

GENERAL PROVISIONS

FOR

CONSTRUCTION CONTRACTS

OF THE

COUNTY OF KAUA'I

COUNTY OF KAUA'I
STATE OF HAWAII

September 2015

**GENERAL PROVISIONS
OF
CONSTRUCTION CONTRACTS
OF THE**

COUNTY OF KAUA‘I

September 2015

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**COUNTY OF KAUA‘I
STATE OF HAWAI‘I**

**GENERAL PROVISIONS OF CONSTRUCTION CONTRACTS (GPCC)
OF THE COUNTY OF KAUA‘I**

SECTION 1 DEFINITIONS AND REFERENCES

When used in these provisions or elsewhere in the contract, the following terms, or pronouns used in place of them, shall have the meaning ascribed to them in this section, unless it is apparent from the context that a different meaning is intended:

1.1 DEFINITIONS

"**Addendum/Addenda**" means a written document issued during the solicitation period involving changes to the solicitation documents which shall be considered and made a part of the solicitation documents and resulting contract [HAR 3-122-16.06].

"**Alternative procurement method**" means a procurement method used due to a waiver from the competitive sealed bids or proposals process when one or no responsive, responsible offer is received. [HAR 3-122-1]

"**Amendment**" shall have the same meaning as "contract modification" or "modification" as hereafter defined.

"**Best value**" means the most advantageous offer determined by evaluating and comparing all relevant criteria in addition to price so that the offer meeting the overall combination that best serves the County is selected. These criteria may include, in addition to others, the total cost of ownership, performance history of the offeror, quality of goods, services, or construction, delivery, and proposed technical performance. [HAR 3-122-1]

"**Bid**" means the executed document submitted by a bidder in response to an invitation for bids, or a multi-step bidding procedure. [HAR 3-120-2]

"**Bidder**" means any individual, partnership, firm, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, a bid for the good, service, or construction contemplated. [HAR 3-120-2]

"**Bid sample**" means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid. [HAR 3-122-1]

"**Change order**" means an amendment or modification of the work within the scope of the Contract, by the Contracting Officer or his/her authorized designee, directing the Contractor to make changes with or without the consent of the Contractor. [HRS 103D-104] [HAR 3-125-2][HAR 3-125-4]

"Chief Procurement Officer" or "CPO" means the chief procurement officer of the County (Director of Finance) as provided in HRS 103D-203, or the officer's designee. [HAR 3-120-2]

"Construction" means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term includes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property. [HRS 103D-104]

"Contract" means all documents covering the construction being procured for which award is made to the Contractor. It may include, but is not limited to the following documents, and any amendments or addenda thereto: the solicitation documents, offer, RFP Final Proposal (see definition herein), these GPCC and any supplements to the GPCC, change orders, bonds and plans, and the contract agreement, whether attached to or incorporated by reference.

"Contract modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

"Contracting Officer" means for all projects, the Director of Finance of the County of Kaua'i, or the Director's delegated Designee.

"Contractor" means any individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of the work under the terms of the Contract with the County, and acting directly or through its agents or employees. [HAR 3-120-2]

"Cost analysis" means the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed. [HAR 3-120-2]

"Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements which have been actually incurred or which are expected to be incurred by the contractor in performing the contract. [HAR 3-120-2]

"County" means the County of Kaua'i, State of Hawaii.

"Days" means consecutive calendar days unless otherwise specified. [HAR 3-120-2]

"Design and plans" means any and all designs, plans, construction drawings, specifications, cost estimates, work schedules, proposals, studies, reports and other items.

"Designee" means a person appointed by the Director of Finance or the Officer-in-Charge (OIC) to act on its behalf with delegated authority (HAR 3-121-16).

"Director" means the Director of Finance of the County.

"Discussion" means an exchange of information to promote understanding of a County's agency's requirements and offeror's proposal and to facilitate arriving at a contract that will be the best value to the County. Discussions are not permissible in competitive sealed bidding,

except to the extent permissible in the first phase of multi-step sealed bidding to determine the acceptability of technical offers. [HAR 3-122-1]

"Division of Purchasing" means the Division of Purchasing, Department of Finance, with delegated authority to solicit bids and proposals and award contracts.

"Final Proposal" means the final mutually-agreed terms of the proposal submitted by the awarded Offeror in response to the County's RFP or the Best and Final Offer accepted by the County in accordance with HAR 3-122-53 and 3-122-54.

"Guarantee" means a formal assurance of the quality or of the length of use to be expected from a product offered or constructed.

"HAR" means the Hawaii Administrative Rules of the State of Hawaii, as amended.

"Hazardous materials" mean and include any and all radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, hazardous wastes, toxic substances, and any and all other substances or materials defined as "hazardous materials," "extremely hazardous materials," "hazardous wastes" or "toxic substances" under or for the purposes of hazardous materials laws.

"Hazardous materials laws" mean and include all federal, state or local laws, ordinances, rules, regulations or codes, now or hereafter in effect, relating to environmental conditions, human health or industrial hygiene, including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. section 9601, et seq., the Resource Conservation and Recovery Act, 42, U.S.C. section 6901, et seq., the Hazardous Materials Transportation Act, 42 U.S.C. section 1801, et seq., the Clean Water Act, 33 U.S.C. section 1251 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. section 2601 - 2629, the Safe Drinking Water Act, 42, U.S.C. sections 300f - 300j, HRS Chapter 128D, Environmental Response Law, HRS Chapter 342B, Air Pollution Control, HRS Chapter 342D, Water Pollution, HRS Chapter 342H, Solid Waste Pollution, HRS Chapter 342J, Hazardous Waste, HRS Chapter 342L, Underground Storage Tanks, Chapter 342P, Asbestos, and any similar state or local laws or ordinances and the regulations now in effect or hereafter adopted, published or promulgated thereto.

"Head of the purchasing agency" means the Director of Finance.

"HRS" means the Hawaii Revised Statutes of the State of Hawaii, as amended.

"Informal Bid" means a quotation made under small purchase procedures, pursuant to HRS Chapter 103D-305 or a quotation made under emergency purchase procedures, pursuant to HRS Chapter 103D-307.

"Invitation for Bids" or "IFB" means all documents, whether attached or incorporated by reference, utilized for soliciting bids under the competitive sealed bidding source selection method. [HAR 3-120-2]

"Notice to Contractors" means the publication or the notice of a solicitation for offers.

"**Notice to Proceed**" or "NTP" means the document issued to the Contractor designating the official commencement date of the performance under the Contract.

"**Offer**" means the bid, proposal, or quotation. [HAR 3-120-2]

"**Offeror**" means any individual, partnership, firm, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, an offer for the goods, service, or construction contemplated. [HAR 3-120-2]

"**Officer-in-Charge**" or "OIC" means the person responsible, or delegated designee, for carrying out the provisions of the contract and advising the Director on contractual matters.

"**Opening**" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals. [HAR 3-122-1]

"**Overhead**" means continuous or general costs occurring in the normal course of business, including, but not limited to costs for labor, rent, taxes, royalties, interest, discounts paid, insurance, bonds, lighting, heating, cooling, accounting, legal fees, equipment and facilities, telephone systems, depreciation, and amortization. [HRS 238-1].

"**Plans**" (or "**Drawings**") mean the contract drawings and any County-approved revisions to drawings, in graphic or pictorial form, which show the design, location, character, dimensions and details of the work to be done and which shall be part of the Contract documents.

"**Price analysis**" means the evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed. [HAR 3-120-2]

"**Price data**" means factual information concerning prices, including profit, for goods, services, or construction substantially similar to those being procured. In this definition, "prices" refers to offered or proposed selling prices, historical selling prices, and current selling prices of such items. This definition refers to data relevant to both the general contractor and subcontract prices. [HAR-3-120-2]

"**Procurement**" means buying, purchasing, renting, leasing, or otherwise acquiring any good, service, or construction. The term also includes all functions that pertain to the obtaining of any good, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. [HRS 103D-104]

"**Project**" means work to be performed as set forth in the Contract, including furnishing all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of work contemplated under the Contract.

"**Proposal**" means the executed document submitted by an Offeror in response to a Request for Proposals. [HAR 3-120-2]

"**Public Purchase System**" or "PPS" means the County of Kaua'i electronic procurement

system.

"Purchasing agency" means any governmental body which is authorized by HRS 103D or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods, services, or construction.

"Quotation" means a statement of price, terms of sale, and description of goods, services, or construction offered by a prospective seller to a prospective purchaser, usually for purchases pursuant to HRS 103D-305. [HAR 3-122-1]

"Request for Proposals" or "RFP" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals under the competitive sealed proposal source selection method. [HAR 3-120-2]

"Responsible 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. [HRS 103D-104]

"Responsive Bidder or Offeror" means a person who has submitted an offer which conforms in all material respects to the IFB or RFP. [HAR 3-120-2]

"Solicitation" means an invitation for bids, request for proposals, or a request for quotations, or any other document issued by the County for the purpose of soliciting bids or proposals to perform a County contract. [HAR 3-120-2]

"Specifications" mean any description of the physical or functional characteristics, or of the nature of a good, service, or construction item. The term includes descriptions or any requirement for inspecting, testing, or preparing a good, service, or construction item for delivery. [HRS 103D-104]

"State" means the State of Hawaii.

"Standard commercial product" means a product or material, in the normal course of business, is customarily maintained in stock or readily available by a manufacturer, distributor, or dealer for the marketing of the product. [HAR 3-122-1]

"Subcontractor" means any person who enters into an agreement with the Contractor to perform a portion of the work for the Contractor. [HAR 3-120-2]

"Using Agency" means the department(s) of the County of Kaua'i who is (are) the end-user(s) of the project procured by the Division of Purchasing.

"Warranty" means a written statement that promises the good condition of a product and states that the maker is responsible for repairing or replacing the product for a certain period of time after its purchase

"Work" means the furnishing by the Contractor of all labor, services, material, equipment, and other incidentals necessary for the satisfactory performance of the contract.

"**Working day**" means any day on the calendar, exclusive of State holidays, Saturdays, and Sundays. Unless another meaning is intended, "working days" shall mean consecutive working days.

1.2 REFERENCES.

- A. When reference is made to known Standards and Specifications, the most recently adopted and published edition of such standards and specifications on the date of the notice to offerors is contemplated, unless otherwise specified.
- B. Abbreviations. The following abbreviations shall refer to the technical society, organization, body, code, rules, or standards, listed opposite each abbreviation:

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ADAAG	Americans with Disabilities Act Accessibility Guidelines
AISC	American Institute of Steel Construction
AITC	American Institute of Timber Construction
ANSI	American National Standard Institute
ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
AWS	American Welding Society
CFR	Code of Federal Regulations
FAR	Federal Acquisition Regulation
FHWA	Federal Highway Administration, U.S. Department of Transportation
FS	Federal Specifications
FTA	Federal Transit Administration
G06	General Order No. 6 of the Public Utilities Commission, Rules for Overhead Electric Line Construction
GRJP	General Rules for Joint Use of Poles
HAR	Hawaii Administrative Rules

HRS	Hawaii Revised Statutes
IBC	International Building Code
IES	Illuminating Engineering Society
IFB	Invitation for Bids
IRC	International Residential Code
ITC	Instructions to Contractors
NEC	National Electrical Code
RFP	Request for Proposal
UL	Underwriters' Laboratories, Inc.
UPC	Uniform Plumbing Code
WCLA	West Coast Lumberman's Association

C. County of Kaua'i Standards and Specifications. The following standards and specifications of the County of Kaua'i shall apply:

1. Sewer Design Standards of the Department of Public Works, June 1973;
2. Standard Details for Public Works Construction, September 1984, commonly referred to as Standard Details;
3. Parks Standard Details for Parks and Recreation Construction, May 1990;
4. Water System Standards 2002 (and approved amended materials list); and
5. Construction Best Management Practices (BMP) for Sediment and Erosion Control for the County of Kaua'i, April 2, 2004.

D. State of Hawai'i Standards and Specifications. The following standards and specifications of the State of Hawai'i shall apply:

1. Hawai'i Standard Specifications for Road and Bridge Construction, 2005, as amended.

SECTION 2 BIDDING/PROPOSAL INSTRUCTIONS

2.1 PLANS AND SPECIFICATIONS

All plans and specifications are electronically available, and may be obtained from the online hosted eProcurement system, Public Purchase.

2.2 QUALIFICATIONS OF OFFERORS

All offerors shall be contractors licensed in accordance with Chapter 444, Hawaii Revised Statutes, as amended, to perform the work under the contract. Prospective offerors must be capable of performing the work for which solicitations are being called.

No contract will be awarded to any person who has been suspended under and as provided in, the provisions of HRS Chapter 104, HAR Chapter 126 and HRS 103D-702, or to any firm in which such suspended person has an interest.

2.3 DETERMINATION OF RESPONSIBILITY

The procurement officer shall determine, on the basis of available information collected, the responsibility or nonresponsibility of a prospective offeror.

If the procurement officer requires additional information, the prospective offeror shall promptly supply such information within two working days from the date requested. Failure to supply the requested information within the above stated time may be considered unreasonable and may be grounds for a determination of nonresponsibility.

Notwithstanding the paragraph immediately above, the procurement officer shall not be precluded from requesting additional information.

A written determination of non-responsibility of an offeror shall be made by the procurement officer. The prospective offeror shall be immediately notified of the determination. The decision of the procurement officer shall be final unless the offeror applies for administrative review pursuant to HAR Chapter 126. (HRS 103D-310) (HRS 103D-310) (HAR 3-122-108)

2.4 OFFER

Offers shall be electronically submitted via the online hosted eProcurement system, in accordance with the requirements of the solicitation. Offers that cannot transmit successfully as a result of system failure within the County shall be addressed via the issuance of the appropriate addendum.

A late offer 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 County.

Offers transmitted via any other means than Public Purchase System (PPS) shall be deemed

unacceptable and shall be rejected. (HAR 3-122-16.08(a)(b))

2.5 OFFER FORM, INTERPRETATION OF

The electronic offer form within the solicitation does not necessarily outline all of the work involved in the performance of the contract, but is merely a list of items upon which the computation of compensation is to be based. The electronic offer contains all items to be used in such computation, and the compensation computed therefrom shall be full compensation for the performance of the contract.

Any questions regarding the solicitation shall require submission of a question via PPS for clarification no later than ten (10) calendar days prior to the date fixed for opening, unless otherwise noted pursuant to the requirements of the solicitation.

For RFP, any substantial oral clarification of a proposal shall be transmitted via PPS to the priority-listed Offerors.

If during discussions there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate the clarification or change. Addenda to the RFP shall be distributed only to priority-listed Offerors.

The offeror submitting the inquiry shall be responsible for proper transmission. If additional information is deemed necessary, such information will be issued in an addendum by the Division of Purchasing. The addendum will issued via PPS to all persons who have properly registered and obtained the solicitation. All addenda issued shall be a part of the contract.

No oral interpretation, instruction or information concerning the contract given by any officer, employee or agent of the County shall be binding on the County. (HAR 3-122-16.06)

2.6 PRICES TO COVER ENTIRE CONTRACT

Offerors shall include in their offered prices the entire cost of the performance of the contract, and it is understood and agreed that there is included in each lump sum or unit price, the entire cost of all items incidental to the performance of the contract, covered by such lump sum or unit price offer. Offerors in figuring the offer price shall take into consideration the cost of all freight and delivery charges, insurance and taxes; and shall include the cost of furnishing and installing all equipment as called for in the specifications including warranty repairs of the complete unit. Whenever installation is specified, installation shall include all necessary labor, materials and other incidentals required to make a complete operative unit. When an offeror is in doubt as to the proper item to which the anticipated cost of any incidental item is to be allocated, he or she shall include such cost in the lump sum or unit price for the items that he or she deems most appropriate.

It is understood and agreed that whenever unit price(s) is/are called for in the solicitation, all offerors must indicate their unit price(s). Failure to comply will be grounds for rejection. (HAR 3-122-97)

Prices shall remain valid for sixty (60) calendar days after the established bid submission deadline.

2.7 BID SECURITY

Bid security shall be required for construction contracts of \$25,000 or more or for construction contracts for less than \$25,000 when required by the Contracting Officer. Bid security shall be in an amount equal to at least five percent (5%) of the amount of the base bid and additive alternates or in an amount required by the terms of the federal funding.

Acceptable bid security, shall be limited to:

1. Surety bond underwritten by a company licensed to issue bonds in the State of Hawaii;
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, or a certified check accepted by a bank, savings institution, or credit union insured by the United States Federal Deposit Insurance Corporation or the National Credit Union Administration and payable at sight or unconditionally assigned to the County.
 - a. These instruments may be utilized only to a maximum of \$100,000.
 - b. If the required security or bond amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions which meet the requirements of this subsection shall be accepted. (HAR 3-122-222)

All documentation provided to the purchasing agency shall contain the original signatures signed in ink. (HAR 2-122-222, 3-122-223)

2.8 SUBSTITUTIONS

A. Before Bid Opening

Whenever specifications for any material, article, device, product, fixture, form, type of construction or process is indicated or specified by patent or proprietary name, by name of the manufacturer or by catalog number, such specifications shall be deemed to be used for the purpose of establishing a standard of quality and to facilitate the description of the material or process desired and shall be deemed to be followed by the words "or equal". The bidder shall base his bid on one of the specified brand names unless alternate brands are qualified as equal or better by the Director in an addendum to such specifications and/or plans.

