deduct the cost thereof from any money due to the Contractor.

A. Minimum Insurance Coverage Requirements. Unless otherwise approved by the Director, the policy or policies of insurance maintained by the Contractor shall provide the following minimum limit(s) and coverage(s) as specified herein and be placed with an insurance carrier authorized to do business in the State of Hawai'i and rated A- VII by A.M. Best:

1. Commercial General Liability. Commercial General Liability insurance written by a carrier authorized to do business in the State of Hawai'i on an "occurrence" form to include coverage for:
 - Premises Operations
 - Independent Contractors
 - Products and Completed Operations
 - Broad Form Property Damage including completed operations
 - Blanket Contractual Liability
 - Personal Injury
 - Employees named as Additional Insureds
 - Explosion, Collapse and Underground Property Damage, and
 - Severability of Interest

The limit of liability for such coverage shall be:

- (a) Bodily Injury and Property Damage Combined Single Limit:
 - \$2,000,000 per occurrence;
 - \$2,000,000 aggregate.

- (b) Personal Injury:
 - \$1,000,000 per occurrence
 - \$2,000,000 aggregate
- (c) Products/Completed Operations:
 - \$1,000,000 per occurrence;
 - \$2,000,000 aggregate.

Products and Completed Operations coverage protecting the Contractor and Subcontractor must be carried for one (1) year after substantial completion of the Project. Evidence of this insurance will continue to be provided on an annual basis to the County.

- 2. Automobile Liability. The Contractor shall provide Automobile Liability coverage from a carrier admitted to do business in the State of Hawai‘i for all owned, non-owned, and hired autos. Coverage will be for automobile contractual liability, uninsured and underinsured motorist coverage, basic no-fault and personal injury protection as required by Hawai‘i law with the following limits:

- (a) Bodily Injury:
 - \$1,000,000 per person
 - \$1,000,000 per occurrence
- (b) Property Damage
 - \$1,000,000 per accident

- 3. Worker’s Compensation and Employer’s Liability. The Contractor shall, at no cost to the County, procure and maintain, in full force and effect, at all times during the Contract term the following insurance Liability coverage from a carrier admitted to do business in the State of Hawai‘i:

Worker’s Compensation, Temporary Disability, and other similar insurance that is required by the State of Hawai‘i or Federal laws. Self-insurance is permitted subject to submission of a copy of the appropriate governmental authorization and qualification by the Contractor and Subcontractor. The contractor shall request a waiver of subrogation in favor of the County of Kaua‘i.

The minimum limits of liability to be maintained are as follows:

- (a) Coverage A, State of Hawai‘i Workers’ Compensation Law: Statutory Limits
- (b) Coverage B, Employers Liability:

| | |
|--------------------------------------|-------------|
| Bodily Injury from each accident | \$1,000,000 |
| Bodily Injury from disease | \$1,000,000 |
| Bodily Injury from disease aggregate | \$1,000,000 |

- 4. Builder’s Risk Insurance. For projects that consist of building structures, the Contractor shall procure property insurance on an “all risk” basis for builder’s risk coverage on a full replacement value basis for the project, naming the County as an additional insured and loss payee. The policy shall insure all work, labor, and materials furnished by the Contractor and the Contractor’s subcontractors against loss occasioned by fire, lightning, windstorm, theft, vandalism, malicious mischief, flood and collapse. The amount of insurance for the peril of flood may be less than the full replacement cost and subject to a sub-limit. The policy shall also include coverage for debris removal and reasonable

compensation for Architect's and Engineer's services and expenses required as a result of an insured loss.

5. Other Insurance Provisions

(a) For any claims related to this Contract, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(b) The submission of insurance documentation to and acceptance by the County which does not meet the requirements herein shall not be considered a waiver of the contractor's obligations or the County's rights under the terms of this contract."

Section 5.2 MODIFICATIONS. Paragraph two of section 5.2 is hereby amended as follows:

"Upon receipt of a written order, the Contractor shall proceed with the modification as ordered. If the Contractor does not agree with any of the terms or conditions or with the amount of the reduction in cost or extra cost to the County provided for in the order, the Contractor shall file with the Officer-in-Charge a written protest setting forth his reasons in detail within thirty (30) calendar days after receipt of the order. The protest shall be disposed of pursuant to the provisions of section 6.11. Failure to file such protest within the time specified shall constitute agreement on the part of the Contractor with the terms, conditions, and amount in the order. (auth: 3-125-4, P.D. 6/24/94)"

Section 6.2 DELAY. Section 6.2 is hereby deleted in its entirety. (auth: 3-125-16, P.D. 6/24/94)

Section 6.3 PERFORMANCE SCHEDULE. The following paragraph shall be added to this section:

"The Officer-in-Charge will accept and approve only a performance schedule utilizing the critical path method."

Section 6.11 DECISIONS OF THE OFFICER-IN-CHARGE. Section 6.11 is hereby re-titled and replaced in its entirety as follows:

"6.11 DISPUTES.

A. All controversies between the County and the Contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the Contracting Officer in writing, within one-hundred twenty (120) calendar days after a written request by the Contractor for a final decision concerning the controversy; provided that if the Contracting Officer does not issue a written decision within one-hundred twenty (120) calendar days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if an adverse decision has been received.

B. The Contracting Officer shall immediately furnish a copy of the decision to the Contractor, by certified mail, return receipt requested, or by any

- other method that provides evidence of receipt.
- C. Any such decision shall be final and conclusive, unless fraudulent, or the Contractor brings an action seeking judicial review of the decision in the Fifth Circuit Court of the State of Hawai‘i within six (6) months from the date of receipt of the decision.
- D. The Contractor shall comply with any decision of the Contracting Officer and proceed diligently with performance of this contract pending final resolution by the Fifth Circuit Court of the State of Hawai‘i of any controversy arising under, or by virtue of, this contract, except where there has been a material breach of contract by the County; provided that in any event the Contractor shall proceed diligently with the performance of the contract where the Contracting Officer has made a written determination that continuation of work under the contract is essential to the public health and safety. (auth: 3-126-31, P.D. 6/24/94)
- E. If a reduction in cost or extra cost to the County is the result of a written order of the Contracting Officer pursuant to section 5.2, the amount of such cost shall be determined on the basis of a force account pursuant to section 7.3.

Section 6.12 CONTROL OF CONTRACT ACCESS. The following paragraph shall be added to this section:

"The Contractor shall provide access to the work at all times to representatives of the U.S. Department of _____, federal Environmental Protection Agency, the State of Hawai‘i Water Pollution Control, and any other authorized Federal or State Agencies whenever the work is in preparation or in the process, and shall provide proper facilities for such access and inspection. In addition, authorized representatives of the _____ and the County shall have access to any books, documents, papers and records of the Contractor which are pertinent to the project for the purpose of making audit, examinations, excerpts, and transactions thereof."

Section 6.15 WAGES. Section 6.15 is hereby deleted in its entirety. (auth: outdated, Office of the County Attorney, 8/4/94)

Section 6.19 ASSIGNMENT. Section 6.16 is hereby re-titled and replaced in its entirety as follows:

"6.19 ASSIGNMENT, CHANGE OF NAME, NOVATION.

- A. No assignment. No County contract is transferable, or otherwise assignable, without the written consent of the Contracting Officer; provided that a Contractor may assign moneys receivable under a contract after due notice to the County
- B. Recognition of a successor in interest; assignment. When in the best interest of the County, a successor in interest may be recognized in an assignment agreement in which the transferor and the transferee and the County shall agree that:
 - 1. The transferee assumes all of the transferor's obligations;
 - 2. The transferor remains liable for all obligations under the contract but waives all rights under the contract as against the County; and
 - 3. The transferor shall continue to furnish, and the transferee, shall also furnish all required bonds.

- C. Change of name. When a Contractor requests to change the name in which it holds a contract with the County, the Contracting Officer shall, upon receipt of a document indicating such change of name (for example, and amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting Contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.
- D. Reports. All change of name or novation agreements effected hereunder other than by the Contracting Officer shall be reported to the Contracting Officer within thirty days of the date that the agreement becomes effective. (auth: 3-125-13(a)-(d), P.D. 6/24/94)

Section 6.33 INSPECTION OF PLANT OR SITE, ACCESS TO PLANT OR PLACE OF BUSINESS. There is hereby created a new section 6.33 titled "INSPECTION OF PLANT OR SITE, ACCESS TO PLANT OR PLACE OF BUSINESS", which shall read as follows:

"6.33 INSPECTION OF PLANT OR SITE, ACCESS TO PLANT OR PLACE OF BUSINESS.

- A. Inspection of plant or site. Circumstances under which the County may perform inspections include, but are not limited to, inspections of the Contractor's plant or site in order to determine:
 1. Whether the standards set forth in section 3-122-108, Hawai'i Administrative Rules, have been met or are capable of being met; and
 2. If the contract is being performed in accordance with its terms. (auth: 3-122-166, P.D. 6/24/94)
- B. Access to plant or place of business. The County may enter a Contractor's or subcontractor's plant or place of business to:
 1. Inspect goods or services for acceptance by the County pursuant to the terms of a contract;
 2. Audit cost or pricing data or audit the books and records of any Contractor or subcontractor pursuant to section 3-122-175, Hawai'i Administrative Rules; and
 3. Investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to sections 3.126-11 through 3-126-18, Hawai'i Administrative Rules. (auth: 3-122-167, P.D. 6/24/94)"

Section 7.1 PAYMENT. Paragraph number three of section 7.1 is hereby deleted and replaced in its entirety as follows:

"For unit price contracts, the contract price shall be the sum of results obtained by multiplying the number of units of such item incorporated in the work under the contract by the unit price therefor. The unit price of an item shall be the amount therefor specified in the bid, provided that if the number of units of any item needed to perform the required work exceeds or is less than the number specified in the bid as the County's estimate of quantity of units required by more than fifteen percent (15%), then a price adjustment shall be made in the unit price for the item by supplemental agreement or, at the option of the Contracting Officer, by first determining the cost of the item on the basis of a force account pursuant to section 7.3 and dividing the cost by the number of units of the item needed to

perform the required work. (auth: 3-125-10, P.D. 6/24/94)"

Section 7.3 FORCE ACCOUNT. Item number six (6.) of section 7.3 is hereby deleted and replaced in its entirety as follows:

"6. To the sum of the costs of labor, material, premiums and contributions (under item 3) and rental for machinery or equipment (including the 15% applied to costs of items 1, 2 and 3), there shall be added a sum equal to four percent (4%) thereof for excise taxes."