Where certain brands are specified in the specifications and/or plans, such alternate brands may be qualified through the submittal to the OIC of a written request for review and approval of the substitution. The email request must be addressed to COKPurchasing@kauai.gov. The email's subject line shall state "SUBSTITUTION REQUEST FOR IFB # _____" and must be received by the DIVISION OF PURCHASING no later than ten (10) calendar days prior to the date fixed for bid opening. The statement of variances must list all features of the proposed substitution which differ from the plans, specifications and/or product(s) specified and must further certify that the substitution has no other variant features. The brochures shall be clearly marked showing make, model, size, options, etc., and must include sufficient evidence to enable the OIC to evaluate each feature listed as a variance. Should an unlisted variance be discovered after installation of the product, the penalty shall be immediate replacement with a specified product at no cost to the County. If sufficient evidence from which a determination can be made for a particular model does not accompany a request for substitution, the request shall be denied. Substitution requests not complying with the above requirements will be denied. Substitution requests sent to other agencies and received by the Division of Purchasing after the deadline above will also be denied. An addendum shall be issued to the specification to formally inform the prospective bidders of any approved substitution of brand or brands which are equivalent to those specified and acceptable for use on the proposed project.

2.9 READING OF BIDS

Pursuant to HRS 103D, electronic sealed offers via PPS will be received up to the date and time published, and recorded immediately for the Division of Purchasing, Department of Finance.

Bid reading information will be posted on the Division of Purchasing website.

Offerors may request for nondisclosure of trade secrets and other proprietary data. Confidential material shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. The Contracting Officer shall determine the validity of the request for nondisclosure; any disagreement as to disclosure shall be handled according to HAR 3-122-30. (HAR 3-122-30)

2.10 RECEIPT AND REGISTRATION OF PROPOSALS

Pursuant to HRS 103D, electronic sealed offers via PPS will be received up to the date and time published, and recorded immediately for the Division of Purchasing, Department of Finance. Proposals and modifications shall not be opened publicly. Proposals and modifications shall be shown only to members of the evaluation committee. (HAR 3-122-51).

2.11 EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS AND SITE

Offerors shall examine the site of the proposed work and the provisions of the contract,

including, but not limited to the proposal, addenda, bond forms, bid form, special provisions, plans and specifications before submitting a bid or proposal. The submission of an offer shall be considered conclusive evidence that the Offeror has made such examination; knows the surface and subsurface conditions of the site, the character, quality and quantities of labor, materials and equipment and other requirements necessary under the contract; and agrees to all and every item, covenant, condition and provision of the contract.

Where investigation of subsurface conditions has been made by the County, in respect to foundation or other design, Offerors may inspect the records of the County as to such investigation and examine any sample that may be available.

Investigations of subsurface conditions are made for the purpose of design, and the County assumes no responsibility whatsoever as to the sufficiency or accuracy of borings or of the log of test borings or reports or other investigations, or of the interpretation thereof, and there is no guaranty, either expressed or implied, that the conditions indicated are representative of those to be encountered during the performance of the contract, or any part thereof, or that the Offeror may not encounter unforeseen subsurface conditions.

Making information concerning subsurface conditions available to Offerors is not to be construed in any way as a waiver of the provisions of the first paragraph of this subsection and Offerors must satisfy themselves through their own investigation as to conditions to be encountered.

Records of such investigations as may have been made by the County may be inspected.

2.12 PREFERENCES

- A. All offers/bids shall comply with the preferences, as applicable, outlined in HAR 3-124 and the Apprenticeship Program Preference laid out in Section 103-55.6, Hawai‘i Revised Statutes, as enacted by S.B. 19, Act 17, SLH 2009, and the State of Hawai‘i Comptroller’s Memorandum 2011-25 as amended, which provides for a Hawai‘i Apprenticeship Preference for public works construction projects with estimated values of \$250,000 or greater.
- B. This subsection shall not apply whenever its application will disqualify the County from receiving Federal funds or aid.

2.13 MODIFICATION OR WITHDRAWAL OF OFFERS

A. Pre-opening Modification or Withdrawal of Offers.

Offers may be modified or withdrawn at any time prior to the time fixed in the notice to Offerors for opening of offers or if applicable pursuant to solicitation documents, prior to the date at which the Best and Final Offer is due, using the PPS.

Any notice of withdrawal or notice of modification of any offer with the actual modification received after the time and date set for receipt and opening is late and shall not be

considered for award except when received before contract award and would have been timely but for the action or inaction of personnel within the County. (HAR 3-122-16.08)

After the established due date for offers, an offer may be withdrawn only if the County fails to award the contract within sixty (60) calendar days after the established due date for offers.

2.14 LISTING OF JOINT CONTRACTORS AND SUBCONTRACTORS

HRS 103D-302, provides that each bid for Public Works Construction Contracts shall include the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the Public Works Construction Contract. The bid shall also indicate the nature and scope of the work to be performed by such joint contractors or subcontractors. All bids which do not comply with this requirement shall be rejected pursuant to HRS 103D-302(b).

MANDATORY LICENSING REQUIREMENT:

"A" general engineering contractors and "B" general building contractors are reminded that due to the Hawai'i Supreme Court's January 28, 2002 decision in Okada Trucking Co., Ltd. v. Board of Water Supply, et al., 97 Haw. 450 (2002), they are prohibited from undertaking any work, solely or as part of a larger project, which would require the general contractor to act as a specialty contractor in any area in which the general contractor has no license. Although the "A" and "B" contractor may still bid on and act as the "prime" contractor on an "A" or "B" project (See, HRS 444-7 for the definitions of an "A" or "B" project.), respectively, the "A" and "B" contractor may only perform work in the areas in which they have the appropriate contractor's license (An "A" or "B" contractor obtains "C" specialty contractor's license either on its own, or automatically under HAR 16-77-32.). The remaining work must be subcontracted out to appropriately licensed entities. **It is the sole responsibility of the contractor to review the requirements of this project and determine the appropriate licenses that are required to complete the project.**

Although the bid documents may provide a list of the contractor licenses that the County anticipates are required to complete this particular project, this list is not all inclusive and additional licenses may be required. If a specialty license is required to complete the scope of work and the contractor does not list said license(s), the contractor may have their bid rejected as non-responsive.

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

2.15 BIDS, DISQUALIFICATION OF

- A. Bids which are conditional or not in compliance with the bidding instructions may be rejected.

Multiple or alternate offers. Unless specifically provided for in the solicitation, multiple or alternate offers shall not be accepted and all such offers shall be rejected. (HAR 3-122-4)

- B. Bids may be rejected for the following reasons, including, but not limited to:
1. Bidder determined to be "nonresponsible," pursuant to HAR Subchapter 13. (HAR 3-122-97); or
 2. The bid is "not responsive". Bid does not conform in all material respects to the invitation for bids by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the invitation for bid pursuant to HAR 3-122-33. (HAR 3-122-97); 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 HAR 3-122-33. (HAR 3-122-97)
 4. Bid submitted by any person submitting more than one bid under the same or different names, under his or her own name, or through his or her agents, or through joint ventures, partnerships or corporations in which he has more than 25% interest in each of them, or through any contractor thereof.
 5. If there is any evidence indicating that two or more bidders are in collusion to restrict competitive bidding, the bids of all such bidders shall be rejected and such evidence may be a cause for the disqualification of the participants in any future proposal involving any contract with the County.
 6. Any offer which is conditioned upon receiving award of both the particular contract being solicited and another Department contract. (HAR 3-122-6)

2.16 PROPOSAL, DISQUALIFICATION OF

- A. A proposal may be accepted with modification or correction unless the solicitation states otherwise.
1. This allowance must be considered in determining whether reasons exist for rejecting all or any part of a proposal.
 2. A proposal may be rejected for reasons, including, but not limited to:

- a. The offeror is non-responsible pursuant to HAR, Subchapter 13. (HAR 3-122-97)
- b. The proposal, after any opportunity has passed for modification or clarification, fails to meet the announced requirements of the agency in some material respect; or
- c. The proposed price is clearly unreasonable.

2.17 OFFEROR LIMITED ACCEPTANCE

- A. An offeror may not limit acceptance to the entire bid or proposal offering, unless allowed by the solicitation:
 1. If the acceptance of an offer is so limited by the offeror but not allowed, the offer will be determined to be not acceptable and rejected.
 2. If the acceptance of an offer is so limited by the offeror and allowed, the purchasing agency shall not reject part of the offer and award on the remainder.

2.18 MISTAKES IN BIDS

- A. A bidder may correct, waive or withdraw an obvious mistake in his or her bid to the extent it is not contrary to the best interest of the County or to the fair treatment of other bidders.
- B. Before Bid Opening. A bidder may remedy a mistake in a bid discovered before the time fixed in the notice to bidders for opening of bids by withdrawing or correcting the bid as provided in subsection 2.13 of these GPCC.
- C. After Bid Opening But Prior to Award.
 1. A mistake in a bid discovered after bid opening but prior to award may be corrected or waived if:
 - a. The mistake is attributable to an arithmetical error, the Procurement Officer shall so correct the mistake. In case of error in extension of bid price, unit price shall govern.
 - b. The mistake is a minor informality which shall not affect price, quantity, quality, delivery, or contractual conditions, the Procurement Officer may waive such informalities or allow the bidder to request correction by submitting proof of evidentiary value which demonstrates that a mistake was made. The Procurement Officer shall prepare a written approval or denial in response to this request. Examples of such mistakes include:

- i. Typographical errors;
 - ii. Failure to return the number of signed bids required by the invitation for bids;
 - iii. Failure to acknowledge receipt of an amendment to the Invitation for Bids, but only if:
 - (1) It is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or
 - (2) The amendment involved had a negligible effect on price, quantity, quality or delivery;
 - iv. Arithmetical errors;
 - v. Transposition errors;
 - vi. Failure of a bidder to sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound.
2. A mistake in a bid discovered after bid opening but prior to award may be withdrawn if the mistake is attributable to an obvious error which shall affect price, quantity, quality, delivery, or contractual conditions, provided:
- a. The bidder requests withdrawal by submitting proof of evidentiary value which demonstrates that a mistake was made; and
 - b. The Procurement Officer prepares a written approval or denial in response to this request. (HAR 3-122-31).

D. After Award.

A mistake in a bid discovered after award is not permissible except when the Director makes a written determination that it would be unreasonable not to allow the mistake to be remedied. (HRS 103D-302, HAR 3-122-31)

SECTION 3 AWARD AND EXECUTION OF CONTRACT

3.1 AWARD OF CONTRACT

No contract shall be awarded to any person suspended under, and as provided in, the provisions of HRS Chapters 104 and 444, as amended and any federal law if federal funds are used in the contract, or to any firm in which such suspended person as an interest.

A. Bids.

Award of contract, if made, shall be made to the lowest responsive, responsible bidder, whose bid meets the requirements and criteria set forth in the invitation for bids. (HAR 3-122-33)

B. Proposals.

Award of contract, if made, shall be made to the responsible offeror whose proposal is determined in writing to provide the best value to the County taking into consideration price and the evaluation criteria in the request for proposals. (HAR 3-122-57)

3.2 CANCELLATION OF SOLICITATION OR AWARD

An IFB, a RFP, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the governmental body which issued the invitation, request, or other solicitation, in accordance with rules. (HRS 103D-308).

The Contracting Officer reserves the right to cancel a solicitation at any time before a contract is executed by the County and the contractor.

3.3 FUNDS, AVAILABILITY OF

- A. 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; provided that if the contract is a multi-term contract, the Director of Finance shall only be required to certify that there is an appropriation or balance of an appropriation sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract.

This section shall not apply to any contract under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded. (HRS 103D-309).

B. State and/or Federal Funds.

In any contract involving not only state or county funds but supplemental funds from the

federal government, this section shall be applicable only to that portion of the contract price as is payable out of state or county funds. As to the portion of the contract price as is expressed in the contract to be payable out of federal funds, the contract shall be construed to be an agreement to pay the portion to the contractor, only out of federal funds to be received from the federal government. This subsection shall be liberally construed so as not to hinder or impede the County in contracting for any project involving financial aid from the federal government. (HRS 103D-309(b))

C. **Contracts Utilizing One-Hundred Percent (100%) Federal Funds.**

A contract which is 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 by the County from the federal government when the federal funds are so received by the County 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. (HRS 103D-309(b))

3.4 ENTERING INTO CONTRACT

Upon award of the contract to an offeror, such offeror shall enter into the contract by signing the contract and by furnishing bonds for faithful performance and payment as prescribed in the invitation for bid or proposal, copies of certificates of insurance and endorsements demonstrating compliance with the insurance policies required to be procured by the contractor and subcontractor in subsection 4.5 within ten (10) calendar days after the date the contract has been transmitted to the contractor or within such further time as the Director of Finance may allow after the offeror has received the contract for execution.

If the offeror to whom the contract is awarded fails or neglects to enter into the contract and furnish bonds, as prescribed in subsection 3.6, and the copies of insurance policies prescribed in subsection 4.5, the bid security which accompanied the offer pursuant to subsection 2.7 shall be forfeited or in the case where such bid security was in the form of a surety bond, the proceeds representing the bid security 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 the next responsible proposer whose proposal is determined to provide the best value to the County, or publish another call for bids or proposals as, in his or her judgment, may be in the best interests of the County.

3.5 RESPONSIBILITY OF OFFERORS and TAX CLEARANCE

Upon award of the contract, HRS 103D-310 specifies that all Offerors shall comply with all laws governing entities doing business in the State, including, but not limited to HRS Chapters 237, 383, 386, 392, and 393.

In addition, pursuant to HRS 103D-328 and HRS 103-53, no contract shall be binding or effective until the purchasing agency confirms tax clearance from the director of taxation and the Internal Revenue Service. The Offeror shall provide updated tax clearances as

required by the Director of Finance to comply with HRS 103-53, as amended.

As proof of compliance with the above, the purchasing agency must verify contractor compliance using Hawaii Compliance Express (HCE), as a pre-requisite to award, for the following requirements:

1. **Tax Clearance from the Department of Taxation and Internal Revenue Service to demonstrate compliance with HRS 237, General Excise Tax Law, and HRS 103D-328, Tax Clearance; and**
2. **Compliance from the Department of Labor and Industrial Relations to verify compliance with HRS Chapters 383 (Hawaii Employment Security Law), 386 (Worker's Compensation Law), 392 (Temporary Disability Insurance Law), and 393 (Prepaid Healthcare Act), current within six months of issuance date; and**
3. **Good Standing from the Department of Commerce and Consumer Affairs.**

3.6 PERFORMANCE AND PAYMENT BONDS

- A. Performance and payment bond shall be required for construction contracts:
 1. When the contract price is \$25,000 or more (Act 173, SLH 2012); and
 2. When the contract price is less than \$25,000 and is required by the Director.
 3. Federally funded contracts wherein the conditions of the funding requires a performance or payment bond or both
- B. The amounts of the performance and payment bonds, when required, shall be as follows:
 1. For construction contracts, performance and payment bonds shall each be in an amount equal to one hundred per cent of the amount of the contract price;
 2. For contracts where contract price cannot be determined at the time of award, the amounts of the performance and payment bonds shall be as stated in the solicitation;
 3. For federally funded contracts, performance or payment bond or both shall each be in amount required by the terms of the federal funding.
- C. The performance and payment bonds, if required, shall be delivered by the contractor to the County at the same time the contract is executed. If the contractor fails to deliver the required performance and payment bonds, the contractor's award shall be cancelled, the contractor shall be subject to a claim by the County for all resulting damages, its bid

security shall be enforced, and award of the contract may be made to the next lowest offeror (HAR 3-122-224).

- D. Performance and payment bonds, if required, shall continue for twelve (12) calendar months after either 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 (HAR 3-122-227).
- E. Acceptable forms of performance and payment bonds.
 - 1. Surety bond underwritten by a company licensed to issue bonds in the State of Hawaii;
 - 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, or a certified check accepted by a bank, savings institution, or credit union insured by the United States Federal Deposit Insurance Corporation or the National Credit Union Administration and payable at sight or unconditionally assigned to the County.
 - a. These instruments may be utilized only to a maximum of \$100,000.
 - b. If the required security or bond amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions which meet the requirements of this subsection shall be accepted. (HAR 3-122-222)
- 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 made 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 or her 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 Director may allow in writing.

3.7 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

If awarded a contract in response to this solicitation, offeror agrees to comply with HRS 11-355, which states that campaign contributions are prohibited from a State and County

government contractor during the term of the contract if the contractor is paid with funds appropriated by the legislative body between the execution of the contract through the completion of the contract. Questions regarding this statute should be directed to State of Hawai‘i Campaign Spending Commission.

3.8 HRS 103-55.5, WAGES AND HOURS OF EMPLOYEES ON PUBLIC WORKS CONSTRUCTION

The contractor shall comply with the requirements of HRS 103-55.5 if awarded a contract. The attached Schedule F-1, WAGE CERTIFICATE FOR CONSTRUCTION CONTRACTS shall be signed and transmitted as a condition of contracting.

3.9 EMPLOYMENT OF STATE RESIDENTS ON CONSTRUCTION PROCUREMENT CONTRACTS

Bidders are advised of the applicability of Act 68, SB 2840, HRS 103B, 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 103D, HRS 103D-305 (small purchases), or if there is a conflict with any federal law as further detailed herein under “Conflict with Federal Law.”

3.10 HAWAII PROCUREMENT LAW

If any provision in these GPCC is in conflict with any provision in the HAR, HRS 103D and 103, the provisions of the HAR, HRS 103D and 103 shall control and supersede the provisions in these GPCC.

SECTION 4 LEGAL RELATIONS AND RESPONSIBILITY

4.1 AUTHORITY OF THE OFFICER-IN-CHARGE (OIC)

The OIC shall decide all questions which may arise relating to the quality and acceptability of the materials furnished and work performed, the manner of performance and rate of progress of the work, the interpretation of the plans and specifications, the acceptable fulfillment of the contract on the part of the Contractor, the compensation under the contract and the mutual rights of the parties to the contract.

The OIC shall have the authority to enforce and make effective such decisions and orders which the Contractor fails to carry out promptly and diligently.

The OIC shall have the authority to suspend the work wholly or in part due to the failure of the Contractor to correct conditions unsafe for the workers or the general public; for failure to carry out provisions of the contract; for failure to carry out orders; for such periods as he may deem necessary due to unsuitable weather; for conditions considered unsuitable for the prosecution of the work or for any other condition or reason deemed to be in the public interest.

4.2 INDEPENDENT CONTRACTOR

- A. The contractor shall perform the contract as an independent contractor and shall defend, indemnify and hold harmless the County, its officer, agents, and employees from and against all claims, damages, losses, liability, and expenses, including, but not limited to attorney's fees, court costs, or other alternative dispute resolution costs arising out of, resulting from, or otherwise but for the performance or furnishing of work or services under the contract for any injury, death or damages to persons or property arising out of the performance of the contract; but only to the extent caused in whole or in part by the actual or alleged negligent acts, errors, or omissions of the Contractor, Contractor's subcontractor(s), or anyone directly or indirectly employed or hired by the Contractor or anyone for whose acts Contractor may be liable.

- B. The obligations of the contractor under Subparagraph A above shall not extend to the liability of the County, and its officers and employees because of negligence in (1) the preparation of maps, plans, drawings, land surveys, designs or specifications, or (2) the giving of directions or instructions with respect to the requirements of the contract by written order; provided that such giving of directions or instructions is the primary cause of the injury or damage.

- C. The contractor shall defend, indemnify and save the County, its officers, agents, and employees harmless from any and all claims for infringement by reason of the use of any patented design, device, process or material, in connection with work to be performed under the contract.

All royalties due or becoming due for the use of any patented design, devices, process or material used in connection with the work performed under the contract shall be paid by the contractor, and shall be held to be included in the contract price.

- D. 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 to the extent arising from contractor's negligent performance of his or her 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.

4.3 LAWS, REGULATIONS

The contractor shall at all times keep himself fully informed, of all future and present Federal, State, and County laws, ordinances, policies, rules and regulations which affect the contract and the performance thereof, including, but not limited to:

- A. Chapter 103, HRS, relating to expenditure of Public Money and Public Contracts.
- B. Chapter 103D, HRS, relating to the Hawaii Public Procurement Code.
- C. Chapter 104, HRS, relating to Wages and Hours of Employees on Public Works.
- D. Chapter 321, HRS, relating to Health Department.
- E. Chapter 377, HRS, relating to Hawaii Employment Relations Act.
- F. Chapter 378, HRS, relating to Employment Practices.
- G. Chapter 383, HRS, relating to Hawaii Employment Security Law.
- H. Chapter 386, HRS, relating to Worker's Compensation Law.
- I. Chapter 387, HRS, relating to Wage and Hour Law.
- J. Chapter 388, HRS, relating to Payment of Wages and Other Compensation.
- K. Chapter 390, HRS, relating to Child Labor Law.
- L. Chapter 396, HRS, relating to Occupational Safety and Health.

M. Chapter 444, HRS, as amended, relating to licensing of contractors.

The contractor shall comply with all such present and future laws, regulations, and ordinances, including the giving of all notices necessary and incident to the performance of the contract. If any discrepancy or inconsistency is discovered between the contract and any such law, regulation or ordinance, the contractor shall forthwith report the same in writing to the OIC.

4.4 PERMITS, LICENSES

The contractor shall obtain all permits, licenses and approvals required by the County, State, or Federal Government, for the execution of the contract, and pay all charges and fees therefore, including, but not limited to overtime inspection, cost of preparation of documents, and any and all other costs associated with attaining required permit approvals.

4.5 INSURANCE

Contractor agrees to maintain, on a primary basis and at its sole expense, at all time during the term of this contract and prior to the commencement of any work, the following insurance coverage, limits and endorsements described herein. The requirements contained herein , as well as the County's review or acceptance of insurance maintained by the Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the Contractor under this contract. Further, unless otherwise approved by the Director of Finance, the policies of insurance maintained by the Contractor shall provide the minimum limit(s) and coverage(s) as specified herein and be placed with an insurance carrier authorized to do business in the State of Hawaii with an A. M. Best rating of A-VII or higher.

A. **COMMERCIAL GENERAL LIABILITY.** Contractor shall procure and maintain commercial general liability coverage written on an occurrence basis covering the liability for all operations of the Contractor, including operations under all Subcontracts. The commercial general liability policy shall include the following coverage(s):

- Premises Operations
- Independent Contractors
- Blanket Contractual Liability
- Products and Completed Operations
- Broad Form Property Damage including Loss of use
- Personal Injury
- Employees named as Additional Insured
- Work performed by Subcontractors
- Severability of Interest
- Explosion, Collapse and Underground, where applicable

The following Limits of Liability are the required minimum limits which will be maintained by the Contractor. The County expressly reserves the right to require higher

Limits of Liability provided by the Contractor when in the sole judgment of the County the exposures contained in the Scope of Work present an increased exposure to the County and the general public. These minimum Limits may be satisfied by a combination of the primary commercial general liability policy and an Umbrella policy maintained by the Contractor.

- Bodily Injury and Property Combined Single limit
\$2,000,000 per Occurrence
\$2,000,000 Aggregate
- Personal Injury
\$1,000,000 per Occurrence
\$2,000,000 Aggregate
- Products and Completed Operations
\$1,000,000 per Occurrence
\$2,000,000 Aggregate

Products and Completed Operations coverage protecting the Contractor and Subcontractors (where applicable) shall be maintained for one (1) year after Final Acceptance of the work or the County accepts the project as completed. The Additional Insured status provided to the County as described later in the insurance requirements shall be provided using the ISO Additional Insured Endorsement Form CG 20 10 and Form 20 37 or other endorsements providing Additional Insured status to the County for both course of construction and products/completed operations upon completion of the work.

B. COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY. Contractor shall procure and maintain automobile liability coverage written on an occurrence basis for all Owned, Non Owned and Hired automobiles. If the Contractor does not own automobiles, Contractor shall maintain coverage for Hired and Non Owned auto liability by an endorsement to the commercial general liability policy. Coverage shall be maintained for automobile contractual liability, uninsured and underinsured motorist coverage, basic no-fault and personal injury protection as required by Hawaii law with the following limits:

- Bodily Injury \$1,000,000 per person/\$1,000,000 per accident
- Property Damage \$1,000,000 per accident

C. WORKERS COMPENSATION & EMPLOYERS LIABILITY. Contractor shall procure and maintain Workers Compensation and Employers Liability insurance as required with the State of Hawaii Revised Statutes chapter 386. The minimum limits of liability to be maintained are:

- Coverage A – Workers Compensation – Statutory
- Coverage B – Employers Liability

\$1,000,000 Bodily Injury from Each Accident
\$1,000,000 Bodily Injury from Disease
\$1,000,000 Bodily Injury Aggregate from Disease

- D. **UMBRELLA LIABILITY.** Contractor may procure and maintain an umbrella policy written on a following form basis with coverage and limits excess of the underlying commercial general liability, commercial automobile liability and employers liability coverage to meet the minimum required limits. The umbrella policy shall have an effective date concurrent with the casualty policies and the annual general aggregate limit will annually reinstate to satisfy the required limits.
- E. **BUILDERS RISK.** Contractor shall procure and maintain an Inland Marine Builders Policy for all projects that consist of building structures. The form shall be written to protect the interests of the County, Contractor, Subcontractors (if any), architects and engineers and shall include coverage for property in transit, on site and off site, which would become incorporated into the structure. The insured amount shall be 100% of the projected completed value of the structure unless an Agreed Amount is stipulated between the County and the Contractor. The coverage shall be written to cover the structure on an All Risk basis at Replacement Cost and Completed Value form basis. The perils of Flood and Earthquake and the limit of liability for those perils will be determined by the County per the individual risk profile of the project. The policy will not have an automatic termination clause upon substantial completion. The builders risk policy will remain in full force and effect until Final Acceptance by the County.
- F. **POLLUTION LEGAL LIABILITY.** The County reserves the right to require the Contractor to procure and maintain pollution legal liability coverage when the Scope of Work involves an exposure to pollutants or impairment of the environment. The policy shall provide coverage for third party liability, clean-up, and corrective action including assessment, remediation and defense costs. The policy may be written on either an occurrence or claims made basis. The minimum limits of liability shall be:
- \$1,000,000 per claim
 - \$2,000,000 Annual Aggregate
- G. **PROFESSIONAL LIABILITY (Errors & Omissions).** If professional services are required in the Scope of Work, the Contractor shall procure and maintain professional liability coverage. Professional liability policies may be written on either an occurrence or claims made basis. If the policy is written on a claims made basis the Contractor will continue to maintain and provide evidence of this coverage for a period of two years after substantial completion of the project. The policy shall have the following minimum limits:
- \$1,000,000 per claim
 - \$1,000,000 Annual Aggregate

H. **GENERAL CONDITIONS.** The Contractor shall be subject to the following requirements regarding the insurance provisions. Failure to secure and maintain the required insurance shall be deemed a major breach of contract. In the event the County must expend funds that would have been covered and paid by the required insurance coverage, Contractor shall reimburse the County for such funds.

- Waiver of Subrogation – Contractor will provide a waiver of subrogation in favor of the County for the commercial general liability, commercial automobile liability and workers compensation policies. This waiver of subrogation requirement shall be waived if the policy specifically prohibits such an endorsement or voids coverage on a pre-loss basis.
- Additional Insured – Contractor will name the County of Kaua‘i, its elected and appointed officials, officers and employees as an Additional insured to the commercial general liability, commercial automobile liability and Umbrella policies. If a pollution legal policy is required Contractor shall name the County of Kaua‘i as an Additional insured. The Builders Risk policy will name the County of Kaua‘i as an Additional Insured and Loss Payee.
- Primary and Non Contributory – All policies required of the Contractor will be endorsed as primary and any insurance or self-insurance program maintained by the County shall be non-contributory.
- Deductibles and Self-Insured Retentions – Any deductibles or self-insured retentions must be disclosed to the County prior to the commencement of work. Contractor shall disclose if the deductibles and retentions to either defense costs or indemnity or both. All deductibles and self-insured retentions will remain the sole responsibility of the Contractor. The County has the option to require Contractor to provide a financial guarantee or demonstrate the financial capacity to satisfy the deductibles and self-insured retentions.
- Certificate of Insurance (COI) – As a condition of contract execution, Contractor shall provide the County a COI demonstrating the required coverage and limits is in full force and effect. Contractor will give the County immediate notice if the required coverage is cancelled or non-renewed by the insurer. The Certificate Holder address shall read as follows:

County of Kaua‘i
Contracting Department/ Agency
Address of the Contracting Department/Agency
Attention: (Name of OIC)
Contract Number and Project Title

- Contractor shall furnish the County with original certificates and endorsements effecting required coverage(s). All certificates and endorsements are to be received and approved by the County before work commences. The County reserves the right

to require complete certified copies of all required insurance policies, including endorsements affecting the coverage required at any time.

- Failure to secure and maintain the required insurance shall be considered as a major breach of Contract. Should the County be forced to expend funds that would have been covered under any specified insurance, Contractor shall agree to reimburse the County for such funds.

I. **RIGHT TO REVISE OR REJECT.** The County reserves the right, but not the obligations, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work or specifications affecting the acceptability of coverage. Additionally, the County reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due to its poor financial conditions or failure to operate legally.

4.6 NO PERSONAL LIABILITY

Neither the Contracting Officer nor the OIC nor any other officer or employee of the County, in the performance of their duties, shall incur personal liability to the contractor for any action taken in good faith.

SECTION 5 SCOPE OF CONTRACT

5.1 SCOPE OF CONTRACT

The scope of the contract encompasses the contractor's furnishing of, and payment for, all labor, supervision, skills, materials, tools, transportation, equipment and apparatus, and all incidentals necessary to perform all the work and do all the things necessary in accordance with the provisions of the contract documents by the contractor.

5.2 MODIFICATIONS

A. Oral Directive

Any directive, direction, instruction, interpretation or determination through oral order, email, or text message (“oral directive”) from the OIC, which in the opinion of the Contractor causes any change, shall be considered as a change only if the Contractor gives the OIC written notice of its intent to treat such oral directive as a change directive. Such written notice must be delivered to the OIC before the Contractor acts in conformity with the oral directive, but not more than five (5) days after delivery of the oral directive 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. Such written notice may not be waived and shall be a condition precedent to the filing of any claim by the Contractor. Unless the Contractor acts in accordance with this procedure, any such oral order shall not be treated as a change for which the Contractor may make a claim for an increase in the contract time or contract price related to such work.

B. Change order.

The Contracting Officer, at any time, and without notice to any surety, in a signed writing designated or indicated to be a change order, may unilaterally make changes in the work within the scope of the contract as may be found to be necessary or desirable and may unilaterally make changes in the time of performance of the contract that does not alter the scope of the contract work. 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 OIC at no change in contract price or time.

1. Adjustment of price or time for performance. If any change order increases or decreases the contractor's cost of, or the time required for, performance of 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. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of this contract or as negotiated. Failure of the parties to agree to an adjustment shall not excuse a contractor from proceeding with the contract as changed, provided that the County promptly and duly makes such

provisional adjustments in payments or time for the direct costs of the work as changed as the County deems reasonable. The right of the contractor to dispute the contract price or time or both shall not be waived by the contractor performing the work, provided the contractor follows the notice requirements for disputes and claims established by the contract or these provisions.

2. Time period for claim. Within thirty (30) days after receipt of a written change order unless such period is extended by the OIC in writing, the contractor shall file notice of intent to assert a claim for an adjustment. The requirement for timely written notice cannot be waived and shall be a condition precedent to the assertion of a claim.
3. Claim barred after final payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.
4. 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. (HAR 3-125-4)
5. Duty of contractor to provide cost proposal for changes.
 - a. Within fifteen (15) days after receipt of a request for cost proposal, the Contractor shall submit to the OIC a detailed written statement setting forth all charges the Contractor proposes for the change, properly itemized and supported by sufficient substantiating data to permit evaluation of charges and the proposed adjustment of the contract time.
 - b. No payment shall be allowed to the Contractor for pricing or negotiating proposed or actual changes. No time extension will be granted for delay caused by late Contractor pricing of changes or proposed changes.
 - c. The OIC, subject to approval by the Contracting Officer, may accept the entire cost proposal, or any discrete cost item contained within the cost proposal, or the proposed adjustment to contract time by a contract change order.
 - d. If the County refuses to accept the Contractor's entire cost proposal, the OIC may recommend issuance of a change order for the work, subject to the approval of the Contracting Officer. If the Contractor disagrees with any term, condition or adjustment contained in such change order, it shall follow the protest procedures set forth in and be subject to the other terms of Subsection 8.13 REMEDIES. (HAR 3-122-241)

6. Additional performance bond or payment bond may be required by the procurement officer for a contract change order or modification where the contract amount increases. (HAR 3-122-225)

C. **Price Adjustment for Construction Contracts.**

1. **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:
 - a. By agreement on a fixed price adjustment before commencement of the pertinent performance;
 - b. By unit prices specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
 - c. 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;
 - d. In any other manner as the parties may mutually agree upon before commencement of the pertinent performance; or
 - e. In the absence of agreement between the parties the provisions of HRS 103D-501(b)(5), shall apply.
2. **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 section HRS 103D-312. The submission of any cost or pricing data shall be made subject to the provisions of HAR Chapter 3-122. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in paragraph 1.a. through 1.d. shall be issued within ten days after agreement on the method of adjustment.
3. **Determining Adjustments in Price.** In determining the adjustment in price to the County resulting from a change, the allowances for all overhead, extended overhead resulting from adjustments to contract time (including home office and branch office overhead) and profit combined shall not exceed the percentages set forth below :
 - a. For the contractor, for any work performed by its own forces, twenty per cent (20%) of the cost;
 - b. For each subcontractor involved, for any work performed by its own forces, twenty per cent (20%) of the cost;

- c. For the contractor or any subcontractor, for work performed by their subcontractors, ten per cent (10%) of the amount due the performing subcontractor.

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.

4. The County in determining an adjustment in price using any of the methods listed in paragraph 1.a. through 1.d. above may not mandate that the contractor submit its proposal for a price adjustment at a specified percentage that it unilaterally considers to be acceptable.
5. Paragraphs c. and d. shall not be construed to impair the right of a contractor and County from mutually agreeing to a price adjustment under any method listed in paragraphs 1.a through 1.d. above.

D. **Assignment, Change of Name, Novation**

1. **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.

2. **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:

- a. The transferee assumes all of the transferor's obligations;
- b. The transferor remains liable for all obligations under the contract but waives all rights under the contract as against the County; and
- c. The transferor shall continue to furnish, and the transferee, shall also furnish all required bonds.