Further, the following paragraph is hereby added as the last paragraph to section 7.3:

"Allowability of costs shall also be governed by chapter 123 ("Cost Principles"), subtitle 11, title 3, Hawai'i Administrative Rules. (auth: chapter 123, subtitle 11, title 3, P.D. 6/24/94)"

Section 7.4 PAYMENTS DURING PERFORMANCE OF WORK. Paragraph number four of section 7.4 is hereby deleted and replaced in its entirety as follows:

"After fifty (50) per cent of the work to be performed under the contract has been completed, progress payments may be for one hundred (100) per cent of the above estimate, less (1) the five (**5**) **per cent** withheld from the previous payments to the Contractor during the performance of the first fifty (50) per cent of the work required under the contract, (2) other sums withheld by the County pursuant to the contract and (3) previous payments; provided that, if the completion of the work under the contract is being delayed through no fault of the Contractor, the contracting Officer, upon recommendation of the Officer-in-Charge, may make additional payments from the amount withheld under (**1**) above, to the extent that such amount withheld is not required for the protection of the County."

Section 7.6 ASSIGNMENT OF MONEY DUE OR PAYABLE. Section 7.6 is hereby deleted in its entirety. (auth: 3-125-13, P.D. 6/24/94)

Section 8.1 SUSPENSION OF WORK. Section 8.1 is hereby deleted and re-placed in its entirety as follows:

"A. Suspension for convenience. The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as the Contracting Officer may determine to be appropriate for the convenience of the County.

B. Adjustment of cost. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Contracting Officer in the administration of this contract, or by the failure of the Contracting Officer to act within the time specified in this contract (of if no time is specified, within reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract necessarily caused by such reasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent:

1. that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or
2. for which an adjustment is provided for or excluded under any

- other provision of this contract.
- C. Time restriction on claim. No claim under this clause shall be allowed:
 - 1. For any costs incurred more than twenty calendar days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
 - 2. Unless the claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.
 - D. Adjustment of price. Any adjustment in contract price made pursuant to this clause shall be determined according to the price adjustment clause of this contract." (auth: 3-125-7, P.D. 6/24/94)

Section 8.2 TERMINATION OF CONTRACT - WORK MAY BE TAKEN OVER BY COUNTY.

Subsection O of section 8.2 is hereby replaced in its entirety as follows:

- "O. has made unjustifiable and substantive changes from the condition set forth in his original itemized bid, pursuant to Sec. 103-33, Haw. Rev. Stat., as amended"

Further, the second narrative paragraph of section 8.2 is hereby replaced in its entirety as follows:

"Whenever the Officer-in-Charge is not satisfied with the performance of the contract the Officer-in-Charge, with the approval of the Contracting Officer, may make specified orders as to the progress or conduct of such work, giving the Contractor a definite period within which to comply with such orders; or whenever the Contractor shall be in default in any particular, the Officer-in-Charge, with the approval of the Contracting Officer, shall serve the Contractor, or its authorized representatives, with a written notice to remedy said default or any part thereof within fourteen (14) calendar days after notice thereof, serving copies of such notice to the surety or sureties of the Contractor, as the case may be. If, after the expiration of the time of such notice, the Contractor fails to comply with the notice, or the default continues, the Officer-in-Charge, with the approval of the Contracting Officer, may order all payment under the contract to cease and the work to be discontinued. Upon such order the Contractor shall discontinue the work. Failure on the part of the Officer-in-Charge to order a discontinuance of the work or payment for the same to cease shall in no event be construed as an acceptance of the work, nor as a waiver of any failure or any default. (auth generally: 3-125-16, P.D. 6/24/94)"

Section 8.4 DAMAGES FOR DELAY. Subparagraph C. of section 8.4, titled "Delay caused by County", is hereby deleted in its entirety.

Section 8.11 TERMINATION FOR CONVENIENCE OF CONSTRUCTION CONTRACTS.

There is hereby created a new section 8.11 titled "TERMINATION OF CONVENIENCE OF CONSTRUCTION CONTRACTS", which shall read as follows:

"8.11 TERMINATION FOR CONVENIENCE OF CONSTRUCTION CONTRACTS.