3. **Change of name.**

When a contractor requests to change the name in which he or she holds a contract with the County, the Contracting Officer shall, upon receipt of a document

indicating such change of name (for example, an 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. (HAR 3-125-14)

E. **Value Engineering Incentive**

1. **Definitions.** As used in this section:

"Net savings" means those savings in project costs realized by the County as the result of a value engineering change proposal after deducting the contractor's share of the cost savings.

"Single contract" means the single construction for which the cost savings is proposed.

"Value engineering" means an analysis of the requirements for the systems, equipment, and supplies of the single contract for the purpose of achieving a net savings by providing less costly items than those specified without impairing any essential functions and characteristics as service life, reliability, substitutability, economy of operations, ease of maintenance, and necessary standing functions.

"Value engineering change proposal" means a cost reduction proposal based on value engineering submitted by the contractor pursuant to this chapter and particularly identified as such. (HAR 3-132-1)

2. **Applicability.**

a. The provisions of this chapter shall apply to all construction contracts in excess of \$100,000. The application of value engineering incentives to contracts shall not be construed to have an effect on the solicitation or the selection of the contractor.

b. The contractor may develop and submit value engineering change proposals for drawings, designs, specifications, or other requirements of the contract. If any proposal is accepted and approved, in whole or in part, by the procurement officer, the contract shall be modified and shall include an equitable adjustment of the contract price in accordance with this section.

c. This section shall not apply to any cost reduction proposal that is not identified as a value engineering change proposal by the contractor at the time of its submission to the procurement officer. (HAR 3-132-2)

3. **Section provisions.**

- a. The processing of a value engineering change proposal shall be similar to that for any proposed contract change order and shall be considered only after the construction contract is awarded.
- b. Nothing herein shall be construed to mean that the County must accept or approve any or all value engineering change proposals submitted in accordance with this section. The OIC's interpretation and findings relative to the impairment of the functions or characteristics of the item or items covered by the value engineering change proposal shall be final.
- c. Adjustment in contract prices and allowances for implementation costs shall be in accordance with this section and shall only be considered if and when the value engineering change proposal is approved by the contract officer. The receipt of the value engineering change proposal by the County or a verbal acceptance of a value engineering change proposal by any employee of the County shall not obligate the County to accept the value engineering change proposal.
- d. The contract officer may impose, as a condition of acceptance of any value engineering change proposal, a requirement that the contractor warrant the statements, claims, and other information contained in the value engineering change proposal. In addition, the contractor's responsibility under any such warranty shall be in addition to the liability imposed by the "guarantee of work" requirement as included in the contract.
- e. The contractor shall be responsible for the new design of the facility or a portion of the facility submitted as a value engineering change proposal, including errors and omissions and, if the value engineering change proposal is for a portion of the facility, for any adverse impacts the new design may have on the unchanged portions of the facility

4. **Conditions for a value engineering change proposal.**

- a. A value engineering change proposal to a contract shall:
 - i. Result in an estimated net savings to the County in the project cost of at least four thousand dollars by providing less costly items than or using different construction methods from those specified in the contract without impairing any essential functions and characteristics as service life, reliability, substitutability, economy of operation, ease

- of maintenance, and necessary standardized features of the completed work;
- ii. Require, in order to be applied to the contract, a change order to the contract; and
 - iii. Not adversely impact on the performance schedule or the contract completion date.
- b. As a minimum, the following information shall be submitted by the contractor with each value engineering change proposal:
- i. A description of the difference between the existing contract requirements and the value engineering change proposal and the comparative advantages and disadvantages of each including durability, service life, reliability, substitutability, economy of operation, ease of maintenance, desired appearance, design, safety standards, impacts due to construction, and other essential or desirable functions and characteristics as appropriate;
 - ii. An itemization of the requirements of the contract which must be changed if the value engineering change proposal is adopted and are commendation as to how to make each change;
 - iii. An itemized estimate of the reduction in performance costs that will result from adoption of the value engineering change proposal or parts thereof taking into account the costs of implementation by the contractor, including any amounts attributable to subcontractors, and the basis for the estimate;
 - iv. A prediction of any effects and impacts the value engineering change proposal would have on: other costs to the County as the costs of County-furnished property, related items, and maintenance and operation over the anticipated life of the material, equipment, or facilities as appropriate; the construction schedule, sequence and time; and bid item totals used for evaluation and payment purposes;
 - v. A statement of the time by which a change order adopting the value engineering change proposal must be issued so as to obtain the maximum cost reduction during the remainder of the contract, noting any effect on the contract time; and

- vi. If previously submitted, the date(s) of any previous submission(s), the contract number(s) of those contract(s) for which it was submitted and the previous action(s) by the County, if known.
- c. When, in the judgment of the OIC, a value engineering change proposal alters the design prepared by a registered professional architect or engineer, the contractor shall ensure the changes to be prepared are by or under the supervision of a registered professional architect or engineer, and stamped and so certified.
- d. A value engineering change proposal 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. Unless and until a change order applies a value engineering proposal to a contract, the contractor shall remain obligated to perform in accordance with the terms of the contract and the County shall not be liable for delays incurred by the contractor resulting from the time required for the County's determination of the acceptability of the value engineering change proposal. The determination of the procurement officer as to the acceptance of any value engineering change proposal under a contract shall be final.
- e. The contract officer may accept in whole or in part any value engineering change proposal submitted pursuant to this section by issuing a change order to the contract. Prior to issuance of the change order, the contractor shall submit complete final contract documents similar to those of the original contract showing the accepted changes and the new design and features as well as the following:
 - i. Design calculations;
 - ii. The design criteria used; and
 - iii. A detailed breakdown of costs and expenses to construct or implement such revisions. The change order will identify the final value engineering change proposal on which it is based.
- f. When a value engineering change proposal submitted pursuant to this section is accepted under a contract, an equitable adjustment in the contract price and in any other affected provisions of the contract shall be made in accordance with this section and the "change order" clause of the contract. The equitable adjustment shall first be established by determining the effect on the contractor's cost of implementing the change, including any amount attributable to subcontractors and to the County's charges to the contractor

for architectural, engineering, or other consultant services and the staff time required to examine and review the proposal. The contract price shall then be reduced by fifty per cent of the net estimated decrease in the cost of performance.

- g. The contractor may restrict the County's right to use the data or information or both on any sheet of a value engineering change proposal or of the supporting data, submitted pursuant to this section, if it is stated on that sheet as follows:

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

- h. In the event of acceptance of a value engineering proposal, the County shall have all rights to use, duplicate, or disclose in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so, any data or information or both reasonably necessary to fully utilize such proposal.
- i. Notwithstanding the provisions of this section, for any construction contract, the contractor shall not be precluded from making substitution requests in accordance with applicable rules and policies of the County. The OIC shall be the sole judge of whether a proposal is a value engineering change proposal or a substitution request. (HAR 3-132-4)

- 5. **Value engineering sharing method.** The method by which the contractor will share a portion of the cost savings from an accepted value engineering change proposal shall be in accordance with HAR 3-132-4 and the following:

- a. The contractor's share in cost savings shall be for the single contract only, and no consideration shall be made for future acquisition, royalty type payment, or collateral savings.

- b. The County may accept the proposed value engineering change proposal, in whole or in part. The engineer shall issue a contract change order or modify the contract to identify and describe the accepted value engineering change proposal. (HAR 3-132-6)

F. **Payment for deleted material**

1. Canceled Orders – If acceptable material was ordered by the Contractor for any item deleted by an ordered change in the work prior to the date of notification of such deletion by the OIC, the Contractor shall use every reasonable effort to cancel the order. The County shall pay reasonable cancellation charges required by the supplier excluding any markup for overhead and profit to the Contractor.
2. Returned Materials – If acceptable deleted material is in the possession of the Contractor or is ultimately received by the Contractor, if such material is returnable to the supplier and the OIC so directs, the material shall be returned and the Contractor will be paid for the reasonable charges made by the supplier for the return of the material, excluded any markup for overhead and profit to the Contractor. The cost to the Contractor for handling the returned material will be paid for as provided in Subsection 5.2.C “Price Adjustment for Construction Contracts.”
3. Uncanceled Materials – If orders for acceptable deleted material cannot be canceled at a reasonable cost, it will be paid for at the actual cost to the Contractor including an appropriate markup for overhead and profit as set forth in Subsection 5.2.C “Price Adjustment for Construction Contracts.” In such case, the material paid for shall become the property of the County and the cost of further storage and handling shall be paid for as provided in Subsection 5.2.C “Price Adjustment for Construction Contracts”.

G. **Differing site conditions for construction contracts.**

Unless stated otherwise in the contract documents, the Contracting Officer has determined that the Contractor is not fully responsible for differing site conditions and subsection one (1) below applies. Unless stated otherwise in the contract documents, the Contracting Officer has determined that the following applies:

1. Differing site conditions [HAR 3-125-11(1)]
 - a. Price adjustments.
 - i. Notification. The contractor shall promptly, and before such conditions are disturbed, notify the OIC of:
 - (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or

- (2) 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 OIC 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.

- c. 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 Contracting Officer in writing.

- d. 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.

- e. 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.

5.3 EXTRA WORK

No work of any kind in connection with the work covered by the specifications and plans shall be considered as entitling the Contractor to extra compensation except when the work is ordered in writing, as a change order, by the Contracting Officer.

SECTION 6 PERFORMANCE OF CONTRACT

6.1 TIME

Time is of the essence of the contract. Performance of the contract shall be commenced on the commencement date designated in the notice to proceed and shall be completed within the contract time specified in the contract or as computed or extended in accordance with the provisions of subsection 8.7.D.

- A. After the contract is completely executed, the OIC will issue the contractor a written "Notice to Proceed" designating the official date for the commencement of the work. The contractor shall arrange a preconstruction conference with the OIC, along with other affected agencies, firms and individuals at least ten (10) calendar days prior to the starting date for construction.

At the preconstruction conference, the contractor shall submit to the County, the name, local address and telephone number(s) of his or her authorized superintendent of the job.

No construction work shall commence until the contractor has notified the OIC, at least seven (7) calendar days in writing in advance of the actual date he or she will start the work to be done under the contract after the notice to proceed, and shall diligently prosecute the same to completion within the time limit provided in the contract. The contractor shall be entirely responsible for any delay in the work caused by his or her failure to give such notice to the OIC.

- B. When the contract time is on a working day basis, the OIC will furnish the contractor a weekly statement showing the number of days charged to the contract for the preceding week and the number of days specified for completion of the contract. The contractor will be allowed seven (7) calendar days in which to file a written protest setting forth in what respect said weekly statement is incorrect; otherwise the statement shall be deemed to have been accepted by the contractor as correct.
- C. When the contract time is on a calendar-day basis, it shall consist of the number of calendar days stated in the contract beginning with the effective date of the NOTICE TO PROCEED, including all Sundays, holidays and non-working days. All calendar days elapsing between the effective dates of any orders of the OIC to suspend work and to resume work for suspensions that are not the fault of the contractor shall be excluded.

6.2 PERFORMANCE SCHEDULE

Within seven (7) calendar days after the commencement of the contract, or such further time as may be allowed by the Contracting Officer, the contractor shall submit to the OIC, a practicable schedule utilizing the "critical path method" for the performance of the contract. The date on which parts of the project, including the procurement of materials, plant and equipment, have been or will be started, and the contemplated dates for completion of parts

of the project. If the schedule is not approved, it shall be revised as directed by the OIC. After approval, no changes in the schedule shall be made without the approval of the OIC. The approved schedule shall be updated with a three (3) week schedule breakdown submitted to the County weekly. The updated schedule shall show the actual progress of work compared to the approved schedule or the latest amended schedule. The updated schedule shall be used as a basis for establishing major construction and as a check on the progress of the work performed under the contract. All schedules shall be provided via hard copy and as a Microsoft Project file/PDF file

6.3 FIELD OFFICE

If required in the special provisions, the contractor shall provide a field office for the OIC at a location designated by the OIC. It shall be available within seven (7) calendar days after the commencement of the work under the contract.

6.4 SPECIAL PROVISIONS, PLANS, SPECIFICATIONS TO BE KEPT ON SITE

The contractor shall keep a copy of the special provisions, plans, and specifications of the contract on the site of the project readily accessible for reference.

6.5 ADDITIONAL PLANS AND SPECIFICATIONS TO BE FURNISHED BY THE CONTRACTING OFFICER

The OIC may furnish by written order such additional plans and specifications, during the performance of the contract as may be necessary to clarify the contract or define it in greater detail, and the contractor shall comply with such additional plans and specifications. Such additional plans and specifications shall become a part of the contract.

6.6 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 OIC 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 OIC with one PDF file and two hard copy sets of as-built drawings showing all changes from the original contract drawings. The "As-Built Drawings" will be required prior to Final Acceptance.

6.7 DRAWINGS AND SUBMITTALS TO BE FURNISHED BY CONTRACTOR

- A. **Shop Drawings.** The contractor shall make and supply such working or shop drawings as may be required by the OIC during the performance of the contract. The drawings shall be finished plans, and shall be neat, legible and drawn to scale.

The contractor shall submit six (6) prints and a PDF file of working or shop drawings to the OIC for approval as to method of construction and design prior to the commencement of the work under the contract or the delivery to the project site of any equipment or material covered by the drawings, whichever is later. The OIC may require the drawings to be resubmitted as often as necessary to render them complete, legible and free of extensive corrections. If a resubmittal is required, the OIC shall return one (1) print to the contractor who shall make all the corrections or drawings for approval.

After approval, no working or shop drawings shall be changed without the written approval of the OIC; and the contractor may proceed with the parts of the project called for in such drawings.

- B. **Descriptive Sheets.** The Contractor shall submit to the OIC six (6) complete sets and one (1) PDF file of descriptive sheets such as brochures, catalogs, illustrations, etc., which will completely describe the material, product, equipment, furniture or appliances to be used in the project as shown in the plans and specifications. The contractor may submit descriptive sheets for review by the OIC as required at the earliest possible date after the date of award in order to meet the construction schedule. Delays caused by the failure of the Contractor to submit descriptive sheets as required will not be considered as justifiable reasons for contract time extension.
- C. **Material Samples and Color Samples.** The Contractor shall submit to the OIC samples of the materials to be used in the project and color selection samples. The Contractor may submit material and color samples for approval as required at the earliest possible date after the date of award in order to meet the construction schedule. Delays caused by the failure of the Contractor to submit material and color samples will not be considered as justifiable reasons for contract time extension.

The County will review and return shop drawings and other submittals to the Contractor with appropriate comments within a reasonable time.

It shall be expressly understood that the review by the OIC of the Contractor's shop drawings and other submittals does not relieve the Contractor of any responsibility for accuracy of dimensions and details and for agreement and conformity of shop drawings with the contract plans and specifications. It is further understood that the review by the OIC of the Contractor's shop drawings, whether general or detailed, is a general review relating only to their sufficiency and compliance with the intention of the contract. The Contractor shall clearly identify and inform the OIC in writing of any deviations from the contract documents at the time of submission and shall obtain the OIC's written approval to the specified deviation prior to proceeding with any work. The Contractor, at his own risk and expense, may elect to proceed with the work affected by the shop drawings prior to final review.

6.8 SUBSTITUTIONS

A. **After Bid Opening** Substitution of material or equipment may be allowed after the bid opening date only if:

1. The specified or prequalified item is delayed by a lengthy strike in the factory or other unforeseeable contingency beyond the control of the Contractor which would cause an abnormal delay in the project completion; or
2. All specified or prequalified items are found to be unusable or unavailable due to change or other circumstances; or
3. The Contractor is willing to provide a more recently developed or manufactured model of material or equipment of the same name manufacturer which the OIC determines to be equal or better than the one specified or prequalified.

A substitution request, regardless of reason, shall be fully explained in writing, by the Contractor including his justification for said request, quantities and unit prices involved, quotations and such other documents as are deemed necessary to support the request. Any savings in cost will be rebated to the County and any additional cost for the substituted items will be paid for by the Contractor.

The above shall not be construed to mean that substitutions for brand name specified materials and equipment will be allowed; the OIC reserves the right to reject and deny any request he deems irregular or not in the best interest of the County and a request for substitution shall not in any way constitute a justification for an extension of contract time.

6.9 COORDINATION OF THE CONTRACT DOCUMENTS

The special provisions, plans, specifications, GPCC, Agencies' Standards, contract documents and all supplemental documents are essential parts of the contract, and a requirement occurring in one is as binding as though occurring in all. Each document is intended to be complementary, and describe and provide for the complete work. In case of conflict or discrepancy within any part of the contract, the stricter requirements, including Hawai'i State Statutory requirements, shall govern. Unless it is apparent that a different order of precedence is intended, the following is the precedence list with one (1) taking precedence over two (2) , two (2) taking precedence over three (3), etc.:

1. Contract
2. Special Provisions
3. Specifications
4. Plans
5. General Provision
6. Agency Standards

Hawaii Standard Specifications for Road, Bridge and Public Works Construction, 2005. Unless otherwise specified, the means and methods of Hawaii Standard Specifications for Road, Bridge and Public Works Construction, 2005, as amended, shall govern the requirements for construction within all State and County roadway rights-of-way.

6.10 INTERPRETATION OF PLANS AND SPECIFICATIONS

- A. Should an error or conflict appear within the specification, the Contractor shall immediately notify the OIC. The OIC shall promptly issue instructions as to procedure. Any requirement occurring in one or more parts of the specifications is as binding as though occurring in all applicable parts.
1. Plans:
 - a. General notes shall govern over all other portions of the drawings.
 - b. Schedules shall govern over all other notes and drawings.
 - c. Larger scale drawings shall govern over smaller scale drawings.
 - d. Figured or numerical dimensions shall govern over dimensions obtained by scaling. The drawings when scaled shall be subject to the approval of the OIC.
 - e. In cases of discrepancies in the figures or drawings, the discrepancies shall be immediately referred to the OIC without whose decision said discrepancy shall not be corrected by the Contractor save at his own risk and in the settlement of any complications arising from such adjustment without the consent of the OIC, the Contractor shall bear all extra expense involved.
 - f. Items shown on the drawings that are completely void in terms of description, details, quality and/or performance standards in both the plans and specifications to make a price determination shall be considered an omission and the Contractor shall immediately refer same to the OIC for a decision.
 - g. Where there is a conflict between the architectural sheets and the mechanical or electrical or structural sheets, etc., the conflict shall be considered a discrepancy and the Contractor shall immediately refer same to the OIC for a decision.
 - h. Any requirement occurring in one or more of the sheets is as binding as though occurring in all applicable sheets.

- B. Should it appear that the work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the plans and specifications, the Contractor shall apply to the OIC for such further explanations as may be necessary and shall conform to same as part of the contract, so far as may be consistent with the original plans and specifications; and in the event of any doubt or question arising respecting the true meaning of the plans and specifications, reference shall be made to the OIC whose decision thereon shall be final.

6.11 OMISSION IN CONTRACT

Unless specified, work which is otherwise incidental to the contract although not specifically referred to in the contract shall be furnished and performed by the contractor. Labor, materials and equipment directly or indirectly necessary to complete the construction of the project, whether or not the same may have been expressly provided for in the contract, shall be furnished and performed by the contractor.

6.12 CONTRACTOR TO REPORT ERRORS OR DISCREPANCIES

The contractor shall notify the OIC in writing immediately upon discovery of any error or omission in the layout given by stakes, points or instructions furnished by the OIC, or any discrepancy within the contract, or any part thereof or between the plans and the conditions of the site.

After such discovery, the contractor shall proceed with the performance of the contract only after receiving written approval from the OIC.

6.13 CONTROL OF THE CONTRACT

A. Workmanship.

The contract shall be performed in an orderly and workmanlike manner in accordance with the latest acceptable practice and shall be of the best quality, except as clearly specified otherwise. Whenever there is a doubt as to what is permissible or the contract fails to note the quality of any work, the interpretation which calls for the best quality of work is to be followed.

B. Access to the Project.

During the performance of the contract, the contractor shall provide the OIC with proper and safe facilities for access to the site of the project and the shops of the contractor and the subcontractor.

Other contractors of the County shall be permitted access to the site of the project when it is required for performance of their respective contractors.

C. Storage, work zone, construction access.

Location of storage areas, work zones, and construction traffic pattern in and out of the

project site shall be subject to approval by the OIC. Contractor shall 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.

D. **Inspection.**

The performance of the contract shall be subject to the inspection of the OIC, and the contractor shall supply such information and assistance as may be required to make a complete and detailed inspection. The OIC may inspect each and every subdivision of the work or any part or parts or process thereof. The County's staff shall have free access to all parts of the work at all times and shall be given every facility, information, and means of thoroughly inspecting the work done and the materials used or to be used. No work or material which may be defective in construction or quality or deficient in any of the requirements of the plans, specifications, special provisions or other contract documents will be accepted. The OIC's presence or inspection on the site will not relieve the contractor of his or her liabilities associated with such deficiencies.

If the contractor wishes to work at such time of the day which is during the period other than the regular business hours of the County of Kaua'i or on a Saturday, Sunday or legal State holiday, he or she shall make a written request for inspectional services during such period. If such a request is made and granted, the contractor shall notify the OIC not less than 24 hours in advance of the time when the inspectional services are required. The contractor shall pay the County at the rate per hour designated by the County for each employee provided pursuant to this paragraph.

E. **Inspection of Plant or Site, Access to Plant or Place of Business.**

1. 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: whether the standards set forth in HAR 3-122-108 have been met or are capable of being met; and if the contract is being performed in accordance with its terms. (HAR 3-122-166, P.D. 6/24/94)
2. Access to plant or place of business. The County may enter a Contractor's or subcontractor's plant or place of business to:
 - a. Inspect goods or services for acceptance by the County pursuant to the terms of a contract;
 - b. Audit cost or pricing data or audit the books and records of any Contractor or subcontractor pursuant to HAR 3-122-175; and

- c. Investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to HAR 3-126-11 through 3-126-18. (HAR 3-122-167, P.D. 6/24/94)

F. **Removal of Defective and Unauthorized Work.**

All work which has been rejected as not conforming to the requirements of the contract shall be remedied or removed and replaced by the Contractor in an acceptable manner at no cost to the County. Any work done beyond the work limits shown on the plans and specifications or established by the OIC or any additional work done without written authority will be considered as unauthorized and will not be paid for. Work so done may be ordered removed at the Contractor's expense. Upon failure on the part of the Contractor to comply promptly with any order of the OIC made under the provisions of this subsection, the OIC shall have authority to cause defective work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs from any monies due or to become due the Contractor.

G. **Test Samples.**

The OIC may require any or all materials to be subject to tests by means of samples or otherwise as he may determine. The Contractor shall afford such facilities as the OIC may require for collecting and forwarding samples and shall not make use of or incorporate in the work any material represented by the samples until all required tests have been made and the material accepted. The Contractor in all cases shall furnish the required samples without charge. Where samples are required from the completed work, the Contractor shall cut and furnish for tests, samples cut from the completed work. The areas of samples so removed shall be replaced with identical material and refinished. No additional compensation will be allowed for furnishing test samples and replacing the areas with new material.

It is understood that the County reserves the right to retest all materials which have been tested and accepted at the source of supply after the same has been delivered to the work site and to reject all materials which, when retested, do not meet the requirements of the contract.

H. **Tests.**

Tests specified by the contract, statute, regulation, or ordinance shall be made; and the cost thereof shall be borne by the Contractor unless otherwise provided for in such contract, statute, regulation or ordinance. Such tests shall be conducted under the direction of the OIC, and the Contractor shall repair any damage resulting there from.

In addition, the OIC may require such tests as he or she deems necessary to carry out his or her duties during the performance of the work under the contract. When a test is required by the OIC, the contractor under the direction of the OIC shall conduct such test and shall bear all of the costs, including the cost of tools, labor and materials necessary therefor.

I. **Site Access.**

The Contractor shall provide access to the work at all times to representatives of the Department(s), including Federal Environmental Protection Agency, State Department of Health, and any other authorized Federal, State or County 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 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.

6.14 PERSONAL SUPERVISION

The contractor shall be present on site in person, or by a responsible agent with authority to act for the contractor in connection with the contract during the performance of the contract.

The contractor shall file with the OIC a written statement signed by the contractor giving the names of the designated competent person(s) for trench excavation and confined space entry, any and all supervisors, foreman and employees who are authorized to act in place of the contractor, and any communication signed in behalf of the contractor by such agents immediately and in writing of any change in the name or names so submitted.

6.15 CHARACTER OF WORKMEN, METHODS AND EQUIPMENT

The Contractor shall at all times provide adequate supervision and sufficient labor and equipment for prosecuting the several classes of work to full completion of the project in the manner and within the time required by the contract.

A. **Character and Proficiency of Workers.** All workers must have sufficient skill and experience to perform properly the work assigned to them. All workmen engaged in special work or skilled work such as bituminous courses of mixtures, concrete pavement or structures, electrical installation, plumbing installation, or in any trade shall have sufficient experience in such work and in the operation of the equipment required to properly and satisfactorily perform all work. All workers shall make due and proper effort to execute the work in the manner prescribed by the Contract; otherwise, the OIC may take action as prescribed herein. Any worker employed on the project by the Contractor or by any subcontractor who, in the opinion of the OIC, is not careful and competent, does not perform his work in a proper and skillful manner or is disrespectful, intemperate, disorderly or neglects or refuses to comply with directions given, or is otherwise objectionable shall at the written request of the OIC, be removed forthwith by the Contractor or subcontractor employing such worker and shall not be employed again in any portion of the work without the written consent of the OIC. Should the Contractor or subcontractor continue to employ, or again employ such person or persons on the project, the OIC will suspend the contract and allow the applicable sections in Section 8 REMEDIES.

B. **Insufficient Workers.** In the event that the OIC, in his judgment, finds the condition whereby insufficient workers are present to accomplish the work and no corrective action is

taken by the Contractor after being informed, the OIC reserves the right to terminate the contract as provided for under Section 8 REMEDIES.

- C. **Equipment Requirements.** All equipment furnished by the Contractor and used on the work shall be of such size and of such mechanical condition that the work can be prosecuted in an acceptable manner at a satisfactory rate of progress and the quality of work produced will be satisfactory.

Equipment used on any portion of the project shall be such that no injury to the work, adjacent property or other objects will result from its use. If the Contractor fails to provide adequate equipment for the work, the contract may be terminated as provided under Section 8 REMEDIES.

In the event that the Contractor is paid for furnishing and operating equipment on a force account basis, it shall be operated as directed by the OIC in order to obtain maximum production under the prevailing conditions.

6.16 WAGES AND HOURS

Contractors shall observe and comply with all the provisions of HRS Chapter 104, relating to wages and hours of employees on public works. The contractor shall pay all employees on any contract with the County, the minimum basic wage rate in conformance with applicable Federal and State laws.

The minimum wages shall be periodically increased during the performance of a contract in an amount equal to the increase in the prevailing wages for those kinds of work as periodically determined by the State Director of Labor and Industrial Relations. Notwithstanding the provisions of the original contract entered into, if the Director of Labor and Industrial Relations determines that the prevailing wage has increased, the rate of pay of laborers and mechanics on the contract shall be raised accordingly. Offerors shall take into consideration increases which may occur during the period of the contract in computing their bid or proposal prices. No additional compensation shall be made for failure to do so.

The current State Wage Rate Schedule and any addenda is incorporated in this document by reference only. Copies are available the State Department of Labor and Industrial Relations, 830 Punchbowl Street, Honolulu, HI 96813, or at the State website:

<http://hawaii.gov/labor/rshttp://labor.hawaii.gov/wsd/files/2013/02/104-2FAQ-Rev-3-09.pdf>

No labor or mechanic employed on the job site shall be permitted or required to work on Saturday, Sunday, or a legal holiday of the State of Hawaii in excess of eight hours on any other day unless the laborer or mechanic receives overtime compensation for all hours worked on Saturday, Sunday, and a legal holiday of the State or in excess of eight hours on any other day. For purposes of determining overtime compensation under this subsection, the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined by the Director of Labor and Industrial Relations to be the prevailing basic hourly rate for corresponding classes of laborer and mechanics on projects of similar

character in the State.

A certified copy of all payrolls shall be submitted weekly to the OIC. The contractor shall be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision of the Director of Labor and Industrial Relations, and that the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed.

If the OIC finds that any laborer or mechanic employed on the job site by the contractor or any subcontractor has been or is being paid wages at a rate less than the required rate by the contract or the specifications, or has not received the laborer's or mechanic's full overtime compensation, the OIC may take appropriate action in accordance with HRS 104-4, or the Contracting Officer may, upon recommendation of the OIC, by written notice to the contractor, terminate the contractor's right, or the right of any subcontractor, to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid and may complete such or part by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the County for any excess costs occasioned thereby.

The contractor is required to post the applicable wage schedule in a prominent and easily accessible place at the job site. The contractor shall give to each laborer and mechanic employed under the contract a copy of the rates of wages required to be posted.

On federally funded or federally assisted projects, the current federal wage rate determination in effect at the time of advertising for bids or proposals is incorporated as part of the invitation for bids or proposals, and both State and federal wage rates shall apply. Where rates for any class of laborers and mechanics differ, the higher rates shall prevail. The minimum federal wage rates shall be those in the U.S. Department of Labor Wage Determination Decision and Modifications in effect five (5) calendar days prior to the bid or proposal opening date.

6.17 CONTRACTOR'S ADDRESS

The contractor shall provide and maintain a post office address within the State of Hawaii and file the same with the OIC. Any written order or notice which may be required or desirable under the contract may be served on the contractor personally, or delivered to his or her representative on the project site, or left with a member of his or her family of suitable age and discretion at his or her residence, or with any employee of the contractor at his or her place of business and/or mailed to the aforesaid local post office address. All orders or notices shall become effective when mailed or at the time of service or delivery as aforesaid.

6.18 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, and is considered incidental work.

6.19 SURVEYS AND CONSTRUCTION STAKES, LINES AND GRADES

- A. All lines, levels and elevations are to be laid out and checked by a surveyor or civil engineer licensed in the State of Hawaii at the contractor's expense. The contractor shall furnish a certificate or document signed by the surveyor or civil engineer certifying that the completed lines, levels and elevations are in conformity with the contract. The contractor shall verify all lines, levels and elevations indicated in the contract before any excavation or construction begins. Any discrepancy shall be immediately brought to the attention of the OIC and any change shall be made in accordance with his or her instruction. The contractor shall not be entitled to any additional payment if he or she fails to report the discrepancies before proceeding with work within the area affected by the discrepancies.

6.20 SUBCONTRACTING

Under the terms of this contract, no subcontractor will be recognized. 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.

The contractor shall not subcontract any part of the contract except to those subcontractors specifically listed in the bid or proposal submitted by the contractor; provided, however, the contractor may for good cause and upon written approval of the Director, based on the recommendation(s) of the OIC, engage other subcontractors. Engaging subcontractors to perform the work under the contract shall not relieve the contractor of his or her duty to perform the contract in accordance with the terms, covenants, conditions, provisions and intent thereof. The contractor shall replace a subcontractor when required by the OIC for not performing the contract in accordance with the terms, covenants, conditions, provisions and intent thereof.

6.21 OTHER CONTRACTS

The contractor shall coordinate his or her operations with those of other contractors who may be employed on adjacent or related projects of the State, County, or private development, shall avoid interference therewith, and shall cooperate with the other contractors so as to avoid unnecessary delay or hindrance in the performance of their respective contracts. Any difference or conflicts which may arise between the contractor and other contractors of the State, County, or private development in regard to their projects shall be adjusted and determined by the County's staff, whose decision and order shall be final and binding.

6.22 ELECTRICAL, TELEPHONE, TOILETS, AND WATER SERVICE

The contractor shall make his or her own arrangements for electrical, telephone, toilets, and water services required for the performance of the contract at his or her expense.

- A. Water. All temporary lines and appurtenances and water use within and beyond the contract limit required for any branch of the construction work shall be supplied and paid for by the Contractor. Contractor shall notify the OIC 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 Contractor. Contractor shall notify the OIC if there is any electrical shut-off prior to installing electrical work.

6.23 SERVICE CHARGE FOR PERMANENT UTILITY SERVICE

The Contractor shall be responsible for scheduling and coordinating the work with the utility companies and applicable governmental agencies for permanent service connection. The Contractor will pay the utility companies and applicable governmental agencies directly for such connections upon receipt of the statement of charges.

6.24 UTILITIES UNDERGROUND

Prior to offer: All underground waterlines and appurtenances, gas, oil, telephone, television, electric, storm drain, fiber optic, sewer and other pipes or conduits, if shown on the plans, are only approximate in their locations. Prior to bid or proposal, the contractor shall make a personal investigation and inspection of the records of the owners of the utilities, supplemented by actual digging in the field, if necessary, to determine the actual locations of such utilities with all their branch and service lines whether indicated on the plans or not. Consequences resulting from the Contractor's failure to do so will be the sole cost and responsibility of the Contractor.

Prior to installation of new facilities: The contractor shall make satisfactory arrangements with the owners of the utilities for the relocation, maintenance and protection of existing utilities and shall furnish the County staff with evidence in writing that satisfactory arrangements have been made not less than ten (10) days before the commencement of the parts of the project under the contract affecting such utilities. Further, the Contractor shall probe the project area to verify existing utilities shown or not shown on the approved construction drawings and indicate potential conflicts with new facility installation. If required, the County will consider redesign of the new facilities to deal with the potential conflicts. Consequences resulting from the Contractor's failure to do so will be the sole cost and responsibility of the Contractor.

6.25 QUALITY OF MATERIALS AND EQUIPMENT

Unless otherwise specifically stated in the specifications, all workmanship, equipment, materials and articles incorporated in the work covered by this contract are to be of the best available grade of their respective kinds.

All materials and equipment furnished and installed under this contract shall be new and must be of standard quality of their respective kinds, free from all defects which may render

them unfit for use. The contract contemplates the use of first-class materials and equipment throughout the performance of the contract, and it is agreed that any material and equipment for which no particular specification is given shall be of the highest quality of its class or kind. The OIC will not accept materials and equipment that do not conform to the contract.

Rejected materials and equipment shall be removed immediately from the work and replaced with materials and equipment of the required quality. Should the contractor fail to remove such rejected materials and equipment within twenty-four (24) hours after notice by the OIC, the latter may remove such rejected materials and equipment and deduct the expense therefor from any sum due or to become due the contractor. Failure to reject any material and equipment or to remove any rejected material and equipment shall not relieve the contractor from responsibility as to the quality and character of materials and equipment used or as to any other obligation imposed upon him by the contract.