- A. Terminations. In addition to any other reason specified in section 8.2 of the General Provisions of Construction Contracts of the County of Kaua'i, as amended, the Contracting Officer may, when the interests of the County so require, terminate this contract in whole or in part, for the convenience of the County. The Contracting Officer shall give written notice of the

termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

- B. Contractor's obligations. The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontractors and orders connected with the terminated work. The Contracting Officer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the County. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations necessary to do so.
- C. Right to construction and goods. The Contracting Officer may require the Contractor to transfer title and deliver to the County in the manner and to the extent directed by the Contracting Officer:
 - 1. Any completed constructions; and
 - 2. The partially completed construction, goods, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereafter "construction material") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

The Contractor shall protect and preserve property in the possession of the Contractor in which the County has an interest. If the Contracting Officer does not exercise this right, the Contractor shall use best efforts to sell such construction, goods, and construction materials according to Sec. 490:2-706, Haw. Rev. Stat., as amended. This in no way implies that the County has breached the contract by exercise of the termination of convenience clause.

- D. Compensation.
 - 1. The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by subchapter 15, chapter 3-122, Hawai'i Administrative Rules, bearing on such claim. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Contracting Officer may pay the Contractor, if at all, an amount set according to subparagraph B of this paragraph D.
 - 2. The Contracting Officer and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the County, the proceeds of any sales of construction, supplies, and construction materials under paragraph C of this section, and the contract price of the work not terminated.
 - 3. Absent complete agreement under subparagraph 2 of this paragraph, the Contracting Officer shall pay the Contractor the following amounts, provided payments under subparagraph 2 shall not duplicate payments under this paragraph the total (without duplication of any items) of:
 - a. The cost of all contract work performed prior to the

effective date of the notice of termination work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of such work; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

- b. Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph 2 of this section. These costs must not include costs paid according to subparagraph D.3.a. of this section;
 - c. The reasonable settlement costs of the Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract; and
 - d. The total sum to be paid the Contractor under this paragraph shall not exceed the total contract price plus the reasonable settlement costs of the Contractor reduced by the amount of any sales of construction supplies, and construction materials under paragraph c of this section, and the contract price of work not terminated.
4. Cost claimed, agreed to, or established under subparagraphs 2 and 3 of this paragraph shall be calculated according to chapter 3-123, Hawai'i Administrative Rules. (auth: 3-125-20, P.D. 6/24/94)"

Section 8.12 CLAIMS BASED ON CONTRACTING OFFICER'S ACTIONS OR OMISSIONS.

There is hereby created a new section 8.12 titled "CLAIMS BASED ON CONTRACTING OFFICER'S ACTIONS OR OMISSIONS", which shall read as follows:

"8.12 CLAIMS BASED ON CONTRACTING OFFICER'S ACTIONS OR OMISSIONS.

- A. Claims based on Contracting Officer's Actions or omissions. If any action or omission on the part of the Contracting Officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the Contractor for additional compensation, damages, or an extension of time for completion, the Contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- 1. The Contractor shall have given written notice to the Contracting Officer:

- a. Prior to the commencement of the work involved, if at that time the Contractor knows or the occurrence of such action or omission;
 - b. Within thirty (30) calendar days after the Contractor knows of the occurrence of such action or omission, if the Contractor did not have such knowledge prior to the commencement of the work; or
 - c. Within such further time as may be allowed by the Contracting Officer in writing.
- 2. This notice shall state that the Contractor regards the act or omission as a reason which may entitle the Contractor to additional compensation, damages, or an extension of time. The Contracting Officer, upon receipt of such notice may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Contracting Officer;
 - 3. The notice required by paragraph 1 above describes as clearly as practicable at the time the reasons why the Contractor believes that additional compensation, damages, or an extension of time may be remedies to which the Contractor is entitled; and
 - 4. The Contractor maintains and, upon request, makes available to the Contracting Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.
- B. Nothing contained herein, however, shall excuse the Contractor from compliance with any rules of law precluding any County officers and any Contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.
 - C. Any adjustment in the contract price made pursuant to this clause shall be determined according to the price adjustment clause of this contract. (auth: 3-125-15, P.D. 6/24/94)"

Section 8.13 REMEDIES. There is hereby created a new section 8.13 titled "REMEDIES", which shall read as follows:

"8.13 REMEDIES. Any dispute arising under or out of this solicitation or contract is subject to chapter 3-126, subtitle 11, title 3, Hawai'i Administrative Rules. (auth: 3-125-22, P.D. 6/24/94)"

- 31. **PUBLIC CONVENIENCE** This section defines the Contractor's responsibility with regards to convenience of the public and public traffic in connection with his operations.

The Contractor shall so conduct his operations as to offer the least possible obstruction and inconvenience to the public and he shall have under construction no greater length or amount of work than he can prosecute properly with due regard to the rights of the public.

Unless otherwise provided in the special provisions, all public traffic shall be permitted to pass through the work with as little inconvenience and delay as possible.

Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by the Contractor at his expense.

Existing traffic signal and highway lighting systems shall be kept in operation for the benefit of the traveling public during progress of the work and other forces will continue routine maintenance or existing systems.

Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.

Convenient access to driveways, houses and buildings along the line of the work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition.

When the abutting property owner's access across the right-of-way line is to be eliminated or to be replaced under the contract by other access facilities, the existing access shall not be closed until the replacement access facilities are useable.

Roadway excavation shall be conducted in such a manner as to provide a reasonably smooth and even surface satisfactory for use by public traffic at all times. Sewer construction shall be conducted on but one-half the width of the traveled way at the time and that portion of the traveled way being used by public traffic shall be kept open and unobstructed until the opposite side of the traveled way is ready for use by traffic.

All locations where traffic is being routed through construction under one-way controls and when ordered by the Officer-in-Charge the movement of the Contractor's equipment from one portion of the work to another shall be governed in accordance with such one-way controls.

Water or dust palliative shall be applied if ordered by the Officer-in-Charge for the alleviation or prevention of dust nuisance at all times, regardless of whether or not work is being performed on the site.

In order to expedite the passage of public traffic through or around the work and where ordered by the Officer-in-Charge, the Contractor shall install signs, lights, flares, barricades and their facilities for the sole convenience and direction of public traffic. Also where directed by the Officer-in-Charge, the Contractor shall furnish competent flagmen whose sole duties shall consist of directing the movement of public traffic through or around the work. The cost of furnishing and installing such signs, lights, flares, barricades and other facilities, shall be considered as included in all items of work and no additional compensation shall be made thereof.

The cost of furnishing flagmen for the sole convenience and direction of public traffic shall be considered included in all items of work and no additional compensation shall be made thereof.

32. **PUBLIC SAFETY** This section defines the Contractor's responsibility with regard to providing for the safety of the public during construction.

Whenever work is being performed adjacent to a lane carrying traffic, the edge of lane or edge of pavement shall be delineated by placing temporary portable delineators.

Whenever the Contractor's operations create a condition hazardous to traffic or to the public, he shall furnish, erect and maintain, at his expense and without cost to the County, such fences, barricades, lights, signs and other devices as are necessary to prevent accidents or damage or injury to the public. The Contractor shall also furnish such flagmen and guards as are necessary to give adequate warning to traffic or to the public of any dangerous conditions to be encountered.

Should the Contractor appear to be neglectful or negligent in furnishing warning and protective measures as above provided, the Officer-in-Charge may direct attention to the existence of a hazard and the necessary warning and protective measures shall be furnished and installed by the Contractor at his expense.

Should the Officer-in-Charge point out the inadequacy of warning and protective measures, such action on the part of the Officer-in-Charge shall not relieve the Contractor from responsibility for public safety or abrogate his obligation to furnish and pay for these devices.

The installation of general roadway illumination shall not relieve the Contractor of his responsibility for furnishing and maintaining any of the protective facilities herein before specified.

The Contractor's equipment shall enter and leave the highway via existing ramps and crossovers and shall move in the direction of public traffic at all times. All movements on or across the traveled way shall be performed in a manner that will not endanger public traffic.

Pedestrian openings through false work shall be paved or provided with full width continuous wood walks and shall be kept clear. Pedestrians shall be protected from falling objects and curing water for concrete. Overhead protection for pedestrians shall extend not less than four (4) feet beyond the edge of the bridge deck.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic and at the end of each day's work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic. Excavated areas of paved surfaces shall be firmly compacted and the surface maintained in a safe condition until repaved.

33. **PORTABLE DELINEATORS** Portable delineators shall be furnished, placed and maintained in accordance with the provisions in Sections 31, "Public Convenience" and 32, "Public Safety".

Portable delineators, including the base, shall be composed of a material that has sufficient rigidity to remain upright when unattended and shall be either flexible or collapsible upon impact by a vehicle. The base shall be of such shape as to preclude roll after impact. The base shall be of sufficient weight or shall be anchored in a manner such that said delineator shall remain in an upright position.

If the portable delineators are damaged, displaced or are not in an upright position, from any cause, said delineators shall immediately be replaced or restored to their original location in an upright position by the Contractor.

The vertical portion of the portable delineators shall be of a brilliant orange or orange and white color combination that will provide contrast with the background. The posts shall be a minimum of 2-3/4 inches in width or diameter or, if tapered, shall have a minimum cross-sectional area of 100 square inches, measured through the vertical axis of the delineator, normal to the roadway. The minimum height shall be 37 inches above the traveled way.

Two 3-2/4 inch amber (yellow) reflectors shall be mounted a minimum of 1-1/2 inches apart and at a height on the post so that one reflector will be between 2.5 feet and 3 feet above the surface.

Only one type of portable delineator shall be used on the project. The type of portable delineator

proposed for use on the project shall be submitted to the Officer-in-Charge for approval prior to placement on the project.

When work is in progress in a trench or other excavation adjacent to the traveled way, the portable delineators shall be placed on the edge of pavement. At other times, the portable delineators shall be placed off the adjacent to the edge of the pavement.