6.26 PROTECTION OF PEDESTRIANS AND VEHICULAR TRAFFIC

During the progress of the work, the contractor shall use all proper precautions and methods of procedure and construction by means of good and sufficient barriers, guards, temporary bridges, notices, lights, warning and other safeguards for the prevention of accidents and for the protection of persons and property, and from sunset until sunrise he or she shall keep suitable lights burning wherever the public has access near or at the work in progress to define the line of safe passage. He or she shall defend, indemnify and save harmless the County against any and all suits, actions and claims for cost, compensation, damages or otherwise to which the said County may be put on account of injury to person or property of another, resulting from negligence of the contractor in the performance of the work or the guarding of the same; and he or she shall include in his or her bond such terms as will protect the County against any loss, charge or expense by reason of any such claims, suits or actions.

A. Public Convenience.

The contractor shall so conduct his or her operations as to offer the least possible obstruction and inconvenience to the public and he or she shall have under construction no greater length or amount of work than he or she 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 travel way shall be removed immediately by the contractor at his or her expense.

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, mail boxes 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.

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

B. Public Safety

The Contractor shall comply with all requirements and provisions of the Federal, State and County safety laws, including Hawaii Occupational Safety and Health (OSHA) Laws, and all building and construction codes, and shall take all necessary precautions for the safety of all employees on the project.

Wherever the contractor's operations create a condition hazardous to traffic or to the public, he or she shall furnish, erect and maintain, at his or her 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.

Should the contractor appear to be neglectful or negligent in furnishing warning and protective measures as above provided, the OIC 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 or her expense.

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

The installation of general roadway illumination shall not relieve the contractor of his or her responsibility for furnishing and maintaining any of the protective facilities hereinbefore specified.

C. Accidents.

The contractor must promptly report in writing to the OIC all accidents whatsoever arising out of or in connection with the performance of the work, whether on or adjacent to the site which caused death, personal injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damage is caused, the accident shall be reported immediately by telephone or by messenger to the OIC.

If any claim is made by anyone against the contractor or any subcontractor on account of any accident, the contractor shall promptly report the facts in writing to the OIC, giving full details of the claim. It is understood and agreed that the written report of any accident shall not relieve the contractor of the responsibility, and the County shall not be held responsible.

D. Non-compliance.

The OIC 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 OIC 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 24 hours after a suspension is ordered by the OIC, the County 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 OIC may also suspend any operations which he or she feels are creating safety problems. County's failure to do so shall not be considered a liability and failure on the County's part shall not be considered a waiver to any rights and remedies to which the County is entitled.

6.27 ACCESS TO PROPERTY

The contractor shall provide safe access to the property abutting the site of the project when the usual means of access are obstructed by the performance of the contract.

6.28 PROJECT SIGN

The contractor shall provide signs to identify the project. The signs shall be erected at locations designated by the OIC at the site of the project upon commencement of the work under the contract. Signs shall be properly erected and kept clean and legible. After completion of the work under the contract and Final Acceptance thereof, the contractor shall remove the signs.

- 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 and Logo Graphics. Shall be of size called for by OIC in block type lettering and color; paint shall be bulletin board sign enamel.
- G. Content. Shall check with OIC 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.

6.29 RESTORATION AND PRECAUTIONS

The contractor shall protect property adjacent to the site of the project from damage and shall restore property damaged by him to the condition it was in prior to the damage. Prior to starting any work, the Contractor shall photograph and video the existing conditions of structures, landscaping, etc. that are to remain within the project and any staging areas. Any existing defects, damages, etc. shall be noted and forwarded in writing to the County. Any damage to existing items noted during or after completion of the project that were not specifically reported in writing prior to starting any work shall be repaired and replaced by the contractor at no cost to the County. Any claims by owners, tenants, leasees or like related to this clause shall be the sole responsibility of the Contractor.

A. Existing Utilities and Structures.

The existence and location of underground utilities and structures as shown on the plans are from the latest available data but are not guaranteed as to their actual existence or location. Other obstacles not shown on the plans may be encountered in the course of the work.

The Contractor shall make a personal investigation and inspection of the records of the owners of the utilities, supplemented by actual digging in the field if necessary to determine the actual locations of such utilities with all their branch and service lines whether indicated on the plans or not. The Contractor shall furnish the OIC with written evidence that the Contractor has contacted all the utility companies.

The Contractor shall be held responsible for any damage to and for the maintenance and protection of existing utilities and structures whether shown on the plans or not.

The Contractor shall also completely protect all buildings, pavements, gutters, curbs, sidewalks, driveways, walls, fences, pipes, drains, conduits, or other structures of all classes, nature or types from settlement or other damage by installing proper underpinning, sheet piling and bracing and by taking all proper precautions during the period of construction. The Contractor shall be responsible for the settlement of any pavement, building or any other structure of any class, nature or type caused by the dewatering of trenches or from any other cause relative to the work of the contractor and he or she shall in all cases be held liable for any damage to any building, structure or property along the line of the work.

Should it become necessary to remove, replace, obstruct, alter or use any existing material, equipment or structure of any kind, the Contractor shall make all necessary arrangements with the County, State, County, corporation, company or any other organization owning or controlling the same relative to the removal, replacement, obstruction, alteration, use, damage and the payment therefor and shall furnish the OIC

with evidence in writing that satisfactory arrangements have been made, not less than ten (10) calendar days before removing, replacing, altering, using or obstructing the equipment or structure concerned.

B. De-watering.

De-watering shall be accomplished by suitable means; this includes the Contractor obtaining the required NPDES permits for de-watering. The Contractor shall repair any and all damages resulting to improvements from such de-watering operation to the satisfaction of the owners of such improvements.

C. Grass.

When grassed areas are disturbed, the area shall be carefully graded and replanted with similar grass leaving the area substantially similar to the condition it was in prior to the disturbance. When deemed appropriate by the OIC, temporary irrigation will be provided to establish grass at no additional cost to the County.

D. Trees, Plants and Shrubbery.

All trees shall be carefully protected and kept from contact with excavation or other materials. Where it is necessary to trim trees, plants or shrubs, the Contractor shall employ licensed tree trimmers. Branches shall be carefully trimmed so that the trees, plants or shrubs are not damaged. All cut sections of branches shall be painted with tree seal compound. All grass, plants, trees or shrubs removed or destroyed shall be replaced by the contractor to the satisfaction of the County. All costs thereof shall be considered incidental.

E. Property Marks.

The Contractor shall reference and replace marks, stakes, pipes, monuments of the property line and similar objects which may be disturbed by the contractor while performing the contract.

F. Environmental Pollution Control.

The Contractor shall comply with the following requirements for pollution control in performing all construction activities. The contractor shall be responsible for conformance to all federal, state and county laws regarding environmental pollution control, including Chapters 37 and 37-A the Public Health Regulations, Department of Health, State of Hawaii, as amended during construction.

1. Erosion and Sediment Control.

- a. The Contractor shall follow Best Management Practices and other regulatory requirements as required by federal, state, and/or county laws, statutes, ordinances, rules and regulations. Soil protection facilities shall be completed as early as practicable. Sections of bare earth and the length of

their exposure to erosion shall be minimized by proper scheduling and limiting the work areas. 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. Also, the Contractor shall continue such measures until establishing the protective ground cover sufficiently to be an effective erosion deterrent. If material begins to erode into a river, stream or impoundment, the contractor shall act immediately to bring the situation under control.

2. **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.

3. **Waste Disposal.**

- a. Care shall be exercised to insure that disposal of waste from construction operations do not create pollution problems.
- b. Disposal of any materials, waste, effluent, trash, garbage, oil, grease, chemicals, etc., in areas adjacent to streams shall be subject to the approval of the OIC.
- c. No burning of debris and/or waste materials shall be permitted on the project site.
- d. No burying of debris and waste materials except for materials which are specifically indicated elsewhere in the bid or proposal document as suitable for backfill shall be permitted on the project site.
- e. 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.
- f. No dry sweeping shall be permitted in cleaning rubbish which can become airborne from floors or other paved areas. Vacuuming, wet mopping or wet or damp sweeping is acceptable.

- g. Enclosed chutes and/or containers shall be used for conveying debris from above to ground floor level.
- h. 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.
- i. Frequency of cleanup shall coincide with rubbish producing events.

4. **Dust Control.**

Dust, which could damage crops, orchards, cultivated fields, County's facilities, public and private facilities, business establishments and dwellings or cause nuisance to persons, shall be abated and control measures shall be performed at all times, including non-working hours, weekends and holidays. The cost for all dust control sprinkling shall be paid for by the contractor and shall extend for the entire period of construction. The contractor shall be held liable for any damage resulting from dust originating from his or her operations.

5. **Waste Water.**

Construction operations shall be conducted so as to prevent discharge or accidental spillage of construction water, pollutants, solid waste, debris and other objectionable wastes in surface waters and underground water sources.

6. **National Pollutant Discharge Elimination System (NPDES) Permit and other Water Discharge Permits.**

The Contractor shall review and become familiar with the latest requirements of the NPDES Permit as issued by the State Health Department and all other necessary permits to discharge water into the waterways prior to bidding or proposing on this project. All inquiries for this permit shall be coordinated with the State Health Department.

Immediately after the award of the construction contract, the contractor shall meet with the OIC to complete the applications for a Department of Health NPDES Permit and for all other permits that may be required to discharge water into waterways. The Contractor shall be the duly authorized representative of the County as it relates to NPDES requirements.

Notice to proceed will not be delayed due to the contractor's inability to meet NPDES Permit requirements in a timely manner.

7. **Noise Control.**

The Department of Health's HAR Chapter 11-46, Community Noise Control, establishes statewide noise rules on community noise.

This statewide noise rule complies with HRS Chapter 342F, which states that the Director of Health shall present, control and abate noise pollution in the state.

In reference to construction activities, community noise permit applications are required for construction operations which exceed, or are anticipated to exceed noise standards established in the rules. The significance of the community noise permit is to allow for construction operations to exceed the noise standards, while allowing the Department of Health to monitor such activities to assure adequate protection of public health and welfare from adverse noise impacts.

The following activities related to construction operations are exempt from the provisions of the rules:

- a. Activities related to the emergency maintenance and repair of state and county highways, parks, and public utilities, including, but not limited to water, sewer, electric, gas, and telephone systems, provided the noise is confined to only the equipment in use.
- b. Backup alarm devices on any vehicle, where such device is required by federal or state occupational safety and health regulations.
- c. Construction and remedial activities related to the emergency repair of damages caused by natural disasters, including, but not limited to tsunamis and hurricanes.

The contractor shall be responsible to obtain all permits and provide the Manager with a copy. The contractor shall pay for all applicable permit fees.

8. **Others**

- a. Whenever trucks and/or vehicles leave the site and enter surrounding paved streets, the contractor shall prevent any materials from being carried onto the pavements.
- b. Trucks hauling debris shall be covered as required by PUC regulations. Truck hauling fine materials shall be covered.
- c. No dumping of waste concrete will be permitted at the job site unless otherwise permitted in the Special Provisions.
- d. Except for rinsing of the hopper and deliver chute, and for wheel washing where required, concrete trucks shall not be cleaned on the job site.

- e. Except in an emergency, such as mechanical breakdown, all vehicle fueling and maintenance shall be done in designated areas. A temporary berm shall be constructed around the area when runoff can cause problems.
- f. Spray painting will not be allowed unless done by the "airless spray" process.

9. **Payment**

The cost of environmental pollution control shall be considered incidental and shall be included in the price of offer for the various items of work unless otherwise noted in the contract documents.

G. **Archaeological, Historical, and Burial Site Findings**

Whenever the contractor encounters possible archaeological, historical or burial site findings, the contractor shall immediately suspend the operation and inform the OIC verbally and follow up with a written letter. The OIC will notify the proper authorities to evaluate such findings and decide the course of action.

The Contractor shall not resume suspended operations without the prior written acceptance of the OIC. The OIC will govern suspensions of work according to subsection 8.3 of these GPCC. Also, the Contractor shall conform to HRS Chapter 6E relating to Historic Preservation, as amended.

Construction work and equipment shall remain within the project limits of this project.

The Archaeologist will decide the limits of the site. Also, the Archaeologist will decide, with the OIC, the best means for protecting the site from further disturbances which requires further investigation or salvage as determined by the State Historic Preservation Officer. Protection may include barricades, roping off, temporary fencing or other means.

H. **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. The Contractor shall be solely liable for any fees, fines or costs associated with failure to take the proper and necessary steps to prevent such interference and agrees to defend, indemnify, and hold harmless the County from any actions arising out of the failure to take the proper and necessary steps to prevent such interference to fish and wildlife.

I. **Subcontractors**

Compliance with the provisions of this subsection by the subcontractors will be the responsibility of the contractor.

J. **Non-compliance**

The OIC 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 OIC, 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 48 hours after a suspension is ordered by the OIC, the County 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 OIC may also suspend any operations which he or she 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 Modification and Force Account provisions herein. 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 OIC.

6.30 MAINTENANCE OF SITE, CONTROL OF DUST, AND FINAL CLEANUP

The Contractor shall maintain the site of the project in an orderly and clean condition, and shall at suitable intervals and/or at the direction of the OIC, remove accumulations of rubbish or refuse materials, surplus materials, concrete mortar, excavated materials and drill cuttings not required or suitable for backfill. Chlorinated water shall not be deposited in the drainage or sewer system of the County of Kaua'i. The contractor shall keep the site, inclusive of vehicular and pedestrian traffic routes through the site, free of dirt, and dust by periodic blading, power brooming, watering or other approve means to the satisfaction of the OIC.

Upon completion and before Final Acceptance of the work performed under the contract, the Contractor shall remove excavated materials, drill cuttings, rubbish, surplus or discarded materials, false work, forms, temporary structures, field offices, project signs, signs not a part of the project, and his or her equipment and machinery, and shall leave the site and ground occupied by him in connection with the performance of the contract in an orderly and clean condition. Facilities constructed, altered, or worked in by the contractor in the performance of the contract shall be left "broom clean," and stains and other blemishes resulting from his or her operations, such as dropped or splattered concrete or mortar and paints, grease or oil, shall be removed from floors, walls, ceiling, windows, equipment, pipes, instruments and all other exposed surfaces.

6.31 RESPONSIBILITY OF THE CONTRACTOR PRIOR TO ACCEPTANCE

The contractor shall repair, reconstruct, restore and replace the work or any part thereof which is injured or damaged, whatever cause, prior to acceptance of the work by the Contracting Officer and shall bear the expense thereof.

Use by the public without permission of the OIC shall not in any way be construed as an acceptance of the work under the contract and shall not in any way relieve the Contractor from his or her obligation under the contract. Use of parts of the project completed under the contract by the public with the approval of the OIC shall in no way be construed to relieve the Contractor from his or her remaining obligations under the contract and shall in no way be construed as acceptance of the project as a whole. Use of parts of the project shall not prevent accrual of liquidated damages.

All completed facilities that are damaged by the contractor or by his or her negligence to safeguard the facilities from construction activities shall be repaired by the Contractor to the satisfaction of the OIC. All other failures to accepted portions of the work shall be repaired under the contractor's guarantee of work.

6.32 SUBSTANTIAL COMPLETION

The County recognizes substantial completion of a project. Substantially complete and Substantial Completion means that the work, the common and other areas of the project or portions thereof and all other things necessary for the County's access to the premises and occupancy, possession, use and enjoyment of the project or portions thereof have been completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use or enjoyment. The OIC has the sole authority and discretion to make the determination of Substantial Completion of a project or portion thereof; the OIC is not required to make a determination of Substantial Completion and may wait for Final Completion, as defined below, to occupy and use the site.

Items that indicate Substantial Completion include, but are not limited to the following:

- All utilities are connected and in working condition.
- All air conditioning and other major equipment are in acceptable working condition.
- No Punch List items (list of deficiencies which must be corrected before Final Acceptance of contract) exist which will disrupt the use of the facility or room.
- The building, structure or improvement can be used for its intended purpose.

Before notifying the OIC that the project is Substantially Completed, the Contractor shall inspect the project and test all equipment with all of his subcontractors. After finding everything in order, the Contractor shall notify the OIC, in writing, that the project is Substantially Completed and ready for inspection to determine Substantial Completion. The Contractor shall also submit with the notification all operating and maintenance manuals for all installed equipment.

Unless the OIC determines that the Work is not sufficiently complete to warrant an inspection to determine Substantial Completion, the OIC will inspect the Work, and may prepare and give to contractor a comprehensive list of items to be completed or corrected before establishing Substantial Completion. If given a list of items, the Contractor shall proceed promptly to complete and correct items on the list and upon correction, must

repeat all steps described above, including written notification, in order to obtain Substantial Completion. Failure to include an item on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents.

If the OIC makes a determination of Substantial Completion, the OIC will do so by written notice only. Such written notice will indicate the portion of the work that is considered Substantially Complete and the date upon which the work is considered Substantially Complete. An issuance of Substantial Completion shall suspend contract time until otherwise noted by the OIC. An issuance of Substantial Completion shall not be considered Final Acceptance.

6.33 FINAL COMPLETION, FINAL ACCEPTANCE AND SETTLEMENT OF CONTRACT

Final Completion is defined as when the work is fully completed and in accordance with the Contract Documents, including, without limitation, satisfaction of all punch list items.

In order to obtain a determination of Final Completion, Contractor shall notify the OIC in writing when the project is complete with no deficiencies and ready for Final Inspection.

Final inspection will be given when all items laid out in the plans, specifications, addendum, punch list and any and all other contract documents are completed. If the OIC provides the Contractor with a pre-final punch list of items, Final Inspection will not be given until those items are completed to the satisfaction of the OIC.

Upon determination of Final Completion, the OIC will request concurrence of Final Acceptance by the Contracting Officer. Once the Contracting Officer concurs, the OIC will send written notification to the Contractor of the Final Acceptance Date.

Final Acceptance is defined as obtaining a designation of Final Completion of the Work and submittal of all necessary documents, including where applicable, but not limited to the following:

1. All written warranties required by the contract.
2. All required "As-Built" drawings.
3. Complete weekly payrolls for both the General and Subcontractors.
4. Certificate of Final Plumbing and Electrical Inspections.
5. Certificate of building occupancy as required.
6. Certificate of Soil and Wood Treatments.
7. Certificate of Water System Chlorination.
8. Certificate of Elevator Inspection, Boiler and Pressure Pipe installation.
9. Maintenance Service Contract and two (2) copies of a list of all equipment installed.
10. All operating and maintenance manuals for installed equipment.
11. All other documents required by the Contract.

The Final Acceptance Date shall determine:

1. End of Contract time.
2. Commencement of all warranty periods.
3. Commencement of all maintenance services required in per the Contract.

Failure to attain Final Acceptance of the project will result in the accrual of liquidated damages in accordance with the Contract Documents.

6.34 GUARANTEE OF WORK

- A. All work shall be guaranteed by the Contractor against defects resulting from the use of defective or inferior materials, equipment or workmanship for one year or as otherwise noted in the technical specifications from the date of Final Acceptance of the contract.
- B. If, within any guarantee period, repairs or changes are required in connection with the guaranteed work, which in the opinion of the OIC is rendered necessary as a result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contract, the Contractor shall within five (5) consecutive working days and without expense to the County commence to:
 1. Place in satisfactory condition in every instance all of such guarantee work and correct all defects therein; and
 2. Make good all damages to the building or work or equipment or contents thereof.
- C. Whenever a warranty on any product hereinafter specified exceeds one year, this warranty shall become part of this contract thereof. The Contractor shall complete the warranty forms in the name of the County and submit such forms to the manufacturer within such time required to validate the warranty.

6.35 CLOSING CONTRACTS

In order to close a contract, the Contractor shall submit the final payment request and the applicable closing documents by the specified time. In the event that the Contractor should fail to comply with this request, the Contracting Officer may terminate the Contract. The pertinent provisions of **Section 8 REMEDIES** shall be applicable.

SECTION 7 PAYMENT

7.1 PAYMENT

The contractor shall receive and accept the compensation provided in the contract as full payment for the performance of the contract.

For lump sum contracts, the contract price shall be the result obtained by first reducing the amount designated as the total sum bid or proposal in the award by the amount included therein for allowances and contingencies and adding thereto or deducting therefrom any extra cost or any reduction in cost, respectively, to the County as a result of supplemental agreements in writing and written orders of the Contracting Officer pursuant to subsection 5.2.

7.2 VARIATIONS IN ESTIMATED QUANTITIES

The quantities of the items in the offer form are approximate only, and the County reserves the right to increase or decrease any of the quantities as the Contracting Officer shall deem necessary or advisable.

That the quantities shown distributed in the LUMP SUM items are given only for the bidder's and/or contractor's convenience and for the purpose of making monthly estimates. The bidder and/or contractor shall verify these quantities in any manner acceptable to the County.

A. 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 Contracting Officer shall, upon receipt of a timely written request for an extension of time, prior to the date of final payment of the contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the Contracting Officer the findings justify.

B. 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. (HAR 3-125-10)

7.3 QUANTITIES AND MEASUREMENTS

All quantities of work to be completed under the contract shall be measured by the OIC. The contractor shall inform the OIC when measurements are required. These

measurements shall be considered correct and final unless the contractor files a written protest demonstrating the existence of an error within ten (10) calendar days after receipt of such measurement data.

Quantities or measurements indicated in the bid or proposal, if any are given for the convenience of the contractor. It will be assumed that the lump sum bid or proposal and unit prices made by the contractor and the price agreed upon by him are based on a thorough knowledge of the existing conditions and the amount and kind of work to be performed. It is expressly understood and agreed by the Contractor that quantities and measurements of the work to be done and the materials to be furnished under this contract which have been estimated, as given are approximate. The Contractor further agrees and hereby understands that neither the OIC, Contracting Officer, the County nor any of them is to be held responsible if such estimated quantities and measurements shall not be found to be the same or even close to the actual quantities and measurements required for the work under the contract. The contractor will make no claim for anticipated profits, or for loss of profits because of a difference between the quantities or measurements of the work actually done, or of materials actually delivered, and the estimated quantities or measurements stated in the bid or proposal. If an error, omission or mis-statement shall be discovered in the quantities or measurements stated in the bid or proposal, the same shall not vitiate the contract, or release the contractor or his or her surety or sureties from performing the contract, or affect the price agreed to under the contract, or excuse the contractor from any of the obligations or liabilities under the contract, or entitle him to damages or compensation, except as provided herein.

7.4 FORCE ACCOUNT

The contract documents may provide that certain work be compensated by force account method, or the Contractor may be directed to provide changes compensable under the price adjustment provision of this contract. When performing force account work, the Contractor and its subcontractor(s) shall comply with the provisions of this section. Compensation by force account will not alter any rights, duties, and obligations under the contract. The Contractor shall follow these procedures:

- A. **The Contractor's Duties; OIC Authority.** The Contractor has the duty to perform the work payable under this provision efficiently and economically. When the OIC determines the Contractor is working inefficiently or uneconomically, the OIC may direct the Contractor to stop, modify its means and methods, or the OIC may specifically direct means and methods of doing the force account work. The OIC will not pay for work that is unacceptable or for the cost of correcting work that fails to conform to contract requirements.

- B. **Records.** The Contractor shall maintain accurate daily records of all allowable costs. The records, as well as all work and costs are subject to review, audit, and approval by the OIC.

The Contractor shall use the County's Force Account Form and obtain the Inspector's

signature thereon each day the Contractor performs force account work. As the condition of payment of the force account work, the Contractor shall submit an original and two copies of the force account records, together with invoices, receipts and other backup data to the OIC.

- C. **Allowable Costs.** Allowable costs include labor, equipment and machinery, trucks, insurance, taxes and bonds, overhead, profit, and reimbursable expenses all as described herein. Other costs or items not covered under this section are subject to the OIC's written approval.
- D. **Labor.** Allowable costs include Contractor and subcontractor(s) costs for hourly worker wages, and fringe benefits required by employment contracts, plus overhead and profit markup. The Contractor shall provide the information on the force account form regarding each worker and supervisor.

Overtime compensation, per diem costs and other reimbursable costs are not allowed unless approved in writing by the OIC prior to incurring the expense. Overhead and profit markup will not be allowed for such costs. Costs and time for employees' to travel to and from the project site are not allowed unless approved in writing by the OIC prior to performing the work.

- E. **Materials.** Contractor and subcontractor(s) are allowed the actual cost of materials (excluding financing costs) delivered and incorporated into the work plus overhead and markup. The Contractor shall provide descriptions and quantities of materials, prices and extensions, and costs to transport materials if not included in the prices of the materials. The Contractor shall provide legible receipts and invoices for all materials used and transportation charges. The Contractor shall promptly inform the OIC of any early payment discounts that are available, as well as scheduled or anticipated price increases.

If materials used are not specifically purchased for the force account work but are taken from the Contractor's stock, then in lieu of the invoices, the Contractor shall certify that the materials were taken from stock and that the amount claimed represents the actual cost to the Contractor.

- F. **Equipment and Machinery.** For equipment and machinery necessary and actually used (other than small tools) that are owned or leased or rented, the Contractor is allowed costs for use of equipment or machinery at a per hour rate.

Hourly rates shall include costs for fuel, oil, lubricants, supplies, necessary attachments, repairs, maintenance, tire wear, depreciation, storage, and other incidentals. The allowable hourly rates shall be the Contractor's actual customary charges e.g., shop rates or yard rates, or rental cost as verified by Contractor's records or invoices, provided that the maximum rate shall not exceed the current rates published in the Blue Book, effective at the time of equipment use. Blue Book hourly rates are calculated based upon the following formula:

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

Equipment and machinery costs are not subject to any additional overhead and profit markup.

Equipment and machinery shall be in good condition and suitable for the purpose for which the equipment and machinery are to be used.

For equipment and machinery that is not listed in the Blue Book, the Contractor shall obtain the OIC's written approval of the monthly and hourly rates prior to using the equipment or machinery. If there is no agreement on the rates, the OIC will set the rate. OIC may, prior the use of rental equipment, approve in writing rates that are higher than the published rates, if justified by special circumstance.

- G. **Equipment Charges.** The rental period for equipment and machinery brought to the work site specifically for the force account work, begins when the equipment or machinery reaches the work site, and continues each day the equipment or machinery is at the site and terminates at the end of the day when the equipment or machinery is no longer needed for the force account work, or when the equipment or machinery leaves the project site, whichever comes first.

Rental times for all other equipment and machinery used for force account are paid for the time actually used. Prior to the performance of work, the OIC must approve any hours or operation in excess of 8 hours in any one day. No additional premium beyond the normal rates used will be paid for equipment or machinery over 8 hours per day or 40 hours per week.

The total of all force account rental charges minus the operating cost accrued over the duration of the contract for a specific item of equipment or machinery (same make, model or kind of equipment or machinery doing the same kind of force account work) shall not exceed the replacement cost of that equipment. The Contractor shall provide the cost of replacement to the OIC prior to using the equipment or machinery. If the OIC does not agree with the replacement cost provided by the Contractor or if the Contractor does not provide the replacement cost, the OIC shall set the replacement cost. The Contractor may contest the replacement cost set by the OIC in accordance with Section 8 - Remedies. The OIC will pay only the hourly operating cost should the replacement cost be reached. This provision shall not apply to the accrued rental charges for barricades and other traffic control devices, or while undergoing maintenance.

Rental times are not allowed or credited for any time during which equipment or machinery is inoperative due to its breakdown.

- H. **Idle and Standby Equipment.** In the event the equipment or machinery must standby due to work being delayed or halted by reasons beyond the Contractor's control, the rental rate shall be: Standby/Idle Hourly Rental Rates = [(Blue Book Monthly Rate ÷

176) X (Regional Adjustment Factor) X (Rate Adjustment Table Factor)] X 0.50 or the Contractor's shop rates or yard rates, whichever is lower. The OIC may order the demobilization of standby/idle equipment or, may direct that equipment that was located at the jobsite at the start of the force account work cease to be used for force account work.

Payment will be made only when:

1. The Contractor has notified the OIC in writing at the beginning of the standby/idle period that compensation is expected for the individual piece of equipment or machinery.
2. The Contractor submits to the OIC on each Monday a list of the equipment or machinery that was idle the past week. This list shall have all information necessary to determine the hourly rental rate and the date and time it became idle and the reason for the equipment or machinery being idle. The list shall also have the date and time when any maintenance was performed on the equipment or machinery during the period the equipment was idle.

With the written approval of the OIC, the Contractor may store the idle equipment or machinery on the project site for its own convenience at no increase in contract price or contract time.

- I. **Small Tools.** Contractor and subcontractor(s) are not allowed costs for depreciation or use of small tools, even if the small tools are consumed by use. Small tools are individual pieces of equipment, tools or other terms having a purchase price for that new item or equivalent replacement value of \$1,000.
- J. **Trucks and Utility Items.** The Contractor's cost for utility vehicles and other items such as pickup trucks, van, flatbed trucks, storage trailers, containers, etc. that are already in use or planned for use on the entire project will not be allowed except for the time that, in the opinion of the OIC, they:
 1. are directly and necessarily used for the performance of the force account work; and
 2. the use of such items has not been included within the Contractor's total project overhead costs.

Allowable rental rates for trucks not owned or leased by the Contractor shall not exceed the listed rates in the Blue Book or those established under the Hawaii State Public Utilities Commission, whichever is less.

The Contractor shall provide points of origin, destinations, mileage, and hourly rates for each travel segment.

Payment for use of trucks shall be in accordance with the provisions of Subsection F. of this section.

- K. **Transportation, Mobilization, and Demobilization**. The Contractor shall obtain the OIC's approval of the location from which the equipment or machinery will be moved or transported.

Where the equipment or machinery must be transported to the work site, the Contractor will be paid the reasonable costs to mobilize and demobilize, load and unload, and transport the equipment or machinery, to and from its original location to the work site, or upon completion of the work to another location, whichever cost is less.

The cost to transport the equipment or machinery shall not exceed the rates established by the Hawaii State Public Utilities Commission. If the rates are nonexistent, then the rates will be determined by the OIC based upon the prevailing rates charged by established haulers within the locale.

If the Contractor uses the equipment or machinery for other than force account work, the costs to mobilize and transport may be disallowed or prorated depending on the non-force account.

- L. **Subcontractors**. Subcontractor's costs are allowed plus a markup limited under Price Adjustments of this contract, and applicable State excise tax. Costs for insurance and taxes shall comply with the provisions of subsection M of this section.

- M. **Insurance and Taxes**. Contractor and subcontractor(s) are allowed actual additional costs attributable exclusively to the force account work for property damage, liability, workers compensation insurance premiums, State unemployment contributions, Federal unemployment taxes, social security and Medicare taxes, plus an allowable markup of 6 percent.

- N. **Other Costs**. Any other costs or items not covered under this section, Force Account Provisions and Compensation, are subject to the OIC's written approval and conditions.

- O. **Reimbursable Expenses**. All costs are subject to HAR 3-123 – Cost Principles. Reimbursable expenses are subject to the Engineer's written approval and conditions. Overhead and profit markups are not permitted on reimbursable expenses.

Costs incurred by the Contractor for air transportation and associated ground transportation, and per diem or subsistence allowance costs (lodging and meals) are allowed as reimbursable expenses when the project conditions require special skilled workers not readily available on the island of the project site. Air transportation shall not exceed the actual cost of coach class airfare. Whenever possible, Contractor shall take advantage of advance purchase discount air fares. Ground transportation shall not exceed the actual cost of renting a compact-sized vehicle. Rental vehicles shall be shared among Contractor's employees to the greatest extent possible. Insurance coverage is not a

reimbursable expense.

Per Diem or subsistence costs (lodging and meals) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel for County government employees. No per diem is allowed for leaving and returning the same day. The Contractor shall obtain prior written approval from the OIC for other conditions.

- P. **State Excise Tax and Bond**. The Contractor will be reimbursed for State excise taxes paid or payable on the allowable force account work. The actual bond premium, not to exceed 1 percent is allowed on items covered by Subsections (D) - Labor, (E) – Materials, (F) – Equipment and Machinery, (J) – Trucks, (L) – Subcontractors, (M) – Insurance and Taxes, (N) - Other Costs, and (O) - Reimbursable Expenses when applicable. When the original contract price includes a bond premium for an allowance item to be paid by force account, no additional bond premium for such allowance items will be paid until the allowance amount is exhausted.

7.5 PAYMENTS DURING PERFORMANCE OF WORK

The OIC, prior to the commencement of work under the contract will submit to the Contractor a schedule of values of the various parts of the work, including quantities, aggregating the total sum of the contract, made out in such form as the OIC and the contractor may agree upon, and, if required, supported by such evidence as to its correctness as the OIC, may direct. The schedule, as approved by the OIC, shall be used as a basis for payment under the contract.

The Contractor shall, not later than the last day of each month during the performance of the contract, make an estimate of the amount of work done in accordance with the contract during that month, deducting sufficient allowance for incomplete or unprotected work or to provide for any contingency for known defects or known damage to said work or for the necessity of performing any part of the work over again to cure such defects or damage.

The County will retain five percent (5%) of the amount due under the contract to the contractor to insure the proper performance of the contract. After fifty percent (50%) of the contract is completed and progress of work is satisfactory, no additional sums for retainage shall be withheld. However, if progress of work is not satisfactory, the County may continue to withhold as retainage, sums not exceeding five percent (5%) of the amount due the contractor. The County will hold the retainage amount until completion, in an acceptable manner of all the work as indicated in the Plans and Specifications. The monthly estimate as ascertained hereinabove, less the retainage and previous payments, will be certified and paid to the contractor.

7.6 PAYMENT FOR DELIVERED MATERIALS

Unless the contractor submits a paid invoice for the materials, the County will not make payment for materials under this subsection.

The County may pay the contractor:

- A. The cost of accepted material to be incorporated in the work when the contractor delivers such materials to the project and stored in acceptable storage places near the project.
- B. For cost of accepted materials furnished and acceptably stored in a fabricator's yard, provided such storage yard is on Kaua'i, if the contractor furnishes evidence that the materials are for use on the project. The contractor shall not use that material elsewhere.

The County will not exceed the bid or proposal price of that item for payments authorized in this subsection. The contractor shall not consider payment of the material as Final Acceptance. The contractor shall be responsible for those materials.

Payment for material does not relieve the contractor of his or her obligations to furnish material acceptable to the OIC and to incorporate properly the material into the project according to the contract.

The County will not make material payment on living or perishable plant material.

7.7 FINAL PAYMENT

After completion of all the work required under the contract and Final Acceptance, the contractor will be paid the balance due in accordance with the OIC's final estimate of the construction actually performed. Final payment will be made only with the approval of the Contracting Officer, and the written consent to the surety or sureties on the contractor's bond after confirmation of Tax Clearance as required by the Director of Taxation of the State of Hawaii and Internal Revenue Service, provided in HRS 103-53, as amended, and certification from the OIC that any and all outstanding bills of the Contractor and subcontractors due and owing to the County are paid.