The portable delineators shall be spaced as necessary for proper delineation; however, in no case shall the spacing between delineators exceed 100 feet on tangents or 50 feet on curves.

When no longer required for delineation, the portable delineators shall be removed from the site of the work.

Full compensation for furnishing all labor, materials, tools, equipment and incidentals and for doing all the work involved in furnishing, placing, maintaining, replacing and removing and disposing of portable delineators as specified herein and as directed by the Officer-in-Charge, shall be considered as included in the contract prices paid for all items of work and no separate payments shall be made thereof. When the Officer-in-Charge's estimate does not include an item for portable delineators, full compensation for furnishing, placing, maintaining, replacing and removing and disposing of portable delineators shall be considered as included in the prices paid for the various contract items of work involved and no separate payment will be made therefor.

34. **FLAGGING COSTS**

The cost of furnishing all flagmen and guards under the provisions in Section 32 "Public Safety", shall be considered as included in all items of work and no additional compensation shall be made thereof.

35. **MEASUREMENT AND PAYMENT**

All costs under this Special Provisions will not be measured or paid for directly, but will be considered incidental to and including and paid for under the various items of the bid.

36. **MINIMUM RATES OF PAY**

Attached hereto or incorporated herein by reference only is a schedule of minimum rates of wages applicable to this contract.

The State Wage Rates Schedule is subject to change at any time by the Department of Labor and Industrial Relations. Any such change must be conformed with the current State of Hawai'i Wage Rate Schedule is available at the State Department of Labor and Industrial Relations. Reference Instructions to Bidders.

Hawai'i Revised Statute Sections 104-1 to 104-10, inclusive, relating to Wages and Hours of Employees on Public Works, are incorporated herein by reference and made a part of this Bid.

37. **CHANGE CLAUSE APPLICABLE TO ALL COST-REIMBURSEMENT CONTRACTS**

The following provisions shall apply to all cost-reimbursement contracts:

- a. The Contracting Officer may at any time, by written order, and without notice to the

sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.)
 - (3) Place of performance of the services.
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the County according to the drawings, designs, or specifications.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of any part of the work under this contract, whether or not change by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the (1) estimated cost, delivery, or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the contract accordingly.
- c. The Contractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- d. Failure to agree to any adjustment shall be a dispute under the remedies clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- e. Notwithstanding the terms and conditions of paragraph A and B, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. (auth: 3-125-3, P.D. 6/24/94)
- f. The cost principles and procedures contained in chapter 123, subtitle 11, title 3, Hawai'i Administrative Rules, shall be used for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs. (auth: 3-123-1(a), P.D. 6/24/94)

38. **CHANGES**

- a. Oral Order. Any oral order, direction, instruction, interpretation or determination from the procurement officer which, in the opinion of the contractor, causes any change, can be considered as a change only if the contractor gives the procurement officer written notice of its intent to treat the oral order, direction, instruction, interpretation or determination as a change directive. The written notice must be delivered to the Engineer before the contractor acts in conformity with the oral order, direction, instruction, interpretation or determination, but not more than five (5) days after delivery of the oral order to the contractor. The written notice shall state the date, circumstances, whether a time extension will be requested, and source of the order that the contractor regards as a change. The written notice may not be waived and shall be a condition precedent to the filing of a claim by the contractor. Unless the contractor acts in accordance with this procedure, any oral order shall not be treated as a change and the contractor waives any claim for an increase in the contract time or contract price related to the work.

Not more than five (5) days after receipt of the written notice from the contractor, the Director shall issue a change order for the subject work if the procurement officer agrees that it constitutes a change. If no change order is issued in the time established, it shall be deemed a rejection of the contractor's claim for a change. If the contractor objects to the procurement officer's refusal to issue a change order, it shall file a written protest with the Director within thirty days after delivery to the Engineer of the contractor's written notice of its intention to treat the oral order as a change. In all cases the contractor shall proceed with the work. The protest shall be determined as provided in the disputes and claims section of the contract.

b. **Change Clause (HAR 3-125-4):**

- (1) **Change order.** The procurement officer, at any time, and without notice to any surety, in a signed writing designated or indicated to be a change order, may make changes in the work within the scope of the contract as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the contractor will perform the work as changed, as though it had been part of the original contract. Minor changes in the work may be directed by the procurement officer with no change in contract price or time of performance.
- (2) **Adjustments of price or time for performance.** If any change order increases or decreases the Contractor's cost of, or the time required for, performance or any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly.
 - (a) Any adjustment in contract price made pursuant to this clause shall be determined according with the price adjustment clause **included pursuant to HAR section 3-125-13 (a)**. Failure of the parties to agree to an adjustment **and contract price shall be resolved in accordance with the price adjustment clause included pursuant to HAR section 3-125-13 (a) (1) (E)**.
 - (b) **Failure of the parties to agree to an adjustment in time shall not excuse a contractor from proceeding with the contract as changed, provided that the procurement officer within 14 days after the changed work commences, makes such provisional adjustments in time as the procurement officer deems reasonable.**

The right of the contractor to dispute the contract price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the contract.