7.8 PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS

A. "Prompt Payment Clause

1. **Generally.** Any money paid to a contractor shall be disbursed to subcontractors within ten (10) 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 of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

3. **Penalty.** The Contracting Officer or the contractor, as applicable, will be subject to a penalty of one and one-half per cent per month upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. 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 paragraph (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 HRS 103-32.1; or
 - b. The following has occurred:
 - i. A period of ninety (90) 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 HRS 103D-324; 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 form of mutually acceptable collateral, then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the Contracting Officer to the contractor and subsequently, upon receipt from the Contracting Officer, by the contractor to the subcontractor within the applicable time periods specified in paragraph (2) and HRS 103-10. The penalty may be withheld from future payment due to the contractor, if the contractor was the responsible party. If a contractor has violated paragraph (2) three or more times within two (2) years of the first violation, the contractor shall be referred by the Contracting Officer to the contractors license board for action under HRS 444-17(14).
4. A properly documented final payment request from a subcontractor, as required by paragraph (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 confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The Contracting 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 Contracting 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 paragraph (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 Contracting Officer shall return any final payment request that is defective to the contractor within seven (7) 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 paragraph (3); provided that any such payments withheld shall be withheld by the Contracting Officer." (HAR 3-125-23)

SECTION 8 REMEDIES

8.1 CLAIMS BASED ON ORAL DIRECTIVES

- A. Not more than five (5) days after receipt of the written notice from the contractor, the Contracting Officer shall issue a change order for the subject work if the OIC agrees that it constitutes a change. If no change order is issued in the time established, it shall be deemed a rejection of contractor's claim for a change. If the contractor objects to the Contracting Officer's refusal to issue a change order, it shall file a written protest with the Contracting Officer within thirty days after delivery to the OIC 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. (HAR 3-125-16)

8.2 SUSPENSION OF WORK

- A. **Suspension of work.** The OIC may, by written order, suspend the performance of the work, either in whole or in part for such periods as the OIC may deem necessary for any cause, including, but not limited to:
1. Weather or soil conditions considered unsuitable for prosecution of the work;
 2. Failure on the part of the contractor to:
 - a. Correct conditions unsafe for the general public or for the workers;
 - b. Carry out orders given by the OIC;
 - c. Perform the work in strict compliance with the provisions of the contract; or
 - d. Provide adequate supervision on the jobsite.
 3. Whenever a redesign that may affect the work is deemed necessary by the OIC;
 4. Unacceptable noise or dust arising from the construction even if it does not violate any law or regulation; or
 5. The convenience of the County.
- B. **Partial and total suspension.** Suspension of work on some but not all items of work shall be considered a "partial suspension". Suspension of work on all items shall be considered "total suspension". The period of suspension shall be computed from the date set out in the written order for work to cease until the date of the order for work to resume.
- C. When the performance of the work under the contract has been suspended for any cause whatsoever, in addition to being responsible for performing the work under the contract, the contractor shall:

1. Defend indemnify and hold the County and its officers and employees harmless from liability for any injury or damage occurring during the period that the performance of the contract is suspended.
2. Be responsible for all materials and equipment delivered to the site of the project, including materials and equipment for which he or she has received partial payment.
3. Properly store the materials and equipment which have been partially paid for by the County or which have been furnished by the County.
4. Remove immediately as directed by the OIC all surplus materials, equipment and rubbish.
5. Neatly and compactly store, only with the approval of the OIC, all materials and equipment on the site of projects that are not within public highways or streets.
6. Provide suitable drainage and erect such temporary structures as are necessary to protect the project or parts of the project from damage, and damages to the County personnel and public.

D. **Reimbursement to contractor.** In the event that the contractor is ordered by the OIC in writing as provided herein to suspend all work under the contract in accordance with the above paragraphs A.3., A.4., or A.5., the contractor may be reimbursed for actual money expended towards the project during the period of suspension. No allowance will be made for anticipated profits.

E. **Cost Adjustment.** If the performance of all or any part of the work is, suspended, for reasons beyond the control of the contractor, an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such suspension, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension:

1. To the extent 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 provisions of the contract.

F. **Claims for Adjustment.** Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the provisions on changes and claims for adjustment. Claims for the compensation shall be filed in writing with the OIC within thirty (30) days after the date of the order to resume work or the claims will not be considered. Together

with the claim, the contractor shall submit substantiating documents covering the entire amount shown on the claim. The OIC shall take the claim under consideration and may make such investigations as are deemed necessary. The Contracting Officer shall be the sole judge as to the equitability of the claim and the Contracting Officer's decision shall be final.

- G. **No adjustment.** No provision of this subsection shall entitle the contractor to any adjustments for delays due to failure of surety, for suspensions made at the request of the contractor, for any delay required under the contract, for suspensions, either partial or whole, made by the OIC under the provisions in subparagraph A2. (HAR 3-125-7)

8.3 TERMINATION OF CONTRACT - WORK MAY BE TAKEN OVER BY COUNTY

The OIC may terminate the contract, with the approval of the Contracting Officer, or require the work therein to be completed by the surety or sureties under the contractor's bond or take over such work as hereinafter provided without terminating the contract, if the contractor:

1. fails to begin work under the contract at the time required,
2. is unnecessarily delaying the performance of the contract or any part thereof,
3. is failing to perform the contract with sufficient or adequate workmen, equipment or materials or is not making sufficient progress to ensure the completion of the contract within the time specified,
4. fails to perform the contract in accordance with directions of the OIC,
5. discontinues performance of the contract,
6. fails to re-commence performance of the contract within a reasonable time after service of a written order to do so if the performance had been suspended,
7. becomes insolvent or is declared bankrupt,
8. commits any act of bankruptcy or insolvency,
9. allows any final judgment to stand against him unsatisfied for a period of ten (10) days,
10. makes an assignment for the benefit of creditors,
11. fails to pay for all labor, tools, materials, and equipment,

12. has been or is paying wages to any laborer or mechanic employed on the job site at a rate below the minimum rate specified in the contract,
13. has failed to pay full compensation for overtime work by any such laborer or mechanic,
14. has abandoned the performance of the contract,
15. has made unjustifiable and substantive changes from the condition set forth in his or her original itemized bid or proposal,
16. or violates or fails to perform the contract in accordance with the terms, covenants, conditions, provisions and intent thereof.

Whenever the OIC is not satisfied with the performance of the contract the OIC, 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 requirement, the OIC, 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 OIC, 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 OIC 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. (HAR 3-125-16 [generally]).

Immediately upon or after ordering the contractor to discontinue the work, the Contracting Officer may require the completion of the contract by the surety or sureties upon the contractor's bond, or (without prejudice to the County to rely upon said bond), the County's contract to a second contractor or contractors, or may direct the OIC to enter upon the work and to use such materials, tools and equipment as he or she may find upon the work and to procure labor, additional tools, materials and equipment for the completion of the work, and to complete said work in such a manner as he or she may deem advisable, and in such event the cost or expenses of completing the work and the delay resulting therefrom shall be a charge against the contractor and/or surety or sureties.

8.4 TERMINATION FOR CONVENIENCE

- A. **Terminations.** In addition to any other reason specified in subsection 8.3 above, the OIC may, with approval of the Contracting Officer, 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. (HAR 3-125-22)

- 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 subcontracts and orders connected with the terminated work subject to the County's approval. The Contracting Officer, upon recommendation by the OIC, 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 as necessary to do so. (HAR 3-125-22)
- C. **Right to construction and goods.** The Contracting Officer may, upon recommendation by the OIC, 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, books, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "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 the construction, goods, and construction materials in accordance with the standards of HRS 490:2-706. This in no way implies that the County has breached the contract by exercise of the termination for convenience clause. (HAR 3-125-22)

- 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 HAR Chapter 3-122, 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, upon recommendation of the OIC, may pay the contractor, if at all, an amount set in accordance with subparagraph 8.4 D.3.b. of this subsection.

2. The Contracting Officer, upon recommendation of the OIC, 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, goods, and construction materials under subparagraph 8.4 D.3.c., and the contract price of the work not terminated.
3. Absent complete agreement under paragraph 8.4 D.2. of this subsection, the Contracting Officer, upon notice from the OIC, shall pay the contractor the following amounts, provided payments under paragraph 8.4 D.2. of this subsection 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 five percent markup on actual direct costs on the portion of the work (the markup shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of the work; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - b. Subject to the prior approval of the Contracting Officer, the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subsection 8.4 B subcontractors shall be entitled to a markup of no more than ten percent on direct costs incurred to the date of termination.

These costs must not include costs paid in accordance with 8.4 D.3.a.
 - c. The total sum to be paid the contractor under this paragraph shall not exceed the total contract price reduced by the amount of any sales of construction, goods, and construction materials under subsection 8.4 C, and the contract price of work not terminated.
4. Cost claimed, agreed to, or established under paragraphs 8.4 D.2. and 8.4 D.3. of this subsection shall be in accordance with HAR Chapter 3-123.

8.5 COSTS OF COMPLETING CONTRACT

The contractor and/or his or her surety or sureties shall pay the County for all costs incurred to complete the work under the contract if the County takes the work out of the hands of the contractor pursuant to the provisions of Subsection 8.4, and for damages for any delay in the performance of the contract.

8.6 DEFAULT, DELAY AND TIME EXTENSIONS

A. **Default.**

If the contractor refuses or fails to perform the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this contract, or any extension thereof, fails to complete the work within such time, or commits any other substantial breach of this contract, and further fails within seven (7) calendar days after receipt of written notice from the OIC to commence and continue correction of the refusal or failure with diligence and promptness. The Contracting Officer may, by written notice to the contractor, declare the contractor in breach and terminate the contractor's right to proceed with the work or the part of the work as to which there has been delay or other breach of contract. In the event, the County may take over the work and perform the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, the materials, appliances, and plants as may be on the site of the work and necessary therefore. Whether or not the contractor's right to proceed with the work is terminated, the contractor and the contractor's sureties shall be liable for any damage to the County resulting from the contractor's refusal or failure to complete the work within the specified time. (HAR 3-125-18)

B. **Liquidated damages upon termination.**

If fixed and agreed liquidated damages are provided in the contract, and if the County so terminates the contractor's right to proceed, the resulting damage will consist of the liquidated damages for the time as may be required for final completion of the work. (HAR 3-125-18)

C. **Liquidated damages in absence of termination.**

If fixed and agreed, liquidated damages are provided in the contract, and if the County does not terminate the contractor's right to proceed, the resulting damage will consist of such liquidated damages until the contractor's work is completed and Final Acceptance given by the County. (HAR 3-125-18)

D. **Time extension.**

The contractor's right to proceed shall not be so terminated nor the contractor charged with resulting damage if:

1. The delay in the completion of the work arises from causes beyond the Contractor's control such as: acts of God; acts of the public enemy; acts of the County, State and any other governmental entity in either a sovereign or contractual capacity; acts of another contractor in the performance of a contract with the County; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by the failure on the part of the contractor and/or

subcontractor to diligently perform his or her duties as it relates to any governmental agency in a timely manner; provided further, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the contractor furnishes to the Contracting Officer proof that the contractor has diligently made every effort to obtain such materials from all known sources, and further proof that the inability to obtain the materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the contractor's operations; and

2. The contractor, within ten (10) calendar days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in the judgment of the Contracting Officer, the findings of fact justify such an extension. (HAR 3-125-18)

- E. **Any additional rights and remedies.** The rights and remedies of the County provided in this claim are in addition to any other rights and remedies provided by law or under this contract. (HAR 3-125-18)

8.7 DAMAGES FOR EXTRA EXPENSES IMPOSED ON THE COUNTY

The contractor shall pay the County for all the expenses incurred in re-doing any of the County's obligations under the contract due to any actions or conduct of the contractor, including the replacing of marks or stakes set by the County.

8.8 DEFECTIVE WORK

Any defective work, workmanship or materials that may be discovered in the performance of the contract before its acceptance or within one year thereafter as provided in the guarantee of the work, shall be replaced by the contractor with work and materials that conform to the contract at no cost or expense to the County. The fact that the OIC may have overlooked defective work during the performance of the contract shall not constitute the acceptance of the same. No payment, whether partial or final, shall be construed to be an acceptance of any defective work, workmanship or materials in the work performed under the contract.

The OIC may at any time, stop the performance of the contract or any portion thereof which is not being done in accordance with a contract by written order. Such order shall not in any way relieve the contractor from performing the contract and shall not in any way terminate, cancel or abrogate the contract or any part thereof; and the County shall not in any way be responsible for the delay due to stopping the performance of the contract or any portion thereof as aforesaid.

8.9 UNAUTHORIZED PERFORMANCE

Performance of any work beyond the lines and grades shown on the plans or established by the OIC or performance of any extra work without written order will be considered as unauthorized and will not be paid for. The OIC may require the removal of such work by service of a written order upon the contractor. If the contractor fails to comply promptly with such order, the OIC shall remove such work and the contractor shall pay the County for all expenses incurred in the removal of such work.

8.10 AUTHORITY TO WITHHOLD MONEY DUE OR PAYABLE

The County may withhold such amounts from the money due or to become payable under the contract to the contractor, or any assignee under subsection 5.2.D, as may be necessary to:

- A. Protect the County from any liability resulting from the work performed under this contract;
- B. Satisfy any obligation of the contractor or its subcontractors to the County, including obligations not relating to the contract, and the obligation of the contractor to the workmen, subcontractors, and materialmen who have performed labor or furnished material and equipment under the contract as provided by law; and
- C. Repair, restore, or compensate for, any real or personal property located within the project site or in the vicinity thereof which has been damaged as a result of the fault or negligence of the contractor while performing the work under this contract.

The County may make such payments from such amounts withheld as may be necessary to cause the repair or restoration of the damaged properties or to compensate therefor, to discharge such obligation as provided under paragraph B above, and to protect the County from any liability resulting from the work performed under this contract; provided, however, before making any payment for damages to property prescribed in paragraph C above, the County through the OIC shall request the contractor in writing to undertake the repair or restoration of the damaged property or make compensation therefor. If the contractor fails or refuses to make such repair, restoration or compensation to the satisfaction of the OIC within thirty (30) calendar days after such notification, the County may make the necessary payments.

8.11 SPECIAL EMERGENCY TERMINATION

In the event of a finding by the OIC and approved by the Contracting Officer that a national emergency exists which creates a shortage of materials, labor, or equipment and that such emergency will probably continue to exist for an indefinite length of time, or that funds are no longer available to the County by reason of which the contractor will be unable to perform the work under the contract, the County may cancel all remaining work required to be performed under the contract by written order.

Upon such cancellation, the County shall pay the contractor the amount hereinafter provided. For lump sum contracts, an agreed upon price for the performance of the contract up to the time of cancellation, or at the option of the OIC, a price for such performance determined on the basis of a Force Account pursuant to subsection 7.3. For unit price contracts, the sum of the results obtained by multiplying the number of units of each item incorporated into the parts of the project performed under the contract up to the time of cancellation by the unit price therefor. For both lump sum and unit price contracts, the contractor shall also be paid for such expenditures as in the judgment of the OIC are not otherwise compensated for and are required in the preparation and moving of equipment and materials to the site of the project, the intent being that an equitable settlement shall be made with the contractor. No claim for loss of anticipated profits, however, shall be made or considered.

Materials obtained by the contractor for the project, that have been inspected, tested, and accepted by the OIC, and that are not incorporated in the work under the contract, and which have been properly stored and maintained, will be purchased from the contractor at actual cost as shown by receipted bills or other proper evidence of actual cost at such points of delivery as may be designated by the OIC.

8.12 REMEDIES NOT EXCLUSIVE

The express provision herein of certain measures which may be exercised by the County for its protection shall not be construed to preclude the County from exercising any other or further legal or equitable right to protect its interest.

8.13 REMEDIES

Any dispute arising under or out of this solicitation or contract is subject to HAR Chapter 3-126. (HAR 3-125-24)

8.14 DISPUTES

- A. The resolution of controversies or claims, by mutual agreement, in excess of \$50,000 shall be subject to prior written approval of the Contracting Officer. (HAR 3-126-27)
- B. All controversies between the County and the contractor not exceeding \$50,000 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 ninety (90) calendar days after a written request by the contractor for a final decision concerning the controversy.

For claims exceeding \$50,000, a decision will be issued ninety (90) calendar days after receipt of the claim; provided that if a decision is not issued within ninety (90) calendar days, the Contracting Officer will notify the Contractor of the time within which such decision will be made. This additional time period will depend on the size and complexity of the claim and the adequacy of the Contractor's supporting data and other relevant factors.

If the Contracting Officer does not issue a written decision within the specified time period, then the contractor may proceed as if an adverse decision has been received.

- C. The Contracting Officer shall 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.
- D. Any such decision shall be final and conclusive, unless fraudulent, or unless the contractor brings an action seeking judicial review of the decision in the Fifth Circuit Court of the State of Hawaii within six (6) months from the date of receipt of the decision.
- E. 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 Hawaii 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. (HAR 3-126-31)
- F. The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting contractor action concerning appeal. The payments shall be without prejudice to the rights of either party and where such payments are required to be returned by a subsequent decision, interest on such payments shall be paid at the statutory rate from the date of payment.


All controversies involving claims asserted by the County against a contractor which cannot be resolved by mutual agreement shall be the subject of a decision by the Contracting Officer.

APPROVED AS TO FORM AND LEGALITY:


County Attorney

9.23.15
Date

APPROVED:


Director of Finance

9/23/15
Date