- (3) **Time period for claim.** Within thirty days after receipt of a written change order under paragraph 1 of this clause, unless such period is extended by the procurement officer in writing, the contractor shall file a notice of intent to assert claim for an adjustment. **The requirement for filing a timely written notice cannot be waived and shall be a condition precedent to the assertion of a claim.**

- (4) **Claim barred after final payment.** No claim by the Contractor for an adjustment hereunder shall be allowed if **written** notice is not given prior to final payment under this contract.
- (5) **Other claims not barred.** In the absence of such a change order, nothing in this clause shall restrict the Contractor's right to pursue a claim arising under the contract or for breach of contract. (auth: HRS 103D-202, 103D-501) (Imp: HRS 103D-501)

39. **Price Adjustment for Construction Contracts (HAR 3-125-13).**

- a. Price Adjustment **methods.** Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance;
 - (2) By unit prices specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
 - (3) **By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon before commencement of the pertinent performance;**
 - (4) **In any other manner as the contracting parties may mutually agree upon before commencement of pertinent performance; or**
 - (5) In the absence of agreement between the parties the provisions of HRS section 103D-501 (b) (5), shall apply:
 - (a) **For change orders with value not exceeding \$50,000 by documented actual costs of the work, allowing for twenty per cent of the actual costs for overhead and profit on work done directly by the contractor and ten per cent on any subcontractor's billing to the contractor for the contractor's overhead and profit. There shall be no cap on the total cost of the work if this method is used. A change order shall be issued within fifteen days of submission by the contractor of proper documentation of completed force account work, whether periodic (conforming to the applicable billing cycle) or final. The procurement officer shall return any documentation that is defective to the contractor within fifteen days after receipt, with a statement identifying the defect; or**
 - (b) **For change orders with value exceeding \$50,000 by a unilateral determination by the governmental body of the costs attributable to the events or situations under clauses with adjustment of profit or fee, all as computed by the governmental body in accordance with applicable sections of the rules adopted under section 103D-601 and subject to the provisions of HRS 103D, part VII, Legal and Contractual Remedies. When a unilateral determination has been**

made, a unilateral change order shall be issued within ten days. Costs included in the unilateral change order shall allow for twenty per cent of the actual costs for overhead and profit on work done directly by the contractor and ten per cent on any subcontractor's billing to the contractor for the contractor's overhead and profit. Upon receipt of the unilateral change order, if the contractor does not agree with any of the terms or conditions, or the adjustment or nonadjustment of the contract time or contract price, the contractor shall file a notice of intent to claim within thirty days after the receipt of the written unilateral change order. Failure to file a protest within the time specified shall constitute agreement on the part of the contractor with the terms, conditions, amounts, and adjustment or nonadjustment of the contract time or the contract price set forth in the unilateral change order.

- b. **Submission of cost or pricing data.** The contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of HRS, Section 103D-312 Cost or Pricing Data. The submission of any cost or pricing data shall be made subject to the provisions of subchapter 15, chapter 3-122, HAR. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in paragraphs A (1) through A (4) shall be issued within ten days after agreement on the method of adjustment. [Auth: HRS 103-D-202, 103D-501] (Imp: HRS 103D-501, 103D-601, 103D-703)
- c. Percentages for fee and overhead. Not more than three line item percentages for fee and overhead, not to exceed the maximum percentages shown above, will be allowed regardless of the number of tier subcontractors.

40. **DIFFERING SITE CONDITIONS FOR CONSTRUCTION CONTRACTS.**

- a. Differing site conditions – price adjustments.
 - (1) Notification. The contractor shall promptly, and before such conditions are disturbed, notify the Engineer of:
 - (a) Subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or
 - (b) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.
- b. Adjustments of price or time for performance. After receipt of the notice, the Engineer shall promptly investigate the site, and if it is found that the conditions do materially so differ and cause an increase in the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of the conditions, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of this contract.
 - 1. Timeliness of Claim. No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in this clause; provided, however,

- that the time prescribed therefore may be extended by the Director in writing.
2. No claim after final payment. No claim by the contractor for an adjustment thereunder shall be allowed if asserted after final payment under this contract.
 3. Knowledge. Nothing contained in this clause shall be grounds for an adjustment in compensation if the contractor had actual knowledge of the existence of such conditions prior to the submission of bids.

41. PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS (HAR 3-125-23)

“Prompt Payment Clause

- (1) Generally. Any money, paid to a contractor shall be disbursed to subcontractors within ten 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 on which the procurement agency has withheld payment.
- (2) Final Payment. Upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be made within ten days after receipt off the money; provided that there are no bona fide disputes over the subcontractor’s performance under the subcontract.
- (3) Penalty. The procurement officer or the contractor, as applicable, will be subject to a penalty of one and one-half percent per month upon outstanding amounts due that were not timely paid by the responsible party under the following. Where a subcontractor has provided evidence to the contractor of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in subsection (4), and:
 - (A) Has provided to the contractor an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 103-32.1, HRS; or
 - (B) The following has occurred:
 - (i) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to contractor and the surety, as provided for in section 103D-324, HRS; and
 - (ii) The subcontractor has provided to the contractor, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the contractor; any other bond acceptable to the contractor; or any other forms of mutually acceptable collateral, then all sums retained or withheld from a subcontractor and otherwise due to the subcontractor shall be paid by the procurement officer to the contractor and subsequently, upon receipt from the procurement officer, by the contractor to the subcontractor within the applicable time periods specified in subsection (2) and section 103-10, HRS. The penalty may be withheld from future payment due to the contractor, if the contractor was the responsible party. If a contractor has violated subsection (2) three or more times within two years of the first violation, the contractor shall be referred by the procurement officer to the contractor license board for action under section 444-17 (14), HRS.

- (4) A properly documented final payment request from a subcontractor, as required by subsection (3), shall include:
- (A) Substantiation of the amounts requested;
 - (B) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:
 - (i) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;
 - (ii) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
 - (iii) The payment request does not include any amounts that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and
 - (C) The submission of documentation conforming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The procurement officer shall return any final payment request that is defective to the contractor within seven days after receipt, with a statement identifying the defect.

- (5) In the case of a construction contract, a payment request made by a contractor to the procurement officer that includes a request for sums that were withheld or retained from a subcontractor and are due to a subcontractor may not be approved under subsection (3) unless the payment request includes:
- (A) Substantiation of the amounts requested; and
 - (B) A certification by the contractor, to the best of the contractor's knowledge and belief, that:
 - (i) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
 - (ii) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the contract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
 - (iii) The payment request does not include any amounts that the contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

The procurement officer shall return any final payment request that is

defective to the contractor within seven days after receipt, with a statement identifying the defect.

- (6) This section shall not be construed to impair the right of a contractor or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under subsection (3) of this section; provided that any such payments withheld shall be withheld by the procurement officer.”

42. EMPLOYMENT OF STATE RESIDENTS ON CONSTRUCTION PROCUREMENT CONTRACTS

Bidders are advised of the applicability of Act 68, SB 2840, Employment of State Residents on Construction Procurement Contracts, (2010) (“Act 68”). Act 68 requires the awarded contractor to ensure that Hawai‘i Residents (as defined in the Act) compose not less than eighty percent of the workforce employed to perform the contract. This requirement shall also apply to subcontracts of \$50,000 or more in connection with any construction contract procured under HRS Chapter 103D, but does not apply to procurements made pursuant to HRS §103D-304 (professional services), HRS § 103D-305 (small purchases), or if there is a conflict with any federal law as further detailed herein under “Conflict with Federal Law.”

a. Definitions for terms used in Act 68 (2010)

“Contract” means contracts for construction under chapter 103D, HRS.

“Contractor” has the same meaning as in section 103D-104, HRS; provided that contractor includes a subcontractor where applicable.

“Construction” has the same meaning as in section 103D-104, HRS.

“Procurement Officer” has the same meaning as in section 103D-104, HRS.

"Resident" means a person who is physically present in the state at the time the person claims to have established the person's domicile in the state and shows the person's intent is to make Hawai‘i the person's primary residence.

"Shortage trade" means a construction trade in which there is a shortage of Hawai‘i residents qualified to work in the trade.

b. Requirements of Contractor

The contractor awarded this contract shall ensure that Hawai‘i Residents compose not less than eighty per cent of the workforce employed to perform this Contract, calculated as follows:

The eighty per cent requirement shall be determined by dividing the total number of hours worked on a contract by Residents by the total number of hours worked by all employees of the Contractor in the performance of the Contract. Hours worked for any subcontractor of the contractor shall count towards the calculation for purposes of this subsection. The hours worked by employees within shortage trades, as determined by the Department of Labor and Industrial Relations, shall not be included in the calculations for purposes of this

subsection.

This requirement shall be applicable during the entire duration of this Contract. A notarized Certification for Employment of State Residents on Construction Procurement Contracts (Schedule I) shall be submitted on a monthly basis with your request for progress payments. If no request for progress payments are made for any month, the Contractor is still responsible to submit the certification on a monthly basis.

c. Penalties

Failure to comply with this requirement shall be subject to any of the following sanctions:

- (1) Temporary suspension of work on the project until the Contractor or subcontractor complies with Act 68;
- (2) Withholding of payment on the Contract or subcontract, as applicable, until the Contractor or subcontractor complies with Act 68;
- (3) Permanent disqualification of the Contractor or subcontractor from any further work on the project;
- (4) Recovery by the County of any moneys expended on the Contract or subcontract, as applicable; or
- (5) Proceedings for debarment or suspension of the Contractor or subcontractor under section 103D-702.

d. Conflict with federal law

Act 68 shall not apply if the application of the Act is in conflict with any federal law, or if application of Act 68 will disqualify the County from receiving federal funds or aid